

No. 23-30520

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**IN RE CITY OF NEW ORLEANS,**  
*Petitioner.*

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UNITED STATES OF AMERICA  
*Plaintiff,*

v.

CITY OF NEW ORLEANS  
*Defendant.*

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**REURGED EMERGENCY PETITION FOR WRIT OF MANDAMUS**

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Emergency Petition for a Writ of Mandamus  
to the United States District Court  
for the Eastern District of Louisiana,  
Docket No. 12-CV-01924.

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## Certificate of Interested Persons

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No. 23-30520

### IN RE CITY OF NEW ORLEANS

The undersigned counsel of record certifies that pursuant to the fourth sentence of Fifth Circuit Rule 28.2.1, petitioner, the City of New Orleans, and respondent, the United States of America, as governmental entities, need not furnish a certificate of interested persons. Counsel for the Plaintiff-Respondent, United States of America:

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## **I. STATEMENT REGARDING ORAL ARGUMENT**

The City seeks emergency mandamus relief from this Court to limit the District Court's role to the boundaries of federal law and the instant consent decree. The constitutional importance and factual complexity of this matter warrants oral argument. The challenged order requires compliance by this Friday, August 25, 2023, however, rendering oral argument likely impracticable without a stay.

## **II. RELIEF SOUGHT**

The City again seeks vacatur of an order of the District Court exceeding its jurisdiction. The District Court has *sua sponte* changed the terms of the consent decree.<sup>1</sup> The Decree tests NOPD's compliance through agreed upon audits of system-wide data to show there is no ongoing pattern or practice of unconstitutional policing. The District Court has ordered that it will use one disciplinary case to

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<sup>1</sup> See App. 2, Consent Decree (hereinafter, the "Decree")

determine NOPD's compliance with the Decree.<sup>2</sup> This flips the Decree on its head. It creates a perfection-based model where any individual matter selected by the District Court can trigger a non-compliance determination, and potentially the contempt of court sanctions now threatened. This material change is far more onerous than the agreed upon terms of the Decree.

That the single example the District Court is using as the new litmus test for compliance is a disciplinary investigation: (i) of the Mayor's security team, that (ii) does not involve any constitutional policing concerns, rather than any of the many disciplinary investigations regarding constitutional policing violations, further warrants this Panel's supervisory attention.

The City respectfully asks this Panel to issue a writ of mandamus vacating the District Court's Rule to Show Cause. Because the District Court's order requires the production of

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<sup>2</sup> App. 3, Transcript of 6/21/2023, at 66:7-9. ("THE COURT: Well, it was in the context of the Officer Vappie investigation, but it was looking at PIB through the lens of the Officer Vappie investigation.")

documentation and responsive pleadings by NOPD this Friday, August 25, 2023, the City of New Orleans respectfully seeks a ruling before that time.<sup>3</sup>

In the alternative, the City seeks an administrative stay of the District Court’s rule to show cause until this Panel can consider the instant petition in a non-emergency setting.

### **III. JURISDICTIONAL STATEMENT**

This Court has appellate jurisdiction to issue mandamus relief under the All Writs Act, which provides in relevant part that “all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. §1651(a).

### **IV. ISSUES PRESENTED**

**(A)** Does Article III, §2 of the U.S. Constitution empower the District Court to expand its equitable powers to craft new compliance

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<sup>3</sup> The District Court’s denial of the City’s objections reset the deadlines originally listed in the challenged Rule to Show Cause. *See* App. 10, at pp. 18 – 19.

metrics based on individual examples rather than the systemic pattern and practice data agreed to by the City and the DOJ?

**(B)** Should the District Court's Rule to Show Cause be administratively stayed pending a ruling of this Panel on the critical constitutional questions raised by the City?

## **V. ARGUMENT IN SUPPORT OF STAY**

This Panel ordered on August 2, 2023, that the District Court's Rule to Show Cause be administratively stayed for fourteen days to give the District Court an opportunity to entertain objections. In response, on August 3<sup>rd</sup> the District Court ordered any objections to be filed by noon, August 7, 2023. The City timely filed its objections with the District Court.<sup>4</sup> DOJ then timely filed its opposition to the City's objections.<sup>5</sup>

The District Court denied the City's objections on August 19<sup>th</sup> (formally on August 21, 2023). *See* App. 10. Therein, the District

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<sup>4</sup> *See* the City's Objections at App. 11.

<sup>5</sup> *See* DOJ's Opposition at App. 12.

Court ordered the City to produce documents and submit a pre-hearing memoranda in addition to all evidence the City may use at the Show Cause hearing, by this Friday, August 25, 2023.<sup>6</sup>

The City is reurging the petition for mandamus that this Panel denied without prejudice now that the position of the District Court and DOJ have been presented for consideration. There is no prejudice to any party in staying the City's document production and merits response to the District Court's rule to show cause. The consent decree is over 10 years old. NOPD will continue its compliance efforts unabated.

The City stands ready to reply to the merits of the Rule to Show Cause but it cannot do so without rendering the instant constitutional challenge moot. A brief stay would remove the only emergency aspect of this petition, which is the briefing deadline of this Friday, and the hearing on August 31<sup>st</sup>.

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<sup>6</sup> See App. 10, Order and Reasons.

## **VI. SUMMARY OF THE ARGUMENT**

The City of New Orleans and the Department of Justice settled litigation through a contract in the form of a court ordered consent decree. The parties detailed how compliance would be measured, including the use of an independent monitor to audit compliance at a systemic level. The goal was to demonstrate that there was no longer a pattern or practice of unconstitutional policing through empirical, objective data.

The instant Rule to Show Cause flips this agreement on its head. The District Court has ordered that the City may be held in contempt for alleged violations of NOPD policy in one disciplinary investigation of a member of the Mayor's executive protection detail. (The City disputes that assertion.) Ordering that one example from thousands of disciplinary cases be hand selected to determine compliance – and potentially contempt of court – is a drastic revision of the core concept of the agreed terms which renders the Decree far more onerous on the City, and violates basic federalism principals.

There is no reason this one investigation linked to the Mayor should be treated as the determination of compliance or a contemptible event under the broad apparatus of the Decree. There are ten years of reports documenting NOPD's progress *towards* compliance. OCDM demands 95% audit compliance. NOPD currently acknowledges it is compliant with approximately 90% of the subparagraphs of the Decree, and OCDM claims a lower figure.<sup>7</sup> Yet, somehow, only this specific allegation of a violation of NOPD policy warrants contempt of court? This cannot be the way forward. The Rule to Show Cause should be vacated.

## **VII. STATEMENT OF THE FACTS**

Consideration of the jurisdictional limits of the District Court requires the context of the Decree's detailed terms as there is no statutory basis for the District Court's authority.

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<sup>7</sup> To be clear, the City strenuously asserts NOPD is in substantial compliance with the Decree, and has met the contractual definition for "full and effective compliance" through "sustained and continuing improvement in constitutional policing." App. 2, Decree at para. 492.

The DOJ and the City set out the terms of a settlement agreement – the consent decree – which became an order of the Court on January 11, 2013. *See* App. 2, Amended and Restated Consent Decree (hereinafter the “Decree”). The Decree represents the nation’s most expansive consent decree, including over 700 material subparagraphs that seek to ensure constitutional policing for the residents of New Orleans. Every NOPD policy, practice, and procedure from arrests to community engagement has been rewritten with line-level edits by the DOJ and the Office of Consent Decree Monitor<sup>8</sup> (“OCDM”) over the past decade of federal oversight. NOPD does not have a policy regarding the Mayors executive protection detail as none was deemed relevant to the constitutional policing goals of the Decree for the last decade.

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<sup>8</sup> The District Court appointed Sheppard Mullin Richter & Hampton, LLP, a Washington, D.C., law firm, as the monitor. The “Office of Consent Decree Monitor” or “OCDM” is not actually a governmental “office,” but a pseudonym with accompanying seal created by Sheppard Mullin Richter & Hampton, LLP.

## **A. Measuring Compliance per the Consent Decree**

Most of the Decree's 700-plus subparagraphs are devoted to NOPD policy and procedure and do not address the mechanisms to prove compliance and end federal control. The introduction of the Decree through paragraph 26, and paragraphs 444 through 492 deal with administration of the Decree and the roles of NOPD, the City, DOJ, OCDM, and the District Court.

Compliance with the Decree, and the resulting end of federal control, was defined by the parties as follows: NOPD was to develop new policies, train officers on the new policies, and test compliance *via* OCDM's outcome assessments and audits.<sup>9</sup> "Full and Effective Compliance" shall be defined to require sustained compliance with all material requirements of this Agreement or sustained and continuing improvement in constitutional policing, as demonstrated pursuant to the Agreement's outcome measures." *See* App. 2, Decree at para. 491.

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<sup>9</sup> *See* App. 2 at paras. 447 and 450.

OCDM is the court-appointed monitor charged with reporting on the NOPD's compliance efforts according to the terms negotiated by the City and DOJ on the Decree. OCDM's role as court-appointed monitor is set forth in express detail. Paragraphs 444 through 492, explain that OCDM "shall assess and report whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in the constitutional and professional treatment of individuals by NOPD."<sup>10</sup> "The Monitor shall conduct compliance reviews or audits as necessary to determine whether the City and NOPD have implemented and continue to comply with the material requirements of this Agreement."<sup>11</sup> Critically, the methodology for the audits is subject to City and DOJ approval at the front end.<sup>12</sup> OCDM is then charged to publicly report

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<sup>10</sup> See App. 2 at para. 444.

<sup>11</sup> See App. 2 at para. 447.

<sup>12</sup> See App. 2 at paras. 450 – 453. This is functionally the same process employed in Seattle. *United States v. City of Seattle*, 2018 U.S. Dist. LEXIS 4615, at \*4 (W.D. Wash. Jan. 10, 2018).

the results of its audits to the District Court.<sup>13</sup> These system-level reviews determine when NOPD has proven compliance.

OCDM is subject to the supervision and orders of the District Court, but *only* inside the framework of the Decree.<sup>14</sup> OCDM is prohibited from functioning as the superintendent or replacing any NOPD functions – including NOPD disciplinary functions. *Id.* For example, specific investigations of a particular officer or a specific disciplinary decision are *not* subject to OCDM approval and cannot replace the audit function at the core of OCDM’s role.<sup>15</sup> As OCDM has admitted in writing, “the Monitoring Team does not investigate specific matters.”<sup>16</sup>

Audits, reviews, and outcome assessments under the Decree are global evaluations of patterns and practices reduced to empirical data to demonstrate systemic compliance. *See, e.g.*, App. 2 at 448. OCDM demands a 95% compliance rate to be “compliant” for an audit. That

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<sup>13</sup> *See* App. 2 at paras. 445 and 457.

<sup>14</sup> *See* App. 2 at para. 445.

<sup>15</sup> App. 1, at Attachment B.

<sup>16</sup> App. 1, at Attachment B.

obviously acknowledges that specific examples of alleged policy violations will always exist, even when NOPD is fully compliant with the Decree. As OCDM often comments, perfection was never the agreed upon metric. As such, a single event cannot render NOPD non-compliant with the Decree.<sup>17</sup>

As the District Court explained: “[t]he Consent Decree is effectuated ... to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law.” App. 4, Rule to Show Cause at p. 2.

The District Court further notes, however, that it “specifically retained jurisdiction over this matter, including but not limited to the right to **interpret, amend**, and enforce the Consent Decree until the final **remedy contemplated** by the Consent Decree has been

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<sup>17</sup> “While room exists for further improvement in a few areas, and the Monitoring Team will ensure those further improvements are made over the coming months, the Consent Decree does not call for perfection.” Annual Report of the Office of the Consent Decree Monitor for 2020, February 16, 2021, R. Doc. 613-1 at 15, and [nopdconsent.azurewebsites.net/Media/Default/Documents/Reports/Monitor's%20Annual%20Report%202020.pdf](https://nopdconsent.azurewebsites.net/Media/Default/Documents/Reports/Monitor's%20Annual%20Report%202020.pdf)

achieved.”<sup>18</sup> It is the District Court’s *sua sponte* amendments of the Decree’s express terms in order to achieve remedies the District Court interprets into the Decree that is at the heart of the constitutional crisis facing the City.

Paragraph 487 allows for the modification of the Decree by joint stipulation of the City and DOJ, with District Court approval. It does not allow either party, or the District Court, to unilaterally change the terms to broaden the unwritten equitable power of the District Court. The City asserts that material changes to the core terms of the Decree based on the subjective views of the District Court are a stark violation of the constitutional limits on federal courts.

As the District Court notes, there is no controlling statute or rule to guide its role. Therefore, the roles stated in the Decree contract are controlling. The Decree sets out the role of each litigant, the monitor, and the District Court, as separate and critical gears in a complex machine. The Decree makes clear at multiple paragraphs

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<sup>18</sup> App. 4, Rule to Show Cause, at p. 2 (emphasis added).

that “[i]f the Parties disagree ... [they] may seek Court resolution.” App. 2, Decree at para. 451; *see also* paras. 23, 445, 456, 478, 479, 480, 483, 484, 491, 492.

The District Court does not have any investigative, managerial, or public reporting duties. The District Court does not agree with this interpretation, instead often declaring that “[t]he monitoring team and I have a responsibility to report to the public on the status of NOPD's compliance under the consent decree.”<sup>19</sup> This view puts the District Court into the role of monitor, as used in the Decree.

**B. This Conduct has Been Challenged Before.**

The City filed a previous petition for writ of mandamus to vacate the injunction. *See* 23-30193, R. Doc. 37-2. A panel of this Court denied the mandamus petition but concluded that the District Court’s cited authority for the public event did not provide jurisdiction to compel the public testimony.<sup>20</sup>

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<sup>19</sup> *See* App. 5, Transcript excerpt of 8/17/2022 at 5:19 – 6:1.

<sup>20</sup> *See* App. 6, Denial of Mandamus, at p. 3. (“Nothing in the short and plain one-sentence text of paragraph 12 of the Consent Decree, on which the District Court wholly relies, authorizes the subject order setting the public hearing.”)

Since then, the District Court has openly expressed frustration that NOPD and City employees are not made available for examination by the District Court before the press at these events, as had occurred before the City's prior mandamus petition.<sup>21</sup>

The City has struggled to navigate these public events without the benefit of the Federal Rules of Civil Procedure or statutory guidance. *C.f.*, Fed. R. Civ. P. 1 (“These rules govern the procedure in all civil actions and proceedings in the United States District Courts, except as stated in Rule 81.”)

### **C. Investigation Leading to this Mandamus Petition**

The following summarizes events regarding the investigation of a member of the Mayor's security detail, Officer Jeffery Vappie, which results in the order challenged here.

In November of 2022 a news outlet requested information about the amount of time Officer Vappie spent inside a residential property with the Mayor as part of the Mayor's executive protection detail.

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<sup>21</sup> See, e.g., App. 3, transcript 6/21/2023 at 73:13-22.

Upon receipt of this media request the Deputy Superintendent over NOPD's Public Integrity Bureau ("PIB") triggered a "rank initiated" disciplinary investigation.

Jonathan Aronie (the head of OCDM) acknowledged that as court-appointed monitor, OCDM lacked the power to "investigate specific matters."<sup>22</sup> Mr. Aronie described the claims as "alleged time card misconduct involving the Mayor's NOPD security detail."<sup>23</sup> Mr. Aronie further advised that the District Court had authorized OCDM to "work closely with the New Orleans Police Department Public Integrity Bureau to ensure their investigation of NOPD's role in this matter is effective, efficient, and without bias." *Id.* OCDM's actual involvement far exceeded any definition of "monitoring."<sup>24</sup>

#### **D. The Monitor's Unique Involvement in PIB's Vappie Investigation**

Immediately upon the start of the PIB disciplinary investigation OCDM became heavily engaged in the investigation. OCDM

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<sup>22</sup> App. 1, at Attachment B (CDM020).

<sup>23</sup> App. 1, at Attachment B (CDM020).

<sup>24</sup> App. 10, Order and Reasons, at p. 3.

participated and demanded a strategy memorandum from the lead investigation for its review. OCDM coordinated with the PIB investigation from the very start and was kept informed of developments via hour-plus weekly calls.<sup>25</sup> This included contemporaneous review of the evidence and updates from investigators on their findings and thoughts.<sup>26</sup> OCDM even drafted questions for PIB witness interviews.<sup>27</sup>

OCDM met with the Office of the Inspector General regarding what it called the “NOPD/Mayor investigation.”<sup>28</sup> The OCDM team kept the District Court informed of what it called the “Vappie investigation issues” on a real-time basis, according to their invoices to the City.<sup>29</sup>

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<sup>25</sup> See, e.g., App. 1, p. 1; and *id.*, at Attachment C, p. 2 (CDM023).

<sup>26</sup> App. 1, at Attachment C, p. 1, and at Attachment E, p. 3; see also, Affidavit of PIB Lead Investigator at App. 7, at Ex. 3 (CDM110).

<sup>27</sup> See e.g., Monitor time entries about Vappie summarized at App. 7, at Ex. 2 (CDM099), at entries 12/05/22, 01/05/23, 12/28/22, 01/08/23, 01/23/23 and 01/24/23.

<sup>28</sup> See App. 7, Monitor time entries about Vappie summarized at Ex. 2 (CDM099), for 11/10/2022.

<sup>29</sup> See, e.g., App. 7, Monitor time entries about Vappie summarized at Ex. 2 (CDM099), for 11/14/2022.

OCDM's conduct during the investigation deeply troubled the lead PIB investigators. The OCDM team demonstrated evident bias against the Mayor, and therefore the officer by extension. As the lead investigator of PIB acknowledged *under oath*, an OCDM team member went so far as to suggest that the PIB investigators should sustain findings of nepotism against Officer Vappie **despite a lack of evidence:**

4. As a result of the many meetings I had with the monitoring team, I was were [*sic*] very concerned that there was a specific outcome to the investigation that was wanted for political reasons by the monitoring team. The pressure applied by certain monitor team members made it clear that this case was about the Mayor of New Orleans to them. PIB has no authority to investigate the mayor of New Orleans....

12. During the investigation of Officer Vappie, the monitoring team specifically suggested that I and Lt. Jones, the other investigator, **sustain the findings against Officer Vappie regarding nepotism and just let the Civil Service commission overturn the sustain disposition on appeal.**

13. It was my understanding that the nepotism charge would open the door for payroll fraud as it would mean Officer Vappie was not working while on duty.

14. These comments were, and still are, very concerning because it is my goal, and the goal of PIB to conduct unbiased and accurate investigations at all times. It goes against everything I understood about NOPD policy to sustain findings despite a lack of evidence.<sup>30</sup>

This conduct by OCDM is antithetical to the root constitutional goal of the Consent Decree and OCDM's contract. It is also relevant in that OCDM's goal to obtain a criminal payroll fraud allegation against Officer Vappie is evident throughout the reports that resulted in the challenged Rule to Show Cause. The District Court's Order and Reasons does not address this troubling episode, except to categorize the City's objection as an *ad hominem* attack on OCDM.<sup>31</sup>

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<sup>30</sup> App. 7, at Ex. 3, Affidavit of PIB Lead Investigator (*emphasis added*).

<sup>31</sup> App. 10, Order and Reasons, at p. 6. (“[T]he City’s response focused on particular facts relating only to the Vappie investigation and ad hominem attacks against the Monitor.”)

**E. On April 7<sup>th</sup> OCDM Reports NOPD Complied with the Decree**

The PIB investigators completed their investigation of Officer Vappie on March 10, 2023, and PIB issued the written report and disciplinary recommendations, without a finding regarding payroll fraud.<sup>32</sup> On April 7<sup>th</sup> OCDM issued a report on the then-complete Vappie investigation titled “Monitoring Team Analysis of PIB Investigation of Officer Jeffrey Vappie.”<sup>33</sup> OCDM reported, that: “Overall, we are satisfied that PIB’s investigation... *met the requirements of the Consent Decree.*”<sup>34</sup> OCDM further reported that, “[h]ere, the PIB investigators did a good job applying the Preponderance of the Evidence standard and, in our view, came to the correct conclusion regarding the allegations sustained.”<sup>35</sup>

The District Court’s Order and Reasons does not address this finding or explain how NOPD could be compliant with the Decree

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<sup>32</sup> See App. 1, at Attachment D (CDM031).

<sup>33</sup> See App. 1, at Attachment E (CDM074).

<sup>34</sup> App. 1, Attachment E at p. 6 (CDM079). (*emphasis added*)

<sup>35</sup> App. 1, Attachment E at pp. 8 (CDM081) and 20 (CDM093).

based on the April 7<sup>th</sup> report, and also in violation of the Decree based on the same single investigation weeks later. This argument goes to the merits of a compliance determination (and possibly a contempt finding). But it is also critical to the asserted basis for jurisdiction to investigate PIB's handling of one case (among thousands)<sup>36</sup> in order to deem NOPD non-compliant with the Decree. OCDM complained about various aspects of the investigation but, on the whole, reported it was compliant with the Decree.<sup>37</sup>

But OCDM's April 7<sup>th</sup> report also specifically sought to alter the outcome of the PIB investigation, admitting its goal was to cause the disciplinary panel reviewing the PIB investigation to "deviate upward from the presumptive discipline set out in the [NOPD discipline] matrix."<sup>38</sup> Discipline according to a set matrix is ordered by the Decree at paragraphs 421 – 425. PIB did not bend to the pressure from OCDM.<sup>39</sup>

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<sup>36</sup> PIB initiates over 500 complaint files per year.

<sup>37</sup> App. 1, at Attachment E p. 15 (CDM088).

<sup>38</sup> App. 1, at Attachment E, p. 16 (CDM086).

<sup>39</sup> See App. 1, at Attachment F (CDM095).

## **F. June 5<sup>th</sup> OCDM Report on the Vappie Investigation**

On, or about, May 1, 2023, OCDM tendered another draft report on the Vappie investigation on the heels of its April 7<sup>th</sup> report. This report is critical. The report is in letter format lacking a formal title, but the file name on OCDM's public website is "12-1924 (Consent Decree) Monitor's Report re Ofc Vappie.pdf." This was not a surprise as OCDM's first quarter of 2023 report noted that the then-forthcoming report would be a "supplemental report focusing on PIB's handling of the investigation into allegations relating to Officer Jeffrey Vappie."<sup>40</sup> OCDM's newest report (finalized June 5, 2023) fundamentally contradicted the recent April 7<sup>th</sup> report. *See App. 1.*

Whereas OCDM had determined that PIB's investigation of Vappie was compliant with the Decree on April 7<sup>th</sup>, it now claimed PIB was cavalier, disingenuous, and generally unprofessional in its handling of the Vappie investigation, and in violation of the Decree on

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<sup>40</sup> OCDM First Quarter 2023 Report, R. Doc. 702, at p. 26 of 32, publicly available at <http://nopdconsent.azurewebsites.net/reports>

June 5<sup>th</sup>.<sup>41</sup> This new, polar opposite view centered around a payroll fraud charge OCDM had stressed from the start of the investigation but that PIB's investigators did not find supported. (The City will not address the merits here, but disputes OCDM's allegations.)

The new attack was not based on new developments or a change in the investigation after the April 7<sup>th</sup> report, as the investigation was closed. But OCDM made clear the intent of the letter was to “remedy the shortcomings of and improve the quality of the PIB report to the extent time still is available to do so.”<sup>42</sup> OCDM has the authority to recommend further investigation in serious use of force and serious misconduct investigations,<sup>43</sup> but it does not have a role in guiding the evaluation of the facts or the discipline imposed.

### **G. The Disciplinary Phase**

The Pre-Disposition Conference and Pre-Disciplinary Hearing for Officer Vappie were conducted on May 25, 2023. After considering

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<sup>41</sup> See App. 1, June 5, 2023, letter.

<sup>42</sup> App. 1, at p. 17.

<sup>43</sup> See App. 2 at paras. 454.

all the evidence from the investigation and Officer Vappie, the Three-Captain Panel recommended sustaining multiple policy violations and exoneration on one. The Superintendent accepted the disciplinary recommendations of the three-Captain panel on June 14<sup>th</sup>, bringing NOPD’s disciplinary process to a close.<sup>44</sup>

#### **H. OCDM Reports and Public Hearings**

On June 6, 2023, the day after OCDM’s letter report was published, the District Court ordered the City and DOJ to file “written responses” to OCDM’s latest report and appear again at a “public hearing” regarding the report.<sup>45</sup> The City unsuccessfully objected to the order because such responses are not a Decree requirement.<sup>46</sup> While voluntary *informal* responses before publication of OCDM reports is a City *right* per paragraph 458, there is no requirement for formal litigation responses to OCDM reports or public status conferences to refute same. The City’s court-ordered

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<sup>44</sup> Officer Vappie has appeal rights to the Civil Service Commission.

<sup>45</sup> No. 12-01924, R. Doc. 712.

<sup>46</sup> App. 7 at p. 1.

response made OCDM's efforts to manipulate the outcome of the investigation public.

OCDM then crafted a new "presentation" for the public hearing that claimed PIB's investigation had *now* violated additional provisions of the Decree.<sup>47</sup> The presentation is titled "Monitoring Team Review of PIB Administrative Investigations Processes"<sup>48</sup> but the file is named "Court Presentation re Vappie.pdf" which is the more honest description. Again, nothing regarding the PIB investigation (as opposed to the discipline ordered) had changed since April 7<sup>th</sup> when OCDM reported that the investigation was compliant with the Decree.

The City unsuccessfully objected to the violation of Decree paragraph 458 as OCDM had not shared this new report/presentation with new "findings" with the City prior to publication at the public

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<sup>47</sup> The June 5, 2023, report notes alleged deviation from Decree paragraphs 26, 416, 470, 454, and 472. The presentation at the hearing claimed violation of these paragraphs, plus paragraphs 303, 313, 399, 409, 413, 414, 415, and 419. See Transcript and Presentation at App. 8.

<sup>48</sup> The OCDM presentation is published at <http://nopdconsent.azurewebsites.net/Media/Default/Documents/Reports/Court%20Presentation%20re%20Vappie.pdf>

hearing. The District Court responded that the public presentation was “not a report” under the Decree, but a presentation. *See* App. 3, Transcript of 6/21/2023, at 60:16 - 61:14. The District Court’s Rule to Show Cause states that this presentation was “substantial evidence of numerous” violations of the Decree.<sup>49</sup> The City was entitled to receive that evidence before the hearing per paragraph 458. This is another change to the agreed upon terms of the Decree.

#### **I. *Sua Sponte* Rule to Show Cause**

After this “public hearing,” OCDM sent an email to NOPD directing that, “Judge Morgan has asked me to collect certain documents and information relating to statements made by the City during the recent PIB/Vappie hearing.”<sup>50</sup> The list of documents and explanations mostly regarding the reassignments of Officer Vappie and the process employed by PIB to investigate him. Counsel for NOPD responded that if this was a directive from the District Court, as opposed to an outcome assessment or audit by OCDM, it should be

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<sup>49</sup> App. 4 at p. 6; *see also*, Order and Reasons, App. 10, at p. 7.

<sup>50</sup> *See* email string at App. 9, at p. 2.

in the form of an order.<sup>51</sup> The District Court responded with the instant *sua sponte* Rule to Show Cause why NOPD should not be held in contempt and sanctioned for the “clear violations” of the Decree demonstrated by the “substantial evidence” presented by OCDM at the “public status conference.”<sup>52</sup>

Challenging the City’s objections that this individual investigation of one member of the Mayor’s executive protection detail over alleged “time card”<sup>53</sup> violations had nothing to do with the Decree, the District Court states that OCDM focused not on Officer Vappie, but on the PIB investigation process.<sup>54</sup> This position is repeated in the Order and Reasons of August 21<sup>st</sup>.<sup>55</sup> This conflicts with the extensive and repetitive reports tendered by OCDM, the sworn testimony of PIB investigators about OCDM’s role,<sup>56</sup> and the data ordered by the District Court about reassignments that have

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<sup>51</sup> See email string at App. 9.

<sup>52</sup> App. 3, at pp. 6 and 11.

<sup>53</sup> App. 1, at Attachment B.

<sup>54</sup> App. 4, Rule to Show Cause, at p. 4.

<sup>55</sup> See Order and Reasons at App. 10.

<sup>56</sup> App. 7, at Ex. 3, Affidavit of PIB Lead Investigator.

nothing to do with PIB’s investigation, policy, training or systemic compliance. Moreover, the District Court made clear at the public hearing that the entire episode was, at best, “looking at PIB through the lens of the Officer Vappie investigations” – *i.e.*, a single case about one officer not involved in traditional policing. App. 3, transcript 6/21/2023 at 66:3-9.

*And this is the fundamental issue:* One sample is *not* how systemic compliance is to be determined according to the express terms of the Decree. App. 2 at paras. 447 - 453. The challenged Rule to Show Cause modifies this fundamental tenant of the Decree.

To support its modification of the Decree the District Court recites jurisprudence that federal courts are not “governed by rule or statute” in wielding the unwritten equitable powers to enforce their judgments.<sup>57</sup> The District Court further states that “[b]ecause of the assertions made by the City, a **determination of whether the City violated the Consent Decree in the course of the Officer**

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<sup>57</sup> App. 4, Rule to Show Cause, at p. 2.

**Vappie investigation** must include an examination of whether, as the City repeatedly asserts, he was treated exactly as any other NOPD officer.”<sup>58</sup> This does not comply with the Decree. This logic is the root of the instant constitutional challenge and refutes the District Court’s view that this is not about the Vappie investigation.

### **VIII. THE RULE TO SHOW CAUSE VIOLATES THE DECREE.**

Even assuming, for the sake of argument, that a single investigation or a single reassignment was somehow non-compliant with NOPD policy, the Decree does not grant the District Court the power to investigate reassignments or a specific disciplinary process to deem NOPD non-compliant – or compliant, for that matter. It can certainly be one data point in the agreed upon testing methodology by OCDM, but no individual event can be a litmus test for compliance in this institutional reform consent decree that has been in effect for over 10 years. *See App. 2, paras. 444, et seq.*

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<sup>58</sup> App. 4, Rule to Show Cause, at p. 7.

To hand pick one example from the thousands of disciplinary investigations done by PIB during the Decree in the name of determining NOPD's compliance is a dramatic and onerous change to the Decree. It allows the District Court or OCDM or DOJ to unilaterally select any individual event to deem NOPD non-compliant, and in contempt of court. Such subjective power was never envisioned by the City in crafting the Decree.

“[T]he scope of a consent decree must be discerned within its four corners.” *Smith v. Sch. Bd. of Concordia Par.*, 906 F.3d 327, 336 (5th Cir. 2018) (cleaned up). As the Eleventh Circuit explained, “our starting point is to determine the legal relationship among the parties that the consent decree itself established. The next step is to determine whether the District Court’s order changed that relationship in a ‘jurisdictionally significant way.’” *Sierra Club v. Meiburg*, 296 F.3d 1021, 1029 (11th Cir. 2002). The instant change is jurisdictionally significant as it changes the core measure of compliance, which controls the end of federal control.

Moreover, what is the “pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law” that the alleged preferential reassignment of one officer seeks to cure?<sup>59</sup>

At the public status conference, the District Court linked the reassignment of the officer to the departure of former Superintendent Ferguson as if the reassignment needed to be defended, stating:

Well, what I want to know is when is it routine, when does it happen. **I want the monitors and you to help us find that out. Everybody should know that.** The only thing I know that happened on that day was that it was the last day that Shaun Ferguson was the superintendent. It may be coincidental. ... Maybe there’s a perfectly good explanation.<sup>60</sup>

This line of investigation by the District Court continues through the email demand, at Appendix 9, and into the instant Rule to Show Cause and Order and Reasons. Notable examples of the District Court’s specific investigation of this officer’s reassignment which are

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<sup>59</sup> App. 4, Rule to Show Cause, at p. 2.

<sup>60</sup> App. 3, Transcript 6/21/2023 at 82:22 – 83:7 (emphasis added).

completely untethered to any Decree provision or the agreed upon measures of compliance include No. 3 – No. 6, which effectively seek all documents regarding Officer Vappie’s reassignments *See* App. 4, at pp. 8 -9.

The District Court also stated in footnote 47 that the contempt charge would only apply to PIB – *i.e.*, regarding the PIB Vappie Investigation. But why? The City acknowledges 10% of the subparagraphs of the Decree are not yet fully compliant with the Decree based on the agreed upon measurements (although the City maintains that substantial compliance has been achieved). Why are those not viewed as contempt of court?

The District Court’s Order and Reasons compares the Vappie investigation (that was overseen by OCDM at every phase) with DOJ’s allegations from 2011 that triggered the Decree. This is a false comparison. The DOJ report asserted NOPD failed to investigate serious constitutional rights violations, including deaths while in NOPD custody. Here, the real allegation is that one administrative investigation regarding time card misconduct did not reach the

conclusion OCDM wanted. The instant example could never support a consent decree as there is no violation of federal law alleged. To equate these is to minimize the importance of the work NOPD has done and raises a question as to validity of this process. The moment the Decree's purpose is other than to prevent conduct that "deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law," federal jurisdiction evaporates.<sup>61</sup>

#### **IX. LEGAL BASIS FOR GRANTING THE WRIT**

The City fully acknowledges that mandamus is only appropriate in "exceptional circumstances amounting to a judicial usurpation of power...." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 309 (5th Cir. 2008) (*en banc*). Because "mandamus is one of the most potent weapons in the judicial arsenal," an appellate court must be satisfied that three conditions are met before issuing the writ. *In re Gee*, 941 F.3d 153, 157 (5th Cir. 2019). First, the City must "have no other adequate means to attain the relief he desires – a condition designed

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<sup>61</sup> App. 4, Rule to Show Cause at p. 2.

to ensure that the writ will not be used as a substitute for the regular appeals process.” *Id.* at 157 (quoting *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380 (2004)).

This element is satisfied as the City is being harmed by the District Court’s modification of the core terms that dictate how compliance with the Decree is measured. The harm incurred can never be corrected as there is no right of appeal to reverse ongoing federal control. The City can and will appeal any contempt order issued, but that goes to the merits of the charge. This is about the District Court’s power to change the agreed upon process for determining compliance.

Second, the City “must satisfy the burden of showing that [its] right to issuance of the writ is clear and indisputable.” *Id.* The Decree expressly requires that the compliance determinations are to be made based on audits over a period of time to test whether NOPD has implemented the adopted policies into actual practice. *See App. 2 at para. 447.*

There is no federal statute or rule authorizing the District Court's *sua sponte* modification of the core function of the Decree. The District Court is ordering the City to prove why it is not in violation of the Decree based on the handling of a single administrative disciplinary matter that did not even involve a constitutional policing issue. Such a change would make it impossible for the City to ever prove compliance as the parties and the monitor have acknowledged many times that there will always be instances of officers violating policies.

Finally, “the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Id.* “These hurdles, however demanding, are not insuperable.” *Id.* at 158. The events at issue here raise serious constitutional concerns and highlight critical issues that need to be addressed if the tool of institutional reform consent decrees is to be effective. No police department or City would agree to be subject to continuing federal oversight and the cost of same (over \$16 million in OCDM fees alone),

if they could be found to be in violation of the Decree based on any one alleged policy violation.

**X. THE CITY’S RIGHT TO THE WRIT IS CLEAR AND INDISPUTABLE.**

**A. Consent Decrees are Interpreted Like Contracts under State Law.**

Consent judgments are “hybrid creatures, part contract and part judicial decree.” *Allen v. Louisiana*, 14 F.4th 366, 371 (5th Cir. 2021) (quoting *Smith v. Sch. Bd. of Concordia Par.*, 906 F.3d 327, 334 (5th Cir. 2018)). A consent judgment “embodies an agreement of the parties” and is “an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree.” *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004) (quoting *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 378 (1992)). Federal courts interpret consent judgments according to principles of contract law from the State in which the dispute arises. *Allen*, 14 F.4th at 371.

“When a contract resolves a lawsuit, it ‘extends only to those matters the parties intended to settle and the scope of the transaction cannot be extended by implication.’” *Id.* (quoting *Trahan v. Coca Cola*

*Bottling Co. United, Inc.*, 2004-0100, p. 15 (La. 3/2/05), 894 So. 2d 1096, 1107). Importantly, “[a] compromise settles only those differences that the parties clearly intended to settle, including the necessary consequences of what they express.” La. Civ. Code art. 3076.

**B. Consent Judgments in Institutional Reform Cases Implicate Sensitive Federalism Concerns.**

When a consent judgment arises from “institutional reform” litigation, federal courts should consider the sensitive federalism concerns at issue because “[s]uch litigation commonly involves areas of core state responsibility.” *Horne*, 557 U.S. at 447; *Hawkins*, 540 U.S. at 441; *Rufo*, 502 U.S. at 381. Consent judgments “bind state and local officials to the policy preferences of their predecessors” and interfere with “their designated legislative and executive powers.” *Horne*, 557 U.S. at 447.

Many courts and scholars have written about the dangers that consent judgments can pose to federalism and democratic principles. *Frew ex. rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (“If not limited to reasonable and necessary implementations of federal law, remedies

outlined in consent decrees involving state officeholders may improperly deprive future officials of their designated legislative and executive powers.”)

Policing is a core state responsibility, and the Mayor of New Orleans is the duly elected executive of the City. Disagreement with the Mayor’s decisions, even if valid, does not empower a federal court (or its appointed monitor) to direct a different course. The Decree gives the District Court expanded power beyond Article III, but that equitable power is not unbounded.

Just as the District Court was not empowered to order City and NOPD employees into court for a press conference, it is not empowered to use specific disciplinary matters linked to the Mayor as a proxy for the detailed compliance methodologies expressly set forth in the Decree. *See* App. 2 at para. 444, *et seq.* The fact that the disciplinary matter the District Court chose to test is one linked to the Mayor is a stark reminder of the fragile edges of federalism and the importance of public trust in the concept of federalism.

**C. A Federal Court Lacks Jurisdiction to Issue Remedies Not Authorized by a Consent Judgment.**

“The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Missouri v. Biden*, 2023 U.S. Dist. LEXIS 46918, at \*27-28 (W.D. La. Mar. 20, 2023) (cleaned up), quoting *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 435, 137 S. Ct. 1645, 198 L. Ed. 2d 64 (2017) “Jurisdiction in an ongoing institutional reform case ‘only goes so far as the correction of the constitutional infirmity.’” *Brumfield v. La. State Bd. of Educ.*, 806 F.3d 289, 298 (5th Cir. 2015) (quoting *United States v. Texas*, 158 F.3d 299, 311 (5th Cir. 1998)); accord *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971) (“[J]udicial powers may be exercised only on the basis of a constitutional violation.”). As the District Court noted, its power is limited to that necessary “to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law.” App. 4, at p. 2. Nothing about the investigation of an officer on the Mayor’s security team even remotely

touches on this core focus. The District Court’s interpretation and amendment of the Decree to achieve subjective goals exceeds its jurisdictional limits.

“[R]emedies fashioned by the federal courts to address constitutional infirmities ‘must directly address and relate to the constitutional violation itself.’” *M. D. by Stukenberg v. Abbott*, 907 F.3d 237, 271 (5th Cir. 2018) (quoting *Milliken v. Bradley*, 433 U.S. 267, 282 (1977)). A federal court may not “order relief beyond what is minimally required to comport with” federal law. *Id.* at 272. Again, there is no link between the instant Rule to Show Cause and the important constitutional policing objectives of the Decree.

Consent judgments are “subject to the rules generally applicable to other judgments and decrees.” *Rufo*, 502 U.S. at 378. And so, like all injunctions, a consent judgment must be “narrowly tailor[ed] ... to remedy the specific action which gives rise to the order.” *M. D. by Stukenberg v. Abbott*, 907 F.3d 237, 272 (5th Cir. 2018) (quoting *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 586 (5th Cir. 2013)); *accord* Fed. R. Civ. P. 65(d)(1).

When combined with the assumed power to interpret and amend the Decree, the District Court’s equitable power becomes unbounded, except by mandamus. But “[d]istrict courts enjoy no free ranging ‘ancillary’ jurisdiction to enforce consent decrees,” and are “instead constrained by the terms of the decree and related order.” *Pigford v. Veneman*, 292 F.3d 918, 924 (D.C. Cir. 2002) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994)). Only this Court can restore the constitutional boundaries to this institutional reform matter.

**D. Mandamus Is an Appropriate Vehicle to Correct “Jurisdictional Excesses.”**

This Court has observed that “[t]he traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine [a court] to a lawful exercise of its prescribed jurisdiction.” *In re Gee*, 941 F.3d 153, 158 (5th Cir. 2019); see 16 Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 3933.1 (3d ed.) (“The clearest traditional office of mandamus and prohibition has been to control jurisdictional excesses, whether the lower court has acted without power or has refused to act when it had

no power to refuse.”).

The City has no desire to be at odds with the District Court. But with full and warranted respect for the Honorable District Court, the City submits that its actions represent jurisdictional excesses that can only be curbed *via* mandamus. The District Court’s modification of the Decree has enabled it to issue injunctive remedies that exceed its authority and jurisdiction.

#### **XI. MANDAMUS IS THE CITY’S ONLY AVENUE FOR RELIEF.**

The production of information and responsive briefs is now due this Friday, August 25, 2023. The public hearing is set for August 31, 2023. If this Court does not grant mandamus relief, the City and NOPD will be forced to continue the misallocation of limited resources to a specific matter that is not even covered by the Decree. “Addressing these issues now serves to provide the District Court with guidance on such matters in the future.” *John B. v. Goetz*, 531 F.3d 448, 461 (6th Cir. 2008).

This Court has previously said that a litigant “easily” satisfies the mandamus factor requiring an “irremediable” harm when an

issue will be moot on appeal. *In re JPMorgan Chase & Co.*, 916 F.3d 494, 499 (5th Cir. 2019). This Court has also explained that federalism issues are important when considering whether harm can be remedied on appeal. *See In re Gee*, 941 F.3d at 167. “Federalism is a clear restraint on the use of equity power because a structural reform decree eviscerates a State’s discretionary authority over its own program and budgets.” *Id.*

When a federal court improperly takes authority from local policy makers, it violates principles of republican government and democracy. That harm cannot be undone on appeal. Thus, it is one of the “special situations” in which a later appeal is inadequate. 16 Wright & Miller § 3932.1. This Court has also explained that issuing the writ is “especially appropriate,”<sup>62</sup> where the issues implicated have “importance beyond the immediate case.”<sup>63</sup> The federalism issues at stake here could not be of greater importance to the

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<sup>62</sup> *In re Lloyd’s Register N. Am., Inc.*, 780 F.3d 283, 294 (5th Cir. 2015).

<sup>63</sup> *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 319 (5th Cir. 2008) (*en banc*); accord *In re JPMorgan Chase & Co.*, 916 F.3d 494, 499 (5th Cir. 2019).

residents of the City of New Orleans, and those under, or considering, institutional reform consent decrees in other cities.

## **XII. CONCLUSION**

If the District Court is allowed to unilaterally select and investigate individual instances of conduct and use that investigation as a surrogate for the detailed systemic compliance measurements of the Decree, then federal control over a sovereign state department becomes utterly subjective, and thus unlimited. This violates essential federalism principles and the core terms of the controlling Decree.

The City asserts that it, DOJ, OCDM and the District Court should all be held to the terms of the Decree. Mandamus is the only relief available to the City.

*Respectfully submitted, this 22<sup>nd</sup> day of August 2023.*

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***and the New Orleans Police***

***Department***

## CERTIFICATE OF SERVICE

I certify that on August 22, 2023, I notified the below counsel of the intent to file the foregoing brief by email and telephone on this date. I notified the clerk of court of the intent to file the foregoing brief on this date. The brief was filed with the Court's CM/ECF system and I caused copies to be deposited with Federal Express and sent by e-mail to the following counsel of record:

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Eastern District of Louisiana  
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New Orleans, LA 70130

/s/ Charles F. Zimmer II

## CERTIFICATE OF COMPLIANCE

The undersigned certifies that:

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 21(d)(1) because it contains 7,598 words, exclusive of parts of the brief exempted by Rule 32(f).

2. This brief complies with Federal Rule of Appellate Procedure 32(c)(2), including the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 365, Century Schoolbook, 14-point font.

3. This document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

/s/ Charles F. Zimmer II

Dated: August 22, 2023

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**IN RE CITY OF NEW ORLEANS,**  
*Petitioner.*

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**INDEX OF EXHIBITS**

Appendix 1 – OCDM June 5, 2023, letter to the court, with attachments

- Attachment A – City Council Letter to Monitoring Team
- Attachment B – Monitoring Team’s Response to City Council
- Attachment C – Monitoring Team’s 2/17/23 Immediate Action Notice to PIB
- Attachment D – PIB Investigation Report
- Attachment E – Monitoring Team Analysis of PIB Report
- Attachment F – NOPD Response to Monitoring Team Analysis

Appendix 2 – Amended and Restated Consent Decree Regarding the New Orleans Police Department

Appendix 3 – June 21, 2023 Transcript of Status Conference

Appendix 4 – Rule to Show Cause

Appendix 5 – August 17, 2022 Transcript of Public Hearing

Proceedings Appendix 6 – Denial of Mandamus, No. 23-30193, R. Doc. 37-2, 4/11/2023

Appendix 7 – Response of the City and NOPD to the Monitor’s Report Regarding the Investigation of Officer Vappie, with Exhibits:

- Exhibit 1 – Removed as this is duplicative of App. 1 hereto.
- Exhibit 2 – Monitor time entries about Vappie
- Exhibit 3 – Affidavit of PIB Lead Investigator, Captain Kendrick C. Allen
- Exhibit 4 – Affidavit of NOPD Superintendent Woodfork
- Exhibit 5 – Affidavit of Retired NOPD Superintendent Ferguson
- Exhibit 6 – Affidavit of City Attorney for the City of New Orleans,
- Exhibit 7 – Disciplinary Hearing Disposition
- Exhibit 8 – January 11, 2023 Email String
- Exhibit 9 – Department of Police Interoffice Correspondence dated 05/30/2023
- Exhibit 10 – Administrative Reassignment Notification dated 11/09/2022

Appendix 8 – Public presentation by OCDM regarding Vappie Investigation

Appendix 9 – July 3, 2023, Email String

Appendix 10 – Order and Reasons published August 21, 2023

Appendix 11 – City’s Objections to Rule to Show Cause

Appendix 12 – DOJ’s Opposition to City’s Objections to Rule to Show Cause



5 June 2023

Dear Judge Morgan:

This report focuses on the New Orleans Police Department's investigation into allegations against Officer Jeffrey Vappie. As you know, in early November 2022, local New Orleans TV station Fox8 ran a series of stories involving Mayor Latoya Cantrell's executive protection team. The story raised a number of questions regarding the operation of that team as well as the actions and inactions of Officer Vappie. PIB opened an investigation into the allegations raised in the story on November 9, 2022.

Following PIB's investigation, the Monitoring Team, per Consent Decree paragraph 454, submitted a detailed analysis to PIB commending the investigators for the quality of their underlying investigation, but pointing out a number of critical shortcomings in the investigation analysis and report. The NOPD's response to the Monitoring Team's analysis raises serious concerns that we believe require the Court's immediate attention.

### **Background**

As noted above, following the early November 2022 Fox8 stories involving Mayor Latoya Cantrell's executive protection team, PIB opened an investigation on November 9, 2022 into multiple allegations against Officer Jeffrey Vappie. Immediately thereafter, on November 10, 2022, the New Orleans City Council requested that the Office of the Consent Decree Monitor and the Office of the Independent Monitor conduct their own independent investigations into the Vappie allegations, citing "significant concerns about the apparent conflict of interest with the New Orleans Police Department being allowed to, again, investigate serious allegations involving Mayor Cantrell."<sup>1</sup> The Monitoring Team responded to the City Council on November 11 explaining that it lacked the authority to conduct an investigation, but that it would monitor PIB's investigation of Officer Vappie closely to ensure it was effective, efficient, and without bias.<sup>2</sup>

Consistent with its response to the City Council and its obligations under the Consent Decree to closely monitor significant misconduct investigations,<sup>3</sup> the Monitoring Team met with Deputy Chief Keith Sanchez and PIB's investigators Captain Kendrick Allen and Lieutenant Lawrence Jones on an almost weekly basis over the course of PIB's investigation. While we were not involved in the day-to-day affairs of the investigation (the Consent Decree makes clear the Monitoring Team has no role in running the NOPD<sup>4</sup>), the PIB team was open with us regarding their strategy and the status of their activities. We appreciate the cooperation we received from PIB prior to the preparation of the PIB investigation report.

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<sup>1</sup> The City Council letter is attached to this Report as Attachment A.

<sup>2</sup> The Monitoring Team's response to City Council is attached to this Report as Attachment B.

<sup>3</sup> See, e.g., Consent Decree paragraphs 377, 444, 454, 455.

<sup>4</sup> Consent Decree paragraph 445.



On February 17, 2023, prior to the conclusion of PIB's investigation, the Monitoring Team sent an "immediate action notice" to Deputy Chief Sanchez alerting him to several issues we believed the NOPD should address right away.<sup>5</sup> Rather than waiting until the conclusion of PIB's investigation, we brought these matters to PIB's attention at that time to ensure NOPD would take immediate steps to correct the concerns we identified. Our opinions and recommendations related only to larger policy/process issues that were unrelated to the then-still-forthcoming substantive findings of the PIB Vappie investigation team.

PIB completed its investigation into the actions/inactions of Officer Vappie on March 10, 2023, and submitted the final investigation report to Deputy Chief Sanchez the same day. Deputy Chief Sanchez reviewed and concurred with the investigators' findings on March 16, 2023. Despite multiple requests from the Monitoring Team and the IPM for a copy of PIB's investigative report, NOPD refused to share it with the Monitoring Team until April 3, 2023.

Per Consent Decree paragraph 454, and the specific request of the New Orleans City Council, we analyzed PIB's investigative report and prepared a series of recommendations, which we shared with Interim Superintendent Woodfork on April 7, 2023. Per Consent Decree paragraph 454, the Interim Superintendent was required either to accept our recommendations or to prepare a written response as to why she did not accept our recommendations.

Because the Monitoring Team had not heard back from the Interim Superintendent by April 13, we wrote to her again asking about the status of NOPD's response. Deputy Chief Sanchez responded that we would receive a formal response by April 18.

On April 18, NOPD requested additional time to respond due to the death of an officer. The Monitoring Team, of course, acceded to the request. NOPD committed to respond by April 20.

The Monitoring Team didn't receive a response from NOPD on the 20th, 21st, 22nd, or 23rd. The NOPD finally responded to our analysis on April 24. The response, however, was wholly inadequate in that it (a) ignored the requirements of Consent Decree paragraph 454, (b) mischaracterized the scope of the investigation regarding payroll fraud, and (c) ignored almost all of the Monitoring Team's substantive recommendations. We have attached the Monitoring Team's analysis and NOPD's response to this report as Attachments E and F.

As noted above, the City's actions here raise serious concerns that we believe require the Court's immediate attention.

### **Summary Of Concerns**

The following paragraphs summarize the Monitoring Team's concerns regarding the NOPD's response to our analysis of the PIB investigation into the actions and inactions of Officer Jeffrey Vappie.

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<sup>5</sup> The Monitoring Team's recommendations are attached to this Report as Attachment C.



## 1. The City Is In Violation Of Consent Decree Paragraph 454

Paragraph 454 of the Consent Decree provides as follows:

City and NOPD shall provide each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; **untruthfulness/false statements**; unlawful search; retaliation; sexual misconduct; domestic violence; and **theft**), to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review. The Monitor shall review each serious use of force investigation and each serious misconduct complaint investigation and recommend for further investigation any use of force or misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence. The Monitor shall provide written instructions for completing any investigation determined to be incomplete or inadequately supported by the evidence. The Superintendent shall determine whether the additional investigation or modification recommended by the Monitor should be carried out. Where the Superintendent determines not to order the recommended additional investigation or modification, the Superintendent will set out the reasons for this determination in writing. The Monitor shall provide recommendations so that any further investigation or modification can be concluded within the timeframes mandated by state law. The Monitor shall coordinate with the IPM in conducting these use of force and misconduct investigation reviews.

Consent Decree paragraph 454 (emphasis added). Pursuant to its authority under the Consent Decree, including this paragraph, the Monitoring Team requested access to the PIB investigation report on multiple occasions during weekly status calls with the PIB and the IPM. The IPM made similar requests during these weekly calls. PIB responded it would not share a copy of the investigation report.

After multiple requests and a suggestion by the Monitoring Team that the matter be taken to Judge Morgan for resolution, PIB ultimately did turn over its investigation report on April 3, 2023. Such a late production, however, conflicts with paragraph 454 of the Consent Decree, and, more importantly, prejudices the ability of PIB to remedy material errors in its investigative report in a timely fashion. Nonetheless, as noted above, the Monitoring Team performed and shared its detailed analysis of the PIB report with NOPD on April 7, 2023.

In its April 24<sup>th</sup> response to the Monitoring Team's analysis of the PIB investigation, the NOPD failed to provide a substantive response to the Monitoring Team's recommendations, arguing it had no legal obligation to do so. According to NOPD, paragraph 454 of the Consent Decree does not apply here because, in NOPD's view, PIB's investigation into the



actions/inactions of Officer Vappie was not a “serious misconduct complaint investigation.” NOPD Response at 2. NOPD’s view not only is wrong, it reflects a cavalier attitude toward PIB’s obligations and the importance of officer accountability.

The facts tell a far different story from the one PIB now is sharing regarding the nature of the Vappie investigation.

From the very first weekly meeting with PIB, the Monitoring Team and the IPM stressed the importance of the scope of the Vappie investigation. The Monitoring Team and IPM emphasized that it was critical that PIB investigate *all allegations*, including the 16.58 hour violation allegation, the professionalism violation allegation, the conflict of interest violation allegation, the nepotism violation allegation, and, importantly, the payroll fraud allegation. This issue was discussed on multiple zoom meetings with PIB, and in each meeting PIB assured the Monitoring Team and the IPM that its investigation would cover all of these allegations.<sup>6</sup>

Following several status meetings, PIB shared its draft investigation plan with the Monitoring Team and the IPM on December 5, 2022. In its draft plan, PIB wrote that it was investigating Officer Vappie for

16.35, devoting entire time to duty, ethics, moral conduct, nepotism and employee conflicts.

Email from Captain Kendrick Allen (12/5/22). The Monitoring Team responded to Captain Allen noting that the investigation plan was missing the payroll fraud allegation, an issue, as noted, discussed in multiple prior status meetings. The Monitoring Team recommended updating the investigation plan to more explicitly reflect what PIB confirmed orally, *i.e.*, that PIB’s investigation would cover

Potential policy violations, working hours beyond mandatory ceilings (e.g., the 16.35 hour rule) (Chapter 13.15), devoting entire time to duty (Chapter 26.2.1), ***billing for time not worked*** (Chapter ??), ethics, professional conduct (Rule 3), moral conduct (Rule 2), nepotism and employee conflicts (Chapter 13.38).

Email from Jonathan Aronie to Captain Kendrick Allen (12/5/22) (emphasis added).

In the same email, the Monitoring Team specifically requested PIB be more specific that it was investigating the payroll fraud issue (*i.e.*, charging for time not worked). *Id.* PIB assured the Monitoring Team and IPM in the next weekly zoom status meeting that it would be fully investigating the payroll fraud allegation against Officer Vappie.

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<sup>6</sup> It is worth noting here that paragraph 399 of the Consent Decree requires NOPD to employ a classification protocol for all complaints that is “allegation-based rather than anticipated outcome-based.” If, in light of the scope of the allegations against Officer Vappie and the representations made to the Monitoring Team and the IPM regarding the scope of the investigation, NOPD failed to classify the investigation as involving “serious misconduct,” the Department likely violated paragraph 399 as well.



On December 8, the Monitoring Team shared with NOPD an email from community member Dr. Skip Gallagher to Judge Morgan. Email from Anne Perry to Keith Sanchez (12/8/23). Dr. Gallagher has been instrumental in raising a number of issues regarding NOPD payroll fraud with the NOPD, the IPM, the OIG, and the Monitoring Team. In his note to Judge Morgan, Dr. Gallagher reiterated his prior concerns about the pervasiveness of NOPD payroll fraud. Email from Skip Gallagher to Judge Morgan (11/14/22). Among other things, Dr. Gallagher emphasized the following:

As can be seen in recent Lee Zurik pieces, *payroll fraud is alive and well and extends into the upper ranks of the NOPD as well as the Mayor's own security detail*. As I have mentioned to the OIG, the IPM, the Mayor, the City Council, Jonathan Aronie and to the NOPD itself, an independent audit of the NOPD must be conducted. The response to this request has been deafening in its silence. The result is that I am the only person examining these payroll fraud allegations and must initiate each investigation through a direct request or by providing the press with the relevant records.

*Id.* In sharing Dr. Gallagher's concerns with PIB, the Monitoring Team noted that Dr. Gallagher's findings "may be helpful re the ongoing Vappie investigation. Some also might go beyond Vappie. The material that goes beyond Vappie I assume you will treat as a new public complaint/allegation." Email from Jonathan Aronie to Deputy Chief Keith Sanchez (12/8/22).<sup>7</sup>

On January 5, 2023, the Monitoring Team again reminded PIB of its multiple commitments to investigate all aspects of the allegations against Officer Vappie, including the payroll fraud allegation. In an email from the Monitoring Team to PIB, the Monitoring Team wrote the following:

Thank you for making time for the rescheduled tag-up call this Friday. To help you prepare for the call, here are the issues I'd like to make sure we discussion [sic]. Other members of the OCDM and IPM teams may have more, and are welcome to share them as well.

\* \* \*

-PIB's current thinking re:

**-Potential time card fraud (FQ Apartment, Hano Board, Travel)**

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<sup>7</sup> It is not clear at this time whether PIB opened the additional investigations recommended by the Monitoring Team. Similarly, it also is not clear at this time whether PIB opened an investigation into allegations raised by Fox8 that Officer Vappie flew first class and stayed in upgraded hotel suites while traveling on City business. The Monitoring Team recommended PIB question Officer Vappie regarding his travel in an email dated December 28, 2022. Specifically, the Monitoring Team recommended including the following question: "How did you travel when you traveled with the Mayor? First class? Upgraded hotel rooms?" Email from Jonathan Aronie to Captain Allen, Deputy Chief Sanchez, *et al.* (12/28/22). Per Consent Decree paragraph 390, which requires NOPD to "accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation," the Monitoring Team is requesting data from NOPD to determine whether PIB opened investigations into these matters, and, if not, why not.



- Potential personal relationship conflict
- Potential other conflict (e.g., significant increase in overtime following start of relationship)
- Potential violation of travel rules (upgraded hotels, etc.)
- Potential 16.35 violations
- Potential professionalism violations

\* \* \*

Email from Jonathan Aronie to Deputy Chief Sanchez (1/5/23) (emphasis added). Each allegation under investigation was discussed on the ensuing phone call, and PIB reconfirmed, once again, it was investigating every issue, including potential payroll fraud.

In short, it was clear from the beginning of the PIB investigation that a fundamental issue under investigation was whether Officer Vappie committed payroll fraud – that is, whether he lied about his time at work and whether he wrongly charged the City for time not worked. *PIB agreed with this understanding of scope from the very beginning of the investigation.*

At its core, an investigation into payroll fraud is an investigation into a “serious misconduct complaint,” which the Consent Decree defines to include an “untruthfulness/false statements” or a “theft” investigation. (CD at 454) Billing the City for time not worked is inherently a false statement; indeed, if done knowingly, it is likely a criminal false statement. NOPD’s position that such an investigation does not constitute a serious misconduct complaint investigation is simply wrong and, quite frankly, defies common sense.<sup>8</sup>

The fact that PIB declined to include a meaningful discussion of the payroll fraud matter in its investigation report (despite (a) its multiple commitments to the Monitoring Team and the IPM that its investigation would fully cover the alleged payroll fraud issues and (b) the investigators clearly questioning Vappie and other witnesses during hours of testimony about the payroll fraud allegation<sup>9</sup>), does not change the fact that the investigation was undertaken to investigate payroll fraud. It is wholly disingenuous to argue PIB’s investigation wasn’t “serious” simply because PIB failed to discuss in its final report a critical issue it committed to fully investigate.<sup>10</sup>

<sup>8</sup> Under Louisiana law, public payroll fraud under La. R.S. 14:138 is considered a type of theft. *See, e.g., State v. Fruge*, 251 La. 283 (1967).

<sup>9</sup> The recordings of the PIB witness interviews, subsequently made available to the media through an inadvertent City disclosure, make clear PIB questioned Officer Vappie and other witnesses about the payroll fraud matter and about the truthfulness of Officer Vappie’s various assertions.

<sup>10</sup> It is worth also remembering that PIB decided to conduct the Vappie investigation on its own rather than referring it out to a different bureau, something it would have done had the matter been non-serious. Paragraph 63 of NOPD Policy 52.1.1 provides that “the investigation of an alleged administrative violation involving serious misconduct shall be completed by PIB...,” and that “the investigation of other alleged administrative violations may be assigned by the PIB Deputy Superintendent or his/her designee to another bureau...”



Because the Vappie investigation clearly does constitute a serious misconduct complaint investigation in that it clearly involves allegations of truthfulness, false statements, and theft, NOPD had an obligation to comply with paragraph 454 of the Consent Decree. Specifically, that means the Monitoring Team was authorized to:

- Review the serious misconduct complaint investigation.
- Recommend for further investigation areas the Monitoring Team determined to be incomplete or for which the findings are not supported by a preponderance of the evidence.
- Provide written instructions to the NOPD for completing those portions of the investigation the Monitoring Team found incomplete or inadequately supported by the evidence.

Consent Decree paragraph 454. Subsequent to these steps, the Consent Decree requires that “the Superintendent shall determine whether the additional investigation or modification recommended by the Monitor should be carried out. Where the Superintendent determines not to order the recommended additional investigation or modification, the Superintendent will set out the reasons for this determination in writing.” *Id.*

The NOPD’s response to the Monitoring Team’s analysis ignores this clear Consent Decree process. By doing so, NOPD also defeated the Monitoring Team’s ability to comply with the City Council’s request that the Monitoring Team closely monitor PIB’s investigation and puts the integrity of its Vappie investigation at risk.<sup>11</sup>

## 2. The City Is In Violation Of Consent Decree Paragraphs 470 and 472

Paragraph 470 of the Consent Decree explicitly provides “the Monitor shall have access to all necessary individuals, facilities, *and documents*, which shall include access to Agreement related trainings, meetings, and reviews, such as critical incident reviews, use of force review boards, and disciplinary hearings.” Consent Decree ¶470 (emphasis added). Likewise, Paragraph 472 explicitly requires the City to ensure that the Monitoring Team has “*full and direct access to City and NOPD documents* that the Monitoring reasonably deems necessary to carry out the duties assigned to the Monitor...” Consent Decree ¶472 (emphasis added). These are clear statements regarding the Monitoring Team’s unfettered right to the documents it needs to get its job done.

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<sup>11</sup> Further to the integrity of the investigation, the Monitoring Team’s analysis of PIB’s investigation raised several concerns about PIB’s failure to take appropriate steps to protect the confidentiality of investigation materials. Among other things, we questioned PIB’s decision to share interview recordings with another City office, its failure to password protect the USB drive on which interview recordings were stored, and its decision to allow PIB work to be conducted outside PIB. Consent Decree paragraph 409 clearly requires “all misconduct investigation interview recordings shall be stored and maintained in a secure location within PIB.” Similarly, paragraph 419 requires that “all investigation reports and related documentation and evidence shall be securely maintained in a central and accessible location...” NOPD’s handling of the interview recordings runs afoul of these clear provisions.



As noted above, the Monitoring Team and the IPM requested the Officer Vappie investigation report from PIB on multiple occasions during their weekly status meetings. PIB rejected these requests. NOPD ultimately closed its investigation of Officer Vappie on March 10, 2023, and presented Officer Vappie with a verbal notice of disposition at that time. *See* PIB Investigation Report at 29.<sup>12</sup>

On March 27, 2023, the Monitoring Team again asked for a copy of PIB's report, this time by email:

Separately, please let me know the status of the Vappie investigation. Has the final report been prepared/submitted for approval? I'm going to want to see all iterations of the report (i.e., all drafts submitted to you or any other supervisor for review/comment).

Email from Jonathan Aronie to Keith Sanchez (3/27/23). PIB responded by phone that NOPD would not be sharing the report as requested. This refusal prompted the Monitoring Team to reiterate its request to PIB by email:

Keith,

Thanks for the time on the Vappie call this morning. It was very informative.

Thanks also for confirming you will be responding to my earlier email and the several outstanding requests very soon.

Regarding my request for copies of all iterations of the Vappie investigation report, please let me know when I will be receiving those. Please keep in mind that paragraph 470 of the CD makes clear:

**The Monitor shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement related trainings, meetings, and reviews, such as critical incident reviews, use of force review boards, and disciplinary hearings.**

Further, paragraph 472 provides as follows:

**City and NOPD shall ensure that the Monitor has full and direct access to all City and NOPD documents and data that the Monitor reasonably deems**

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<sup>12</sup> NOPD's closure of its investigation without looking into the actions/inactions of Officer Vappie's chain of command (i.e., his supervisors) further prejudices the Department's ability to hold those supervisors accountable for their potential failure to provide close and effective supervision to officers working on the Executive Protection team. Consent Decree paragraph 306 makes clear that "NOPD supervisors shall be held accountable for providing the close and effective supervision necessary to direct and guide officers."



**necessary to carry out the duties assigned to the Monitor by this Agreement, except any documents or data protected by the attorney-client privilege....**

Fortunately, we never had had to press these issues because, until now, we have been provided timely access to all documents and data we requested. If NOPD has made a decision to change the level of cooperation we have historically received, I need to know that immediately so we can discuss it with Judge Morgan.

Thanks.

Be well and be safe.

-Jonathan

Email from Jonathan Aronie to Keith Sanchez (3/27/23).

Two days later, on March 29<sup>th</sup>, still not having received the investigation report, the Monitoring Team reminded PIB of its paragraph 454 obligations:

Keith,

Per your earlier request for the CD provisions relating to documents requested by the Monitoring Team, you probably want to ensure Michelle is aware of this one as well.

-Jonathan

454. City and NOPD shall provide each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft), to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review. The Monitor shall review each serious use of force investigation and each serious misconduct complaint investigation and recommend for further investigation any use of force or misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence. The Monitor shall provide written instructions for completing any investigation determined to be incomplete or inadequately supported by the evidence. The Superintendent shall determine whether the additional investigation or modification recommended by the Monitor should be carried out. Where the Superintendent determines not to order the recommended additional investigation or modification, the Superintendent will set out the reasons for this determination in writing. The



Monitor shall provide recommendations so that any further investigation or modification can be concluded within the timeframes mandated by state law. The Monitor shall coordinate with the IPM in conducting these use of force and misconduct investigation reviews.

Email from Jonathan Aronie to Keith Sanchez (3/29/23).

Still not having received the investigation report on March 31<sup>st</sup>, the Monitoring Team again wrote to PIB:

Keith-

Have you sent me the report(s)? I do not see it/them in my inbox. Jonathan

Email from Jonathan Aronie to Keith Sanchez (3/31/23). In a follow-up phone call, Deputy Chief Sanchez explained he was working to obtain permission to share the requested report.

The Monitoring Team still had not received the PIB investigation report by April 3<sup>rd</sup>, and again wrote to PIB for a status update:

Keith,

You said I'd have the documents last week. I still do not have them. I need them and am entitled to them. Shall I call Michelle directly, or will you have them to me this morning?

-Jonathan

Email from Jonathan Aronie to Keith Sanchez (4/3/23). On the same day, the lead monitor, Jonathan Aronie, wrote to and called Interim Superintendent Woodfork, explaining that the Monitoring Team had no choice but to bring the matter to the attention of Judge Morgan.

Following that conversation, Interim Superintendent Woodfork agreed to provide the investigation report. The Monitoring Team immediately reached back out to Deputy Chief Sanchez:

Keith,

Michelle just informed me she okayed you sharing the Vappie report with me. Please ensure I receive all iterations of the Report if there are more than one. Please have it/them to me by noon. Thank you.

-Jonathan

Email from Jonathan Aronie to Keith Sanchez (4/3/23).



Later the same day, NOPD finally shared with the Monitoring Team a copy of the final PIB report we initially requested in mid-March.<sup>13</sup> Sadly, it took multiple meetings, phone calls, and emails, and a threat to take the matter to Court, to get what the Monitoring Team clearly is entitled to. As sadly, by the time NOPD shared the investigation report with us, it was long after the completion of the PIB investigation, which, according to NOPD, was concluded on March 10 and signed by the Deputy Chief and for the Interim Superintendent (by the Deputy Chief) on March 16<sup>th</sup>.

NOPD does not disagree it refused to share the PIB report with the Monitoring Team. Indeed, NOPD concedes the point:

We disagree with the Monitoring Team’s analysis that PIB violated the Consent Decree by refusing to share a copy of the PIB report with the Monitoring Team when requested.

PIB Response to Monitoring Team Analysis at 1 (4/24/23). While PIB agrees it refused to share a properly requested, non-privileged document with the Monitoring Team, NOPD argues its refusal is excused because, in its view that, per Consent Decree paragraph 454, payroll fraud does not constitute a serious misconduct complaint. *Id.* This argument, however, not only is wrong, it is irrelevant. The clear language of paragraphs 470 and 472 gives the Monitoring Team “full and direct access to City and NOPD documents that the Monitoring reasonably deems necessary to carry out the duties assigned to the Monitor.” Regardless of how the City wants to read paragraph 454 (and, as discussed above, it reads it very wrongly), there can be no serious dispute regarding the clarity of paragraphs 470 and 472.

### **3. NOPD Failed To Correctly Apply The Preponderance Of The Evidence Standard In Its Investigation Of Officer Vappie**

As noted in the Monitoring Team’s analysis of PIB’s investigative report, administrative investigation findings must be made using the “preponderance of the evidence” standard. No one disputes this. NOPD Policy 51.1.2 aligns with the Consent Decree by requiring that misconduct investigators “reach a conclusion supported by the preponderance of the evidence and prepare a written recommendation” NOPD Policy 26.2 likewise aligns with the Consent Decree and defines the preponderance of the evidence standard as follows:

**Preponderance of the evidence**—Such evidence that when considered and compared with that opposed to it has more convincing force and produces in one’s mind the belief that what is sought to be proven is more likely true than not true.

NOPD Policy 26.2; *see also* NOPD Policy 51.1.2. To use more commonplace terminology, the preponderance of the evidence standard is a greater-than-50% standard, or a more-likely-than-not

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<sup>13</sup> To date, PIB still has not shared any other iterations of the investigation report as requested by the Monitoring Team.



standard. In contrast, criminal investigations apply a different standard – beyond a reasonable doubt. The administrative preponderance of the evidence standard places a far lower burden on the investigating agency.

In the Monitoring Team’s analysis of PIB’s investigative report, we criticized PIB’s failure properly to apply and document the investigators’ use of the preponderance of the evidence standard. The details of our assessment are set forth in the attached analysis shared with PIB and will not be repeated here. Suffice it to say, while NOPD did reach a reasonable conclusion in sustaining multiple counts against Officer Vappie, it did not describe the standard it applied accurately.

This is a critical error not only because it violates the Consent Decree and NOPD policy, but because it leaves PIB’s investigation open to attack by the subject of the investigation (i.e., Officer Vappie). In response to our concerns, PIB responded with nothing more than the following:

Although the governing standard for administrative investigations is a preponderance of the evidence, PIB does not approach investigations with an intention to make the facts fit. We investigate the complaint by following the lead of the facts wherever they lead and when the trail of the facts ends, we begin the conclusion of the investigation.

NOPD Response to Monitoring Team at 2. To the extent this response is coherent at all, it is wholly non-responsive as it totally misses the point raised in the Monitoring Team’s analysis.

In its analysis, the Monitoring Team noted multiple places where the PIB report misapplied and misstated the preponderance of the evidence standard. Our concerns have nothing to do with when or how to conclude an investigation. Our concerns refer only to the misapplication of the proper legal standard. NOPD ignores these concerns, and its refusal to engage in a meaningful discussion almost certainly will haunt PIB if Officer Vappie appeals his ultimate discipline.<sup>14</sup>

#### **4. PIB Review Process**

The PIB investigation report shared with the Monitoring Team has two signature lines – one for the Deputy Chief of PIB and one for the Superintendent of Police. Both lines have a signature indicating both individuals reviewed and concurred with the information in the report. According to NOPD’s response to the Monitoring Team’s analysis, however, the Interim Superintendent never actually reviewed the report and the Deputy Chief signed on her behalf wrongly indicating that she concurred in the findings. NOPD describes this as a practice “loosely

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<sup>14</sup> Even more fundamentally, NOPD’s refusal to abide by the Consent Decree renders it more likely PIB will fail to hold Officer Vappie and, potentially, his supervisors, accountable for their actions and inactions. The misconduct section of the Consent Decree is designed to ensure NOPD holds officers and supervisors accountable for policy violations. *See* Consent Decree Section XVII.



described in old policies” and “subject to various interpretations.” PIB Response at 3. NOPD goes on the say it is “reviewing to determine its utility at this stage.” *Id.*

NOPD does not indicate in what “old policies” this practice is “loosely described.” NOPD’s current policy, however, as well as the Consent Decree itself, make clear the Superintendent herself is required to sign the investigation report.

Consent Decree paragraph 416 provides as follows:

416. The PIB commander shall accept the investigator’s recommended disposition **and the Superintendent shall approve the disposition**, unless the disposition is unsupported by a preponderance of the evidence or additional investigation is necessary to reach a reliable finding. Where the disposition is unsupported by a preponderance of the evidence, the PIB Commander may correct the disposition or order additional investigation, as necessary.

Consent Decree ¶416 (emphasis added). This clear statement is consistent with NOPD’s misconduct investigation policy 52.1.1, paragraph 105 of which states the following:

105. The report shall conclude with the following format for each person in the investigator's chain of command, **up to and including the Superintendent of Police**:

CONCUR I DO NOT CONCUR      Date: \_\_\_\_\_

\_\_\_\_\_

[rank and name of person in chain of command]

[title and/or place of assignment]

The date alongside each signature will be the date the reviewer signed the document, not the date appearing at the top of the report.

NOPD Policy 52.1.1 at §105 (emphasis added).

The “up to and including” language is clear. But even if it were not clear, paragraph 136 of the same policy makes the same point:

136. Once the Deputy of Superintendent of PIB has approved the disposition of an investigation conducted by PIB, **the investigation disposition shall be transmitted to the Superintendent of Police for review and final approval**. For those investigations conducted by a bureau other than PIB, the Deputy Superintendent of PIB’s review concludes the investigation.

*Id.* at §136 (emphasis added). Nothing in Policy 52.1.1 is unclear. And even if there were, as



NOPD suggests, “old policies” “subject to various interpretations” that “loosely describe” NOPD’s current practice of the superintendent not reviewing and signing PIB reports, such policies clearly have been superseded by the Department’s current policy, which was reviewed and approved by the Monitoring Team and the DOJ.

In any event, it is unclear to the Monitoring Team what possible utility there could be in a deputy chief signing an official document – one which will become a key exhibit in any legal action relating to the investigation – for a superintendent who never has reviewed the document and, according to NOPD, never gave her authorization to sign on her behalf.<sup>15</sup> Nonetheless, we are pleased PIB is reviewing its purportedly historic practice to determine its continued “utility.”

## 5. Failure to Consider or Document Circumstantial Evidence

As spelled out in the Monitoring Team’s attached analysis, the PIB investigation report fails to consider a wealth of circumstantial evidence relating to the many hours Officer Vappie spent in the Upper Pontalba apartment both on and off duty. Among other things, we noted in our analysis that

The Consent Decree mandates that “in each investigation, NOPD shall consider all relevant evidence, *including circumstantial, direct, and physical evidence*, as appropriate, and make credibility determinations based upon that evidence. . . .

Monitoring Team Analysis at 7. Paragraph 26 of NOPD policy 52.1.2 contains the same requirement:

In each investigation, the investigator shall consider all relevant evidence, *including circumstantial, direct, and physical evidence*, as appropriate, and make credibility determinations based upon that evidence. . . .

Policy 52.1.2 (emphasis added).

In our analysis, the Monitoring Team criticized the PIB investigation report for failing to consider the significant circumstantial evidence regarding the time Officer Vappie spent in the Upper Pontalba apartment and its relation to the payroll fraud allegation. The Monitoring Team described it this way:

While PIB admittedly did not have visibility into what was going on in that apartment — i.e., whether Officer Vappie was there in service of his executive protection function or was there for more social reasons — there is much

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<sup>15</sup> We note in this regard that NOPD’s response to the Monitoring Team’s analysis was signed by Deputy Chief Keith Sanchez “for” Interim Superintendent Woodfork. In light of NOPD’s position that a deputy can sign “for” a superior without the superior ever seeing, concurring with, or even knowing about that which is signed, it is unclear whether the Interim Superintendent ever even saw NOPD’s response – let alone understood her obligation to respond to it per Consent Decree paragraph 454.



circumstantial evidence that suggests Officer Vappie was *not* present in furtherance of his executive protective duties. ***This circumstantial evidence should have been included in the PIB report since it all is relevant to NOPD's application of the Preponderance of the Evidence standard.***

Monitoring Team analysis at 8 (emphasis added). To highlight the importance of abiding by NOPD policy and considering all circumstantial evidence, the Monitoring Team noted that a proper analysis would have considered and documented the following:

- Officer Vappie spent many hours in the City's Upper Pontalba apartment.
- Officer Vappie was the only officer among the executive protection team who spent any time in the Upper Pontalba apartment. All other officers stayed outside the apartment while protecting the Mayor. Had the time in the Upper Pontalba apartment truly been work time, other officers presumably would have taken their turn doing the same.
- Officer Vappie changed clothes, used the shower, and undertook various non-security tasks (*e.g.*, watering plants) while in the apartment with and without the Mayor.
- Officer Vappie spent time in the Upper Pontalba apartment both on and off duty.
- Even when Officer Vappie left the Upper Pontalba apartment late at night after spending several hours in the apartment, the Mayor often walked alone to her car in the French Quarter without any security, strongly suggesting Officer Vappie was not spending time in the apartment because of any credible threat to the Mayor's safety. If there had been a credible threat to the Mayor's safety, (a) other officers would have rotated through the in-apartment assignment and (b) the executive protection team would not have allowed the Mayor to walk to and from the apartment alone.
- The news story about the time Officer Vappie spent in the Upper Pontalba apartment led to a prompt divorce filing from Officer's Vappie wife, an unlikely reaction to an actual, transparent executive protection detail.
- No officer spent time inside the Mayor's residence, which would have been the case had there been a credible threat to the Mayor's safety.
- Multiple other members of the Mayor's Executive Protection team testified during the PIB investigation to the unprofessional nature of Officer Vappie's actions, which, they felt, brought discredit to the NOPD.

Monitoring Team analysis at 8-9.



Our analysis explained that while these facts do not *prove* beyond the shadow of a doubt Officer Vappie was not working while in the Upper Pontalba apartment, “they demonstrate *by a preponderance of the evidence* that Officer Vappie was not working while in the apartment. Yet he was billing the City of New Orleans for much of his time there.” In other words, the circumstantial evidence strongly suggests that Officer Vappie may have been involved in payroll fraud. Our findings are spelled out in more detail in the attached analysis.

Not only did PIB’s investigation report ignore this circumstantial evidence, NOPD’s response to the Monitoring Team’s analysis similarly ignores the Monitoring Team’s concerns. NOPD’s actions here not only fail to comport with the requirements of the Consent Decree, they again put the integrity of their underlying investigation at risk.

#### **6. PIB Failed To Respond To Multiple Other Shortcomings Identified By The Monitoring Team**

In addition to the items summarized above, the Monitoring Team identified a number of other shortcomings in its analysis of PIB’s investigation report. These include a failure on the part of PIB to aggressively pursue interviews with all material witnesses, including the Mayor, the former superintendent, and Consulting Chief of Operations<sup>16</sup> Fausto Pichardo;<sup>17</sup> a failure properly to assess the credibility of witnesses; a failure to take adequate steps to protect the confidentiality of its investigation; and a failure to cooperate with the New Orleans Office of Inspector General. PIB ignored all of these concerns in its response to the Monitoring Team. Pursuant to paragraph 454 of the Consent Decree, NOPD should be required to either accept the Monitoring Team’s recommendation to remedy the flaws in its investigation or should be required to explain in writing why it is rejecting those recommendations. Failure to do so not only violates the Consent Decree, but, as noted above, it also puts the integrity of the investigation at risk and makes it more likely any discipline imposed will be appealed successfully.

\* \* \*

It is difficult to understand the City’s position with regard to the Monitoring Team’s analysis. The purpose of paragraph 454 is to help improve the quality and integrity of PIB’s investigations. Each of the Monitoring Team’s recommendations would benefit the NOPD and, by extension, its officers and the community. As things stand now, two professional investigators, Captain Kendrick Allen and Lieutenant Lawrence Jones, will have spent months

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<sup>16</sup> We used the title “Consulting Chief of Operations” for Mr. Pichardo because the Mayor of New Orleans has used it publicly. The Monitoring Team, however, has not seen that title on NOPD organizational charts and does not know what role Mr. Pichardo plays within the Department. In any event, the Consent Decree makes clear it is “binding upon all Parties hereto, by and through their **officials, agents, employees, and successors.**” Consent Decree at ¶8 (emphasis added).

<sup>17</sup> The Mayor, former Superintendent Ferguson, and Consulting Chief of Operations Pichardo all refused to be interviewed by the PIB. As noted in the analysis we shared with PIB, these refusals suggest a lack of understanding of or respect for NOPD’s accountability systems.



conducting an important investigation only to see their hard work potentially overturned by the Civil Service Commission or an appeals court. Either the NOPD is hoping for that result, it has a remarkable blind spot regarding the quality of its final investigation report, or it stubbornly is avoiding taking any recommendation of the Monitoring Team. In any case, the NOPD's position is unfortunate and flies in the face of the letter and spirit of the Consent Decree.

Regardless of the NOPD's inexplicable position regarding the Monitoring Team's recommendations, we remain ready and willing to engage with PIB in a meaningful way to remedy the shortcomings of and improve the quality of the PIB report to the extent time still is available to do so. Until that happens, however, and without taking away from what we have said was a serious effort on the part of the investigators to conduct a professional investigation, we remain extremely concerned with the way NOPD has approached this matter.

Thank you Your Honor for the opportunity to submit this report to the Court. As is our common practice, we shared a draft of this report with the parties for comment on Monday, May 1, 2023. DOJ responded with comments on May 8, 2023. NOPD chose not to submit comments, although, as noted above, NOPD previously submitted a response to the Monitoring Team's analysis of the Vappie investigation. The Monitoring Team considered and incorporated, where appropriate, the feedback received from the parties into this final report.

Should the Court have additional questions for the Monitoring Team, we will be happy to answer them.

Respectfully submitted,

Jonathan S. Aronie Consent Decree Monitor  
Partner, Sheppard Mullin LLP

CC: City Attorney Donesia Turner  
DOJ Counsel Jonas Geissler  
Superintendent Michelle Woodfork  
Deputy Superintendent Keith Sanchez  
Deputy Monitor David Douglass  
Independent Police Monitor Stella Cziment  
Charles F. Zimmer, II, Esq.



**Attachment A**

**City Council Letter to Monitoring Team**



# City of New Orleans

November 10, 2022

Judge Susie Morgan  
500 Poydras Street  
Room C322  
New Orleans, LA 70130

Jonathan Aronie  
2099 Pennsylvania Avenue, NW  
Suite 100  
Washington, DC 20006-6801

Dear Judge Morgan & Mr. Aronie:

We are writing to express our significant concerns about the apparent conflict of interest with the New Orleans Police Department being allowed to, again, investigate serious allegations involving Mayor Cantrell. The NOPD cannot be allowed to handle this matter fully and internally because of the inherent conflict of interest.

By this letter, we formally request that immediate steps be taken to appoint the Consent Decree Monitor, in partnership with Office of the Independent Police Monitor to take the lead on this investigation. We believe swift action is required to cure apparent conflicts of interest and preserve the integrity of the investigations of the Mayor.

Regards,

Handwritten signature of JP Morrell in black ink.

JP Morrell  
Councilmember at-Large  
Governmental Affairs Committee Chair

Handwritten signature of Joseph I. Giarrusso, III in blue ink.

Joseph I. Giarrusso, III  
Councilmember District A  
Budget Committee Chair

CC:  
Stella Cziment, Independent Police Monitor



**Attachment B**

**Monitoring Team's Response To City Council**

NOPD CONSENT DECREE MONITOR  
NEW ORLEANS, LOUISIANA



202.747.1902 direct  
jaronie@sheppardmullin.com

November 11, 2022

File Number: 37PA-191555

JP Morrell, Councilmember at-Large  
Joseph I. Giarrusso, III, Councilmember District A  
City Hall  
1300 Perdido St.  
New Orleans, LA 70112

Dear Sirs:

This letter confirms receipt of your request that the Consent Decree Monitoring Team and the IPM jointly investigate matters relating to alleged time card misconduct involving the Mayor's NOPD security detail. As you know, the Monitoring Team does not investigate specific matters. Likewise, at the moment, the IPM is not staffed to investigate specific matters. Nonetheless, we understand your belief that matters relating to high-ranking officials within the police department or the City require extra diligence to ensure there is no real or perceived pressure on the investigators. Accordingly, we have conferred with the IPM, and agreed we both will work closely with the New Orleans Police Department Public Integrity Bureau to ensure their investigation of NOPD's role in this matter is effective, efficient, and without bias. The U.S. District Court has agreed that this is wholly consistent with our role of monitoring and providing technical assistance to the New Orleans Police Department. We believe this approach will address your concerns and ensure that our role is well within the scope of the Consent Decree and that the IPM's role is met within its current resources.

Thank you for your confidence in us.

Jonathan S. Aronie  
For SHEPPARD MULLIN RICHTER & HAMPTON LLP\*  
2099 PENNSYLVANIA AVE., N.W., SUITE 100  
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)  
DAVID L. DOUGLASS, ESQ. (VIA ELECTRONIC MAIL)  
TIMOTHY MYGATT, U.S. DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)  
DONESIA D. TURNER, CITY OF NEW ORLEANS (VIA ELECTRONIC MAIL)



**Attachment C**

**Monitoring Team's 2/17/23 Immediate Action Notice to PIB**



February 17, 2023

Dear Mr. Sanchez,

In early November 2022, local TV station Fox 8 began a series of stories involving the Mayor's security detail. The story raised a number of questions regarding the operation of that detail as well as the actions of a particular member, Officer Jeffrey Vappie. On November 10, the New Orleans City Council requested that the Office of the Consent Decree Monitor and the Office of the Independent Monitor conduct an independent investigation of the matter, citing "significant concerns about the apparent conflict of interest with the New Orleans Police Department being allowed to, again, investigate serious allegations involving Mayor Cantrell."

The Monitoring Team responded to the City Council on November 11 explaining that it lacked the authority to conduct investigations, but that it would monitor PIB's investigation of Officer Vappie closely to ensure it was effective, efficient, and without bias. As we understand it, PIB opened an investigation into the allegations in late November or early December 2022.

As you know, over the course of PIB's investigation, the Monitoring Team has met with your investigators, Captain Kendrick Allen and Lieutenant Lawrence Jones, on a weekly basis. While we have not been involved in the day-to-day affairs of the investigation, your team has been open with us regarding their strategy and the status of their activities. We appreciate the cooperation your team has shown us throughout this matter.

While we know the Vappie investigation has not yet concluded, the Monitoring Team has become aware of several issues that we believe the NOPD should address right away. Rather than waiting until the conclusion of PIB's investigation, we are bringing these matters to your attention at this time to ensure NOPD considers taking immediate steps to correct the concerns we identified. Importantly, we offer no opinions or recommendations regarding the Vappie investigation itself at this time. Our opinions and recommendations relate only to larger policy/process issues that are unrelated to the forthcoming substantive findings of the Vappie PIB investigation team.

Should you have any questions regarding these recommendations, do not hesitate to reach out to us.

Thank you for your continued cooperation in this matter.

Respectfully,

Jonathan Aronie  
Consent Decree Monitor



### Interim Recommendations Based On Vappie Investigation

1. **Supervision.** As you are aware, the NOPD officers assigned to the Executive Protection detail receive little if any oversight from NOPD supervisors. This appears to have been the case for years. The members of the detail indicated their belief that their only supervisor was the Mayor herself. While the Mayor seemingly is responsible for assignments and schedules, there is no indication the Mayor played any role in supervision beyond that. ***NOPD should take immediate action to ensure the members of the Executive Protection detail receive the “close and effective supervision” required by the Consent Decree.***
2. **Policy.** Currently, no written policy guides the operation of the Executive Protection detail or the actions of the officers assigned to that detail. Likewise, no written document (policy or otherwise) sets out the standards and protocols with which members of the Executive Protection team are expected to comply. The lack of written guidance almost certainly will impact PIB’s investigation of Officer Vappie. ***NOPD should take immediate action to develop clear policies and procedures governing the operation of Executive Protection detail and the officers assigned to that detail.*** As required by the Consent Decree, such policies and procedures should “define terms clearly, comply with applicable law and the requirements of the Consent Decree, and comport with best practices.”
3. **Performance Evaluations.** The Consent Decree requires that “officers who police effectively and ethically are recognized through the performance evaluation process, and that officers who lead effectively and ethically are identified and receive appropriate consideration for promotion” and that “poor performance or policing that otherwise undermines public safety and community trust is reflected in officer evaluations so that NOPD can identify and effectively respond.” Without any meaningful NOPD supervision, it is unclear to us who, if anyone, evaluates the performance of members of the Executive Protection detail. ***NOPD should take immediate action to ensure members of the Executive Protection detail are evaluated in the same manner as other NOPD officers.***
4. **Efficiency.** We understand that members of the Executive Protection team get paid for a full shift whether or not the Mayor is in town. It is unclear, however, what work they are performing while the Mayor is not in town beyond occasional administrative tasks like cleaning the Mayor’s car and catching up on Departmental paperwork. At a time when NOPD has vocally complained about its lack of officers — and used the lack of officers to explain its inability to comply with various Consent Decree obligations — it would seem to be quite inefficient to have multiple days when 1-2 additional officers are available to perform patrol work, but they are not performing patrol work. ***NOPD should consider identifying meaningful tasks members of the Executive Protection team can perform while the Mayor is out of town to contribute to the Department’s well-publicized efforts to combat its lack of personnel.***



5. **Legal Conflicts.** The City Attorney provides “legal advice to the Mayor, the City Council, and other city offices, departments, and boards,” including the NOPD. While this joint representation normally creates no conflict, when the Mayor is or may be a material witness in a PIB investigation, the risk of a real or perceived conflict is significant. Indeed, this occurred in the Vappie investigation when the City Attorney visited PIB to monitor the second interview of Officer Vappie. Situations like this can create the perception that City Hall is attempting to intimidate interviewees or investigators, or otherwise interfere in a PIB investigation. Such perception may be avoided when the Mayor is or may be a witness by (i) the imposition of a formal wall to block the exchange of information between the Mayor’s office/City Attorney’s Office and PIB and (ii) engaging outside counsel to support PIB throughout the investigation. The Office of the Independent Monitor made this suggestion in a thoughtful public letter to the City Council on February 9, 2023. The Monitoring Team agrees with the IPM’s concerns. ***NOPD should consider engaging outside counsel to advise PIB on matters when the City Attorney’s representation of the City, Mayor’s Office, and PIB could create a real or apparent conflict of interest.***
  
6. **Reassignment Of Officers Under Investigation.** We understand, pursuant to Policy 13.1, the Superintendent has the discretion to administratively reassign officers during certain PIB investigations. In this case, Officer Vappie had been moved out of the Executive Protection detail pending the PIB investigation, which was a sensible decision considering the nature of the allegations, the public profile of the investigation, and the likelihood that the Mayor would be a material witness in the investigation. Outgoing Superintendent Ferguson, however, hours before his retirement, directed the return of Officer Vappie to the Mayor’s security detail. While this order, fortunately, was reversed by a deputy chief and the City Attorney, the order itself created at the very least the appearance of interference in a PIB investigation. ***NOPD should consider revising its policy to prohibit officers reassigned due to a PIB investigation from being assigned back to their units until the conclusion of the PIB investigation without the express approval of the PIB Deputy Chief.***
  
7. **PIB Investigators.** During the course of the PIB investigation, the two investigators assigned to the Vappie investigation were moved out of PIB. The lead investigator, Lawrence Jones, was promoted to lieutenant and moved to the district patrol. The PIB Captain, Kendrick Allen, was assigned to command a district. Without at all suggesting these two promotions were not warranted, NOPD should have considered detailing both individuals back to PIB until the completion of the Vappie investigation. While Superintendent Woodfork assured the Monitoring Team both officers would be given adequate time to complete their investigation, as a practical matter, this is difficult to accomplish in practice. PIB readily concedes it lacks adequate personnel to perform aspects of its investigation in the best of times (*e.g.*, reviewing videos and documents). Adding a full time job to Allen’s and Jones’s schedules on top of their PIB jobs virtually guarantees both jobs will be compromised to some extent. ***NOPD should consider adopting a policy of detailing promoted officers back to PIB for limited timeframes when necessary to complete significant pending investigations.***



8. **Initial Investigation Letters.** At the outset of the investigation, PIB alerted Officer Vappie it had opened an administrative investigation initiated by a public complaint. The letter advised Officer Vappie that PIB would focus on an alleged violation of the 16.35 hour rule *as well as other matters*. PIB was aware at that time, however, of several other potential violations by Officer Vappie as a result of the Fox 8 coverage, including potential violations of NOPD's professionalism, conflict, and time charging rules. While PIB represented to the Monitoring Team that the general "other matters" language was all that was required to put Officer Vappie on notice of the allegations against him, the limited wording of the initial letter created avoidable problems during the Vappie interview. ***NOPD should consider the pros and cons of including a more complete description of the conduct under investigation in its initial letters to investigation subjects.***



**Attachment D**

**PIB Investigation Report**

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DEPARTMENT OF POLICE  
INTEROFFICE CORRESPONDENCE

Michelle M. Woodfork  
TO: Superintendent of Police DATE: March 10, 2023  
Captain Kendrick Allen  
FROM: Field Operations Bureau / First District  
P.I.B. Complaint Tracking Number 2022-0513-R  
Senior Police Officer Jeffery Vappie,  
SUBJECT: Employee Number 08913

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INTRODUCTION

On Tuesday, November 8, 2022, approximately 7:00p.m., Public Integrity Bureau Sergeant Lawrence Jones was contacted by Public Integrity Bureau Deputy Chief Keith Sanchez. Deputy Chief Sanchez informed Sergeant Jones that a media request was sent to the Public Integrity Bureau relative to New Orleans Police Department Senior Police Officer Jeffery Vappie assigned to the Investigative Services Bureau, Executive Protection. Deputy Chief Sanchez forwarded the request to Sergeant Lawrence Jones for review.

On Wednesday, November 9, 2022, Sergeant Lawrence Jones reviewed the request and learned that Senior Police Officer Jeffery Vappie was accused of working more than 16 Hours and 35 minutes with in a 24-hour period. The request indicated Officer Vappie may have violated this rule when on several occasions while assigned to the Executive Protection Section he may have violated this NOPD policy.

Based on the information provided, Sergeant Lawrence Jones initiated a departmental FDI **(EXHIBIT B)** and a form (230) the Initial Intake Form for Commendation, Complaint, or Documentation of Minor Violation **(EXHIBIT C)** on Senior Police Officer Jeffery Vappie on Wednesday, November 9, 2022, for potential violations of, **Rule 4 Performance of Duty: Paragraph 4 Neglect of Duty C6 Failing to comply with instructions. oral or written from any authoritative source to wit: N.O.P.D. Chapter 22.08 Police Secondary Employment Paragraph 32 which states: No member, including Reserve officers, shall work more than more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period.**

Investigating Officer's Initials: KA

CDM028

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### Brief Synopsis

On Wednesday, November 9, 2022, Sergeant Lawrence Jones reviewed a media request from WVUE a local news station indicating that Senior Police Officer Jeffery Vappie may have violated NOPD policy. The request indicated Officer Vappie may have violated policy when on several occasions while assigned to the City of New Orleans Mayor Executive Protection team he work more than 16 Hours and 35 minutes with in a 24-hour period. The request also indicated Officer Vappie may have neglected his duty when he attended a Board meeting with the City of New Orleans Housing Authority while on duty. The request also indicated that Officer Vappie may have spent numerous hours with his Protectee at the Upper Pontalba Apartments both on duty and off duty. The media request will be attached to this investigation as **(EXHIBIT D)**

### Allegations

Based on the information provided, Sergeant Lawrence Jones initiated a departmental FDI on Senior Police Officer Jeffery Vappie on Wednesday, November 9, 2022, for potential violations of, **Rule 4 Performance of Duty: Paragraph 4 Neglect of Duty C6 Failing to comply with instructions, oral or written from any authoritative source to wit: N.O.P.D. Chapter 22.08 Police Secondary Employment Paragraph 32 which states: No member, including Reserve officers, shall work more than more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period.**

### INVESTIGATION

This Administrative Investigation was assigned to Captain Kendrick Allen and Sergeant Lawrence Jones of the Public Integrity Bureau on Friday, November 11, 2022, by Deputy Chief Keith Sanchez, bureau chief of the New Orleans Police Department Public Integrity Bureau. For the purpose of this investigation Captain Kendrick Allen will be identified as Captain Allen and Sergeant Lawrence Jones will be identified as Lieutenant Jones.

Captain Allen and Lieutenant Jones began this investigation when on Wednesday, November 9, 2022, approximately 1:00p.m., Lieutenant Jones contacted Senior Police Officer Jeffery Vappie and requested that he relocate to the Public Integrity Bureau, located at 1340 Poydras Street, Suite 1900. Officer Vappie later arrived at the Public Integrity Bureau and he was placed on Administrative Re-assignment. Officer Jeffery Vappie was released from reassignment on Wednesday, December 21, 2022, 4:00pm. **(EXHIBIT E)**

Investigating Officer's Initials: KA

CDM029

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Captain Allen realize that more time would be needed to conduct a thorough, fair and impartial investigation. Therefore, on Thursday, November 17, 2022, in accordance with Civil Service Rule IX, Section 1:4 for the City of New Orleans Captain Kendrick Allen petitioned Ms. Amy Trepaginer, the personnel Director of the Department of Civil Service. Captain Allen respectfully requested an extension of time so Captain Allen could conduct a thorough investigation (EXHIBIT F). On Tuesday, November 22, 2022, Captain Kendrick Allen's extension request was presented to Civil Service Hearing examiner Jay Ginsberg, by PIB Sergeant Omar Garcia. The hearing was conducted at 1340 Poydras Street Suite 900. At the conclusion of the hearing, Examiner Ginsberg granted Captain Allen's request for an extension and allowed an additional 60 days to complete the administrative investigation of Senior Police Officer Jeffery Vappie (EXHIBIT G).

To complete a thorough investigation, Captain Allen and Lieutenant Jones thought it would be best to obtain a historical information relative to previous officers assigned to the Executive Protection Detail. Lieutenant Jones was aware from previous job knowledge of the assignment that Senior Police Office Kristy Johnson-Stokes and retired Sergeant Wondell Smith were recently assigned to the Executive Protection team. Therefore, on Tuesday, November 29, 2022, Lieutenant Lawrence Jones contacted former members of the Mayor's executive protection team, New Orleans Police Senior Police Officer Kristy Johnson-Stokes now assigned to the New Orleans Police Department Investigative Services Division / Intelligence Unit and New Orleans Police Retired Sergeant Wondell Smith. Lieutenant Jones requested an interview of both officers to obtain any investigative knowledge they could provide to the investigation. Both, Officer Kristy Johnson-Stokes and Retired Sergeant Wondell Smith agreed to be interviewed. Officer Johnson-Stokes interview was set for Monday, December 5, 2022 at 11:30am and Retired Sergeant Wondell Smith was scheduled for Tuesday, December 6, 2022 at 10:00a.m.

Captain Allen and Lieutenant Jones met with Senior Police Officer Kristy Johnson-Stokes on Monday, December 5, 2022 at 12:00p.m., the interview was conducted at 3925 North I-10 service Road, Suite 212, Metairie, Louisiana 70002.

Lieutenant Jones commenced the audio-recorded interview (EXHIBIT H) by advising Officer Johnson-Stokes of her rights as outlined in the Police Officers Bill of Rights, Louisiana Revised Statue 40:2531. Lieutenant Jones informed Officer Johnson-Stokes she was only being interviewed as a witness relative to a New Orleans Police Officer being accused of potential violations of Rule 4 Performance of Duty: Paragraph 4 Neglect of Duty C6 Failing to comply with instructions, oral or written from any authoritative source to wit: N.O.P.D. Chapter 22.08 Police Secondary Employment Paragraph 32 which states: No member, including Reserve officers, shall work more than more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period.

Investigating Officer's Initials: KA

CDM030

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Lieutenant Jones then advised Officer Johnson-Stokes of New Orleans Police Department Chapter 52.1.1 requires all New Orleans Police Department employees to answer questions in official inquiries and refusal to comply will result in termination.

Additionally, employees are to be truthful at all times in their spoken, written, or electronic communications, whether under oath or not, in all matters and official investigations relating to the scope of their employment and operations of the Department. Failure to comply will result in termination. Officer Johnson-Stokes indicated she understood her rights and began her statement at 12:06p.m. Officer Johnson-Stokes stated the following:

**Statement of Officer Kristy Johnson-Stokes (Witness)**

Kristy Johnson Stokes...NOPD OFFICER...was trained and assigned to the mayor's office/security detail under retired Sergeant Wondell Smith for Mayor Landrieu part time until Mayor Cantrell's 1st term for 3yrs. The team working schedule was 12hr days except on Wednesday when they would work an eight (8) hour day. On special events, the entire team would be scheduled to work. Some of the responsibilities for the team was transporting the daughter to and from school, practice or whatever is in the daughter's schedule. After Sergeant. Smith's transfer out of the executive protection team, the mayor did not assign another supervisor and Sergeant. Lane (worked in Headquarters) entered the protective team's time but was not assigned to the unit. Via Mayor Cantrell she'll sometimes say, "If I need you, I'll call you." Orders came from the mayor after Sergeant. Smith left. Sometimes the mayor gave instructions to Officer Martinez or Orleans Parish Sheriff Deputy Charles Ellis. If a day exceeded 12hrs, the protection team would stay as long as the mayor was conducting business. Officer Johnson-Stokes stated, no one had keys to the mayor's residence, but they did know where an extra key to the apartment (Upper Pontalba) was located. The executive protection team would receive an email from the mayor's assistant giving them the schedule for the next working day. Via Officer Johnson-Stokes the Mayor may ask an executive protection team member to water plants which was not against the law. At times there would be a gap in the mayor's schedule that would be filled in with things like going to lunch, in the office, or church. On the schedule would be dinner parties, city events, or anything other business involving the city. Via Officer Johnson-Stokes during her time in executive protection, they didn't have keys, nor would they be inside of the Upper Pontalba apartment, nor did they travel, however, the team would occasionally, do some walk/run with the mayor. Officer Johnson-Stokes concluded her statement at 1:02p.m. Senior Police Officer Kristy Johnson-Stokes transferred to the Intelligence Section of the New Orleans Police department on May 23, 2021. A transcribed copy of Officer Kristy Johnson-Stokes statement will be attached to this investigation as **(EXHIBIT I)**

Investigating Officer's Initials: KA

CDM031

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On Tuesday, December 6, 2022, approximately 10:00a.m., Captain Allen and Lieutenant Jones met with Retired Sergeant Wondell Smith. The interview was conducted in the 4700 Block of Lennox Street inside of Retired Sergeant Smith's residence. Note: To maintain the integrity of retired Sergeant's Smith residence, the residence location will not be listed in this investigation, at Sergeant Smith's request. After advising Retired Sergeant Smith of the nature of the investigation, Sergeant Smith advised he wishes to continue and began his taped recorded statement at 10:11a.m., (EXHIBIT J). Retired Sergeant Wondell Smith stated the following;

**Statement of Retired Sergeant Wondell Smith (Witness)**

Sergeant Smith advised he was a 35-year veteran of the New Orleans Police Department. He began his career in the 5th District; 6th District, Mounted for 10 years and three (3) years in the academy. After the academy he transferred to the Mayor's office where he served 18 years in Executive Protection. Sergeant Smith stated he served under Mayor Nagin, Landrieu and the first term of Mayor Latoya Cantrell. Sergeant Smith stated he was promoted to the rank of Sergeant in 2004 while serving under Mayor Nagin and remained as the Executive Protection Supervisor until he was transferred to Intelligence 2021.

Lieutenant Jones inquired from Sergeant Smith if he could provide insight on his job duties as Executive Protection through his time of service. Sergeant Smith responded, for the most part, it transcends. Your responsibilities are to the mayor and to the mayor's immediate family. Sergeant Smith stated, they normally work in teams of two and get the itinerary the day before either by email or text. Often Sergeant Smith would direct someone to conduct an advance review of the location, the Mayor would be visiting the following day. The itinerary received the previous day would discuss pick up location, which is normally the Mayor's residence. The Protection team members would leave their take home vehicle at the pickup location and drive the Mayor's assigned SUV for the work day. Once the Protectee is ready they would go to office or the first appointment. Once the Mayor has gone through the entire schedule, at that point it becomes family time. Sergeant Smith was very clear the Executive Protection team works at the Mayor's discretion. "If Mayor goes to the movies, you got to go to the movies."

Sergeant Smith indicated he serve under the current administration with team members, Kristy Johnson-Stoke, Louis Martinez and Orleans Parish Criminal Sheriff Charles Ellis. Sergeant Smith stated although he was the supervisor "You do what the mayor tells you to do Period." Sergeant Smith explained that all Executive Protection members goes through Executive Protection training, either before assignment or immediately after assigned. Each Mayor would meet with the perspective candidate and the final decision was the mayor's decision. Captain Allen inquired from Sergeant Smith if he considered the mayor to be a part of his Chain of command. Sergeant Smith stated, "Absolutely, the Superintendent takes orders from the Mayor and so did I."

Investigating Officer's Initials: KA

CDM032

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Lieutenant Jones inquired from Sergeant Smith if he could describe how he interacted with the Protectee. Sergeant Smith responded, always professional. During each mayor he served, he and all team members were always professional. Lieutenant Jones then inquired from Sergeant Smith if he ever served with Officer Jeffery Vappie. Sergeant Smith responded, "Yes he worked part time with Mayor Nagin." At no time during the appointment with Mayor Nagin did he ever observe Officer Vappie to be unprofessional.

Captain Allen inquired from Sergeant Smith if he had a key to the Mayors Personal residence or the Upper Potable Apartment. Sergeant Smith responded, "No" to the personal residence, as to the Apartment nobody had a personal key, the key was kept in the car in the glove box. Lieutenant Jones then inquired from Sergeant Smith, if there was ever a moment he had to go to the apartment alone. Sergeant Smith responded, "No, you only went to that apartment like and this is like for everybody, for all the previous mayors, we went – you know you're going there Christmas, for the Christmas caroling in Jackson Square. You know you're going there New Year's Eve. You know you're going there because that's, uh, Sugar Bowl and New Year, bring in the new year, dropping the ball and all that in the French Quarter. And you might go to it during some other special event, but it's always a gathering of people coming and going." never going just hanging out.

As it relates to the payroll for the Executive protection team. Sergeant Smith stated he would enter the time and often Sergeant Tokishiba Lane would call and inquire. But, he would never discuss the Mayor's itinerary with Sergeant Lane, so she would just approve the time. Sergeant Lane was not assigned to Executive Protection, she was a Supervisor in the Investigative Services Bureau, so Sergeant Smith indicated he did not give her reasons for the hours. Sergeant Smith described the schedule as a four day (12) hour work day. Lieutenant Jones inquired from Sergeant Smith if he had any SOP's or Department Regulations associated with executive Protection. Sergeant Smith responded, "No," he normally just worked out any problems he had. Retired Sergeant Wendell Smith concluded his statement at 11:20a.m. A transcribed copy of Sergeant Smith's statement will be attached to this investigation as **(EXHIBIT K)**.

On Thursday, December 8, 2022, Lieutenant Lawrence Jones also contacted New Orleans Police Department retired Sergeant Todd Henry. Sergeant Henry Served as a member of the former New Orleans Police Superintendent Richard Pennington's executive protection team. Lieutenant Jones was aware of this appointment because of previous Job knowledge. After informing Sergeant Henry of the nature of the call and a request to interview him relative to his historical expert knowledge as it pertains to executive protection Sergeant Henry immediately agreed and requested an appointment time. Lieutenant Jones informed retired Sergeant Henry the interview will be conducted on Monday, December 12, 2022, at 1:00p.m. The interview location will be the New Orleans Police Department Public Integrity Bureau's office located at 1340 Poydras Street Suite 1900.

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Captain Allen and Lieutenant Jones met with retired Sergeant Todd Henry on Monday, December 12, 2022, at 1:00p.m., at the Public Integrity Bureau's office located at 1340 Poydras Street Suite 1900. Sergeant Henry provided a detailed recorded interview relative to his knowledge and training as a former Executive Protection member. (EXHIBIT L). Retired Sergeant Henry began his statement at 1:21p.m. and stated the following;

**Statement of Retired Sergeant Todd Henry (Witness)**

Retired Sergeant Henry informed the Lieutenant Jones, he was 35-year veteran of the New Orleans Police department. Prior to retirement, he served as the Executive Protection for former Superintendent Richard Pennington. Sergeant Henry explained that he never served as the Mayor's executive protection, but he attended executive protection training. As to the duties, Sergeant Henry explained he would meet the Chief at his residence or he may tell Sergeant Henry to just meet him at Head Quarters. Often the Chief would drive himself to the Office then Sergeant Henry would drive throughout the day. Sergeant Henry explained he worked for the Superintendent's office for approximately four (4) years. Sergeant Henry explained he took several trips out of state with the Superintendent during his tenure as Executive Protection.

Sergeant Henry was asked if he was following the story involving Officer Vappie and his thoughts. Sergeant Henry responded, "That's a bad move on his part. You know, you can't, you know you're not supposed to get involved or go beyond the scope of your duties. Hey, if you got a team and you're the only one have a key, you're the only one going in, that's a problem. That is a problem. Because you're different from the rest of the guys; the number from the news story, the number of trips you take compared to the other guys, that -- looking from the outside, that looks that's more than you being security. You know, you seem to be favored over everybody else, you know, and that's -- you can't do that. You know." Retired Sergeant Todd Henry concluded his statement at 1:50p.m. A transcribed copy of Sergeant Henry's statement will be attached to this investigation as (EXHIBIT M).

At the conclusion of the interviews of Officer Kristy Johnson-Stokes, Retired Sergeant Wondell Smith and Retired Sergeant Todd Henry it was clear that instruction to members of the Executive Protection detail are often delivered by text via the city issued cell or email. It was necessary for Captain Allen and Lieutenant Jones to gain access to Officer Vappie work issued cell phone and City Emails. The review will provide evidentiary value in the event instructions are received allowing Officer Vappie to attend HANO meetings while at work and any instructions he may have received as it relates to his time spent in the Upper Pontalba Apartments both on duty and off duty.

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Furthermore, Lieutenant Jones and Captain Allen also wished to obtain the video surveillance video located near the Pontalba to corroborate the claims indicated in the WVUE media request. For this reason, Lieutenant Lawrence Jones instructed members of the Public Integrity Bureau Special Investigation Section to obtain the following;

1. Obtain access to Officer Vappie city emails associated with email address Jvappie@nola.gov , from March 1, 2022, to November 30, 2022, the dates Officer Vappie was assigned to the Executive Protection team. This task was accomplished on December 12, 2022. **(EXHIBIT N)**.
2. Officer Vappie work issue Cell Phone **5042698509**. This task was accomplished on December 12, 2022, at 7:12p.m., SIS members met with Officer Vappie at his reassignment location and retrieved his department cell. It should also be noted; Officer Vappie does not have Fourth Amendment protection as it relates to the city issued cell phone. The phone was later released to the New Orleans Police Department Digital Forensic Unit for analysis. Once complete the analysis will be provided to Lieutenant Jones for review. The analysis will be attached to this investigation as **(EXHIBIT O)**.
3. Complete a Public Records request to the French Market Corporation to obtain the video surveillance of the camera located on the light pole on St. Peter Street, in Jackson Square Pedestrian Mall outside of the Upper Pontalba apartment. The Public Records request will be attached to this investigation as **(EXHIBIT P)**. The Public records request was granted and the video was provided. The date range of the video was July 30, 2022, to November 17, 2022. The video surveillance will be attached to this investigation as **(EXHIBIT Q)**.

To also corroborate the inferences that Officer Vappie may have neglected his duty when he attended a HANO board meeting while on duty. Lieutenant Jones queried the Housing Authority of New Orleans official website "hano.org" and obtained historical data relative to "HANO" Board meetings from the March, 2022 to December 2022. The information obtained consisted of meeting minutes, meeting agenda and an audio recording of the meeting. The HANO information obtained from the HANO website will be attached to this investigative report as **(EXHIBIT R)**. Note: The analysis information obtained will be discussed at a later portion of the investigative report.

Captain Allen and Lieutenant Jones continued to obtain expert background information as it pertains to Executive Protection. The investigators sought to obtain Education and Training information from experts who previously trained New Orleans Police Members for executive protection. Mr. John Douglass of the Falcon Group Tactical out of the State of Mississippi and Captain Dewight Robinette of the Louisiana State Police were chosen by the investigators because both previously trained members of the NOPD Executive Protection team.

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This information was firsthand knowledge to Lieutenant Jones, because officer he recently supervised attended the training of Mr. John Douglass and Captain Dewight Robinette was identified by retired Sergeant Wondell Smith as previously training NOPD Officers.

On Wednesday December 14, 2022, Lieutenant Lawrence Jones contacted both Mr. John Douglass and Captain Robinette. Lieutenant Jones informed both of the nature of the call then requested an interview relative to the investigation. Mr. Douglass and Captain Robinette both agreed to be interviewed and appointments were set. Mr. John Douglass interview was set for Friday, December 16, 2022 at 10:00a.m. and Captain Robinette interview was set for Wednesday, December 21, 2022 at 1:30p.m. Due to the fact both members were located outside of the jurisdiction of Orleans Parish they were interviewed via telephone at their request.

On Friday, December 16, 2022, at 10:00a.m., Lieutenant Lawrence Jones contacted Mr. Douglass via telephone for the interview. Mr. Douglass was using telephone number 662-883-0025 and Lieutenant Jones and Captain Allen was using telephone number 504-421-8333. Mr. Douglass began his taped recorded telephone interview at 10:08 a.m. **(EXHIBIT T)** and stated the following to the investigators;

**Statement of Mr. John Douglass (Training Expert)**

Mr. Douglass stated he is a law enforcement officer in the state of Mississippi, for over 25 years probably somewhere closer to 27 years. Mr. Douglass further stated over the course of his career, he served as a patrol officer, an investigator, a narcotics agent, a SWAT team member and a protection agent for the State of Mississippi. Mr. Douglass further stated over the last 10 years, he oversees protection of at least two circuit judges.

Mr. Douglass stated he is a practitioner in protective service operations, better known as, or otherwise known as Dignitary Protection. Mr. Douglass stated he was trained at the Federal Law Enforcement Training Academy in Glencoe, Georgia. Mr. Douglass further explained he is a certified law enforcement instructor for the state of Mississippi for several years and has developed training curriculum in many different subjects, most of being, tactical firearms training and Basic SWAT training for law enforcement officers. Mr. Douglass has also developed the basic protective service operations training program for the State of Mississippi. The Program was submitted to the Board of Law Enforcement Minimum Standards for the State of Mississippi and it was upheld and granted status of a POST certification for the state of Mississippi which is reciprocal throughout the United States. Mr. Douglass went on to say he is contracted by a private company through the state of Mississippi called Falcon Group Tactical. Through the Falcon Group Tactical Mr. Douglass indicated he has trained many officers from the New Orleans Police Department. Note: Licutenant Jones was aware that recently members of the New Orleans Police Department attended Training thru the Falcon Group.

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Lieutenant Jones inquired from Mr. Douglass if he could discuss his training curriculum. Mr. Douglass stated they often discussed academic definition or a description of how a dignitary protection agent should interact with a Protectee, also known as a Principal. The communication and interaction between the two or any member of the protection detail should be kept on a PROFESSIONAL LEVEL ONLY.

Mr. Douglass went on to discuss the training provided by the Falcon Group also covers, escorting and eating with the principal. Mr. Douglass stated at no point should a Protection member sit with the principal unless invited and even then they position themselves with the Protectee safety in mind. Mr. Douglass further stated he believes all Executive Protection units should have a supervisor embedded in the group. The supervisor would have the authority to ensure the Protectee request align with the departments rules and regulation. The supervisor would also monitor the other members of the unit and replace them if need be. Mr. Douglass concluded his statement at 10:32a.m. A transcribe copy of Mr. John Douglass statement will be attached to this report as (EXHIBIT U)

On Wednesday, December 21, 2022, at 1:30p.m., Lieutenant Lawrence Jones contacted Captain Dewight Robinette via telephone for the interview. Captain Robinette was using telephone number 225-379-2029 and Lieutenant Jones and Captain Allen was using telephone number 504-421-8333. Captain Robinette began his taped recorded telephone interview at 1:36 p.m. (EXHIBIT V) and stated the following to the investigators;

**Statement of Louisiana State Police Captain Dewight Robinette (Training Expert)**

Captain Robinette stated he is currently the commander over the Governor's protection team and that is protective services for Louisiana State Police. Captain Robinette is a 27 years veteran of the Louisiana State Police with 16 of the years serving in Executive Protection. Captain Robinette stated he started Executive Protection as a Trooper and worked his way to commander of the Unit, serving under Governor Jindal and Edwards. Captain Robinette further stated he is currently the President of the National Governor's Security Association.

Captain Robinette further explained in 2014, he was in charge of operations for protective services; which entailed overseeing the daily operations of all teams, the Governor's mansion, facilitate all travel, daily movements, scheduling and all of the positions within protective services. Captain Robinette also oversaw Governor Jindal's presidential campaign in 2015.

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Captain Robinette further explained he trained many members of the New Orleans Police Department Executive Protection unit, while serving as the operations Lieutenant. The last training class he could recall was February 11-14, 2019. Captain Robinette stated many NOPD members along with other agencies attended. During the training protection, officers are taught to not only protect the Protectee well-being, but to also protect them from any embarrassment, whether it's your actions or the Protectee actions that may cause them embarrassment. Captain Robinette also explained, your attire should blend in and not overshadow your Protectee. All conversations should remain professional and limited to "Good Morning" not good morning and how was your day. The executive protection officer should gain the trust of the Protectee, but never cross the line of being unprofessional. Captain Robinette explained having a supervisor in the unit is intricate with helping to curb unprofessional behavior from either the Protectee or the team members. Captain Robinette further explained it is common for the protection team members to exercise with the Protectee, to include running, biking, walking or weight lifting. For the purpose of the Governor, it was always two Executive Protection personnel. Captain Robinette further explained as it relates to the primary living quarters of the Protectee. The team only goes there if it is a security issue.

Lieutenant Jones inquired from Captain Robinette insight on working hours for his Protection team. Captain Robinette explained all of the Louisiana State Police Executive Protection members work 12-hour days, which they normally exceed. Captain Robinette explained they follow the motto, "We wake them up and we put them to bed." The Captain also indicated they have a responsibility to the Protectee family members. Captain Robinette further explained all members of the Louisiana State Police Executive Protection team are hand selected. They take into account the persons work ethic, personality background and an interview process. Previous supervisors interviewed and a review of their internal affairs record is reviewed.

Captain Robinette explained all protection teams' whether it is federal, state or local are consistent and do the same duties. Those duties are to protect a particular dignitary. Your focus and main goal is to provide cover for that principal, regardless to whether or not you run a one-man detail or multiple man detail.

Captain Robinette concluded his statement with, **"You never do anything – and we preach this: don't do anything that's immoral, illegal or unethical. Those three things can get you in jail, fired or hurt, or get your Protectee in trouble and that's my, that's my, uh, my policy. That is what I preach all the time and I've preached it to a lot of people. And when we teach that class, we always say that: don't ever do anything that's illegal, immoral or unethical."** Captain Dewight Robinette concluded his telephone statement at 2:25p.m. A transcribe copy of Captain Dewight Robinette statement will be attached to this report as **(EXHIBIT W)**.

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After interviewing both training experts Captain Dewight Robinette and John Douglass, Lieutenant Jones and Captain Allen then wished to interview current members of the Executive Protection team. Therefore, Lieutenant Lawrence Jones contacted New Orleans Police Department Senior Police Officer Louis Martinez. Lieutenant Jones requested to interview Officer Martinez relative to his knowledge of this investigation. Officer Martinez informed Lieutenant Jones that he would be willing to provide a statement then requested a date and time to be interviewed. Lieutenant Jones advised Officer Martinez the interview would take place at the Public Integrity Bureau's office located at 1340 Poydras Street, Suite 1900. An appointment was set to interview Officer Louis Martinez on Tuesday, December 27, 2022 at 11:00a.m.

Lieutenant Jones and Captain Allen met with Officer Martinez on Tuesday, December 27, 2022 at 11:05a.m., at the Public Integrity Bureau's office, interview room number one. Prior to the interview, Captain Kendrick Allen presented Officer Louis Martinez with New Orleans Police Department Internal Investigation Rights and Responsibilities of Employees Under Investigation and Notification to Appear and Render a Statement Form. Both Captain Allen and Officer Martinez signed and dated the form, with a duplicated copy to be included with the internal investigation (EXHIBIT X).

Lieutenant Jones inquired from Officer Martinez if he had a reasonable time to summon an Attorney or Representative. Officer Martinez responded, "Yes," then informed Lieutenant Jones that he would continue the interview without an Attorney or representative present.

Lieutenant Jones commenced the audio and video-recorded interview (EXHIBIT Y) by advising Officer Martinez of his rights as outlined in the Police Officers Bill of Rights, Louisiana Revised Statute 40:2531. Lieutenant Jones advised Officer Martinez he would be interviewed as a witness. Lieutenant Jones then advised Officer Martinez of New Orleans Police Department Chapter 52.1.1 requires all New Orleans Police Department employees to answer questions in official inquiries and refusal to comply will result in termination. Additionally, employees are to be truthful at all times in their spoken, written, or electronic communications, whether under oath or not, in all matters and official investigations relating to the scope of their employment and operations of the Department. Failure to comply will result in termination. Officer Martinez indicated he understood his rights and began his statement at 11:16a.m. Officer Martinez stated the following:

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**Statement of Officer Louise Martinez (Witness)**

Officer Martinez explained to the investigators prior to joining the Executive Protection team he had several assignments throughout his 34 year NOPD Career. Officer Martinez explained that he served under Mayor Ray Nagin then again with his present assignment under Mayor Latoya Cantrell. Officer Martinez continued to explain he attended Executive Protection training with the Gretna Police Department, the Louisiana State Police and he attended training seminars with United States State Department in Virginia.

Lieutenant Jones inquired about his duties as an Executive Protection Officer. Officer Martinez stated, Executive Protection members are assigned to the Mayor and the Mayor's family. On occasion he the Mayor may request that the members pick up her family members and other family. Officer Martinez explained that both Mayor's he served under would normally request team members to pick up and transport family. When asked by Lieutenant Jones, how are members chosen for the Executive Protection team. Officer Martinez explained, the current members would make recommendations then the selected officers would be interviewed by the Mayor, who makes the final selection. Officer Martinez explained it was this way during both Administration he served, Mayor Nagin and Cantrell.

Lieutenant Jones then inquired about supervisors assigned to the team. Officer Martinez explained Sergeant Wondell Smith was the on team Supervisor prior to his transfer, however no Sergeant is currently assigned to the unit. Officer Martinez also explained, Sergeant Tokishibia Lane-Hart only responsibility was to enter payroll and ensure the members were scheduled for annual in-service training. Sergeant Lane had no responsibility to the day to day operations of the team. Officer Martinez then stated, ultimately the Mayor is the Supervisor.

Officer Martinez then explained the schedule the unit operated. Officer Martinez explained the scheduled was adopted by Sergeant Wondell Smith when he was the supervisor. Sergeant Smith adopted the State Trooper scheduled which required 12 Hour Shifts. The unit operated in Teams, he and Deputy Charles Ellis and Officer Vappie and Robert Monlyn were partners. The teams work 12-hour shifts Friday, Saturday, Sunday, Monday, 8-hours shift on Tuesday and off on Wednesday and every other weekend, unless special events or unusual circumstances like furlough, training etc.

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Lieutenant Jones then inquired from Officer Martinez if he traveled when the Protectee would travel out of town. Officer Martinez explained that he did not travel because of an illness. Martinez then explained the Protection team did not travel until Officer Vappie joined the team. Officer Martinez explained that he initially inquired from the Protectee if the team needed to travel and the answer were "NO." Officer Martinez stated, Officer Vappie mentioned to him that he suggested to the Protectee that the Executive Protection team travels with her.

Officer Martinez then explained that he started to notice Officer Vappie unprofessional behavior with the Protectee. Officer Martinez explained how Officer Vappie would sit at the table with the Protectee. Officer Martinez stated, "I found it strange, uh, when I'm waiting for him to get a parking spot to go in, I go in the restaurant; he's sitting, sitting with his back to the door, which we don't do by ourselves. The mayor was sitting at the table, sitting at the table and I just looked at him and I, I said, it just didn't look right. I'm, I'm working for you and I'm sitting down having dinner with you. This didn't look right. We always have a table off to the side, it just didn't look right and I told him again. I said, man, you know you're not following protocol." Martinez stated, he approached Officer Vappie and stated to him "There's a line that you, you don't cross it. And I asked him did he crossed it; did he cross it and he said no. I took him at his word." Lieutenant Jones inquired from Officer Martinez if he ever told a supervisor about Officer Vappie's unprofessional behavior. Officer Martinez stated, "No, I made it known to him that I didn't approve of what he was doing.

Lieutenant Jones then inquired from Officer Martinez, what was his relationship like with the current Protectee. Officer Martinez explained, "You don't have a relationship with uh, the mayor. it is the mayor's office and then there's the mayor and your executive protection, you don't have a relationship with the mayor period."

Officer Martinez went on to say he was disappointed about what he was hearing about Vappie being in the Upper Pontalba Apartment abnormal hours. Officer Martinez also stated, "Um, I was surprised. Like I said, I was hurt. I don't know. I don't get hurt bnt, uh, I was, when I asked him did he cross the line and he said no, I was concerned about if he was telling me the truth. Watching him walk in, coming out all hours of the night, uh, that, that's the only thing that bothered me. You know, we all are grown men. We have common sense and you know, you can only speculate what, what happcued because, you know, you don't really know what happened. But we're grown men and women, so Hum, I cannot see, they go in there with workout clothes. They come out dressed in your work attire. They spend 5 hours a day, I mean, that's strange. It was, it was strange to me." Senior Police Officer Louis Martinez concluded his statement at 12:40p.m. A transcribed copy of Officer Martinez's statement will be attached to this investigation as (EXHIBIT Z).

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After interviewing Officer Martinez, Lieutenant Jones individually contacted Senior Police Officer Robert Monlyn and OPCSO Deputy Charles Ellis, both arc members of the current Executive Protection team. Lieutenant Jones informed both of the nature of the call then requested an interview relative to the investigation. Officer Robert Monlyn and Deputy Charles Ellis both agreed to be interviewed and appointments were set. Officer Monlyn interview was set for Wednesday, December 28, 2022 at 10:30a.m. and Deputy Ellis interview was set for Wednesday, December 28, 2022 at 3:00p.m.

Lieutenant Jones and Captain Allen met with Officer Robert Monlyn on Wednesday, December 28, 2022 at 10:35a.m., at the Public Integrity Bureau's office interview room number one. Prior to the interview, Captain Kendrick Allen presented Officer Robert Monlyn with New Orleans Police Department Internal Investigation Rights and Responsibilities of Employees Under Investigation and Notification to Appear and Render a Statement Form. Both Captain Allen and Officer Monlyn signed and dated the form, with a duplicated copy to be included with the internal investigation (**EXHIBIT AA**).

Lieutenant Jones inquired from Officer Monlyn if he had a reasonable time to summon an Attorney or Representative. Officer Monlyn responded, "Yes," then informed Lieutenant Jones that he would continue the interview without an Attorney or representative present.

Lieutenant Jones commenced the audio and video recorded interview (**EXHIBIT BB**) by advising Officer Monlyn of his rights as outlined in the Police Officers Bill of Rights, Louisiana Revised Statute 40:2531. Lieutenant Jones advised Officer Monlyn he was only being interviewed as a witness. Lieutenant Jones then advised Officer Monlyn of New Orleans Police Department Chapter 52.1.1 requires all New Orleans Police Department employees to answer questions in official inquiries and refusal to comply will result in termination. Additionally, employees are to be truthful at all times in their spoken, written, or electronic communications, whether under oath or not, in all matters and official investigations relating to the scope of their employment and operations of the Department. Failure to comply will result in termination. Officer Monlyn indicated he understood his rights and began his statement at 10:42a.m. Officer Monlyn stated the following:

**Statement of Officer Robert Monlyn (Witness)**

Senior Police Officer Robert Monlyn is a 25-year veteran of the New Orleans Police Department. Officer Monlyn explained that he previously worked Executive Protection for former Mayor Mitch Landrieu on a part time basis, prior to joining the current team in June 2020. Officer Monlyn explained that once he arrived to the team he had no ranking supervisor and he considered Officer Louis Martinez as the senior person to be his supervisor. As far as payroll all payroll was sent to Sergeant Tokishiba Lane-Hart for entry. As to the Protectee, the schedule came via email from Katrina Simmons the Protectee scheduler.

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Officer Monlyn explained he attended Executive Protection training with the Louisiana State Police. Officer Monlyn also provided a description of the work schedule and the hours the team members work. Lieutenant Jones inquired about the team's schedule from Officer Monlyn. Officer Monlyn informed Lieutenant Jones the team work four 12 hour days and are off every other weekend. Monlyn also confirmed that his partner was Officer Jeffery Vappie. Officer Monlyn also confirmed that he and Officer Vappie would do most of the traveling with the Protectee.

Officer Monlyn then explained to investigators that occasionally he would accompany the Protectee and Officer Vappie when the Protectee wanted to exercise. Monlyn further stated they would often exercise at Audubon Park or Napoleon Avenue and once completed the Protectee would return to her residence and he and Officer Vappie would leave.

Lieutenant Jones inquired from Officer Monlyn if he had any keys to the Protectee personal home or the Pontalba Apartment. Officer Monlyn responded "No." Lieutenant Jones inquired if he knew if Officer Vappie had keys to either the house or the apartment. Officer Monlyn responded, "I don't know." Officer Monlyn continued to inform the investigators he first visited the Pontalba apartment for a New Year's Eve party for the 300 Year Anniversary. Officer Monlyn then explained when he and Officer Vappie would drop the Protectee off at the Pontalba, he would stay with the car and Officer Vappie would escort the Protectee to the apartment. Officer Monlyn stated he would often park in the Police Zone near the Cathedral or Chartres street. Once Officer Vappie would return they would leave, retrieve their take home vehicle and remain on call available to return if they were summoned by the Protectee. Officer Monlyn stated the longest he recalls waiting for Officer Vappie to return was about 20 minutes.

Officer Monlyn was then asked "Talk to me about the relationship that you recognize when y'all were together in the car, with him and the Protectee." Officer Monlyn responded, "It really, honestly, bruh, I didn't, I didn't see anything."

Lieutenant Jones inquired from Officer Monlyn if he had any conversations with any of his other team members about the relationship with Vappie and the Mayor? Officer Monlyn responded, "Yeah, well, I would say, uh, I want to say, uh, so this is, this, this was one of the things that was, that came forward and I don't know if it was uh, if it was Louis or Charles. But I know somebody mentioned, uh, like, him, they were like, man, we see, you know, Jeffrey always got his hand out, you know, reaching for her. But she says, y'all leave him alone. I, that's what he's supposed to do. He's a man. I'm a female. I need help getting out the car. So, I think it was Louis. Louis would joke about that all the time. Yeah, you know, I gotta do like Jeffrey do it, put my hand out. But I mean, it was fun and games. She would, we would all laugh it off."

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Officer Monlyn went on to say, "So, when it came, when it came up, like, she would laugh about it, too. It's like, no, you know, I got a dress on. I'm stepping out of a, a tall vehicle; I need help getting down. You know, so, we kind of all started doing that. But, so, I mean, for us, it was just, you know, it just was no separation from a man or a woman. If it's, you know, we're here. You get out the car, you get out the car. Now, we protected you once you get out. We're not worrying about, you know, grabbing your hand and stuff like that." Lieutenant Jones then inquired from Officer Monlyn if that's what you were trained to do? Officer Monlyn responded, "No."

At the conclusion of the interview Lieutenant Jones inquired from Officer Monlyn, "Is there anything I did not ask you, that you think is important?" Officer Monlyn responded, "I mean, so it, it's a bad look. That's definitely not a professional look. I mean anything that, anything that happened, uh, had to be done when I wasn't, when I wasn't there. And I think that's the, that's the thing that is probably what's confusing you now." Senior Police Officer Robert Monlyn concluded his statement at 12:19p.m. A transcribed copy of Officer Monlyn's statement will be attached to this investigation as (EXHIBIT CC).

On Wednesday, December 28, 2022, at 3:00p.m. Captain Allen and Lieutenant Jones met with OPCSO Deputy Charles Ellis at the Public Integrity Bureau's office located at 1340 Poydras Street Suite 1900. Deputy Ellis provided a detailed recorded interview relative to his knowledge of the investigation involving Officer Jeffery Vappie (EXHIBIT DD). Deputy Ellis began his statement at 3:08p.m. and stated the following;

**Statement of OPCSO Deputy Charles Ellis (Witness)**

Deputy Charles Ellis explained that he is member of the Orleans Parrish Criminal Sheriff office and detailed to the Mayor's Office executive Protection detail. Deputy Ellis explained that he was the Mayor's security when she served on the City Council then transferred with her to the Mayor's Office after the election. In all, Deputy Ellis have served as Executive Protection for Latoya Cantrell for more than 10 years, City Council and Mayor's Office combined). Deputy Ellis also discussed he attended Executive Protection training with the Gretna Police Department along with other trainings periodically. Lieutenant Jones inquired about the team's schedule from Deputy Ellis. Deputy Ellis informed Lieutenant Jones the team work four 12 hour days and are off every other weekend.

Deputy Ellis description of Executive Protection Duties mirrored the duties identified by Officer Martinez. Deputy Ellis further confirmed that all schedules and itinerary were sent by the Mayor's scheduler Kertrina Simmons either by text or email.

As it relates to traveling, Deputy Ellis explained the travelling started when Officer Vappie arrived and suggested to the Protectee that the team should travel, however, Deputy Ellis never traveled even after obtaining a Passport and new luggage.

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Deputy Ellis further stated he noticed Officer Vappie became overly charismatic with the Protectee. The Deputy provided an example and stated, "We are at -- she go to eat dinner; one of her favorite places is Houston's and protocol is, you do not sit with the principal at the table. Because if you're sitting with your principal at the table, who's watching your back." Deputy Ellis stated he noticed that and brought it to Officer Vappie's attention. According to Ellis, Vappie responded, "Yeah, I see how that, that, that could look."

Deputy Ellis then stated, "After seeing a couple of incidents, uh, I told him, I said, 'hey, man,' I said, 'look,' I said, 'I don't know what's going on, but that what you're doing is inappropriate. You've been to executive protection school,' you know. I say, 'now from a security standpoint,' I said, 'you're not only putting yourself in danger, but you're putting the mayor in danger' because you can't see behind you if there's somebody wants to do her harm." Again, according to deputy Ellis Vappie responded, "Oh, yeah, man, I understand how it look." Deputy Ellis explained he noticed the unprofessional behavior with Officer Vappie four or five times.

Deputy Ellis explained that he and the other members of the team talked with Officer Vappie as a whole, but he never told any NOPD or Orleans Parish Criminal Sheriff Office supervisor. As it relates to the HANO Board Deputy Ellis stated, "It was just dropped on us." At the conclusion of the interview Lieutenant Jones inquired from Deputy Ellis if believed Officer Vappie were unprofessional, Deputy Ellis responded "Yeah. Absolutely." Deputy Charles Ellis concluded his statement at 3:52p.m. A transcribed copy of Deputy Ellis' statement will be attached to this investigation as (EXHIBIT EE).

After interviewing the other members of the Executive Protection team, it was clear to Captain Allen and Lieutenant Jones, that the members felt Officer Vappie actions were inappropriate and brought discredit to the team. Deputy Ellis in fact indicated he personally spoke with Officer Vappie about his unprofessional behavior and requested that Officer Vappie stop. According to Deputy Ellis he personally witnessed Officer Vappie inappropriate behavior 4 or 5 times. As to Officer Louis Martinez, Officer Martinez stated he inquired from Officer Vappie if he crossed the line, Officer Vappie stated 'No,' Officer Martinez stated, "I took him at his word."

On Tuesday, January, 3, 2022, approximately 2:00p.m., Captain Kendrick Allen contacted Senior Police Officer Jeffery Vappie and requested an Administrative interview relative to the investigation involving Executive Protection. Officer Vappie informed Captain Allen that he would be willing to provide a statement then requested a date and time to be interviewed. Captain Allen advised Officer Vappie the interview will be conducted at the Public Integrity Bureau's office located at 1340 Poydras Street, Suite 1900. An appointment was set to interview Officer Vappie on Monday, January 9, 2023, at 2:00p.m.

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Captain Allen and Lieutenant Jones met with Officer Vappie on Monday, January 9, 2023, at 2:00p.m., at the Public Integrity Bureau's Office interview room number one. Prior to the interview, Lieutenant Lawrence Jones presented Officer Jeffery Vappie with New Orleans Police Department Internal Investigation Rights and Responsibilities of Employees Under Investigation and Notification to Appear and Render a Statement Form. Both Lieutenant Jones and Officer Vappie signed and dated the form, with a duplicated copy to be included with the internal investigation **(EXHIBIT FF)**.

Lieutenant Jones inquired from Officer Vappie if he had a reasonable time to summon an Attorney or Representative. Officer Vappie responded, "Yes," then informed Lieutenant Jones that Attorney Nicholas Linder and Brandon Villavaso would be present for his statement as his Attorney and representative.

Lieutenant Jones commenced the audio and video recorded interview **(EXHIBIT GG)** by advising Officer Vappie of his rights as outlined in the Police Officers Bill of Rights, Louisiana Revised Statute 40:2531. Lieutenant Jones advised Officer Vappie he was being accused of potential violations of Rule 4 Performance of Duty: Paragraph 4 Neglect of Duty C6 Failing to comply with instructions, oral or written from any authoritative source to wit: N.O.P.D. Chapter 22.08 Police Secondary Employment Paragraph 32 which states: No member, including Reserve officers, shall work more than more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period. Lieutenant Jones then advised Officer Vappie of New Orleans Police Department Chapter 52.1.1 requires all New Orleans Police Department employees to answer questions in official inquiries and refusal to comply will result in termination.

Additionally, employees are to be truthful at all times in their spoken, written, or electronic communications, whether under oath or not, in all matters and official investigations relating to the scope of their employment and operations of the Department. Failure to comply will result in termination. Officer Vappie indicated he understood his rights and began his statement at 2:14p.m. Officer Vappie stated the following:

**Statement of Officer Jeffery Vappie (Accused)**

On January 9, 2023 the investigators meet with Officer Jeffery Vappie for an interview. Investigators learned that Officer Vappie is a 25-year veteran of the New Orleans Police Department and have served in several prestigious units such as Homicide, Intelligence and Assets Forfeiture. Vappie, during former Mayor Ray Nagin's second term in office was assigned to his executive protection team by former NOPD Superintendent Warren Riley. During his time there, Officer Vappie received training from the Black Cats Executive Protection Agency sponsored by the Gretna Police Department and further training from Louisiana State Police executive protection team.

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While working Mayor Nagins detail, the team would work twelve (12) hour shifts, just like now, and would travel with the mayor on business related trips. Vappie relayed that some of his duties include taking care of maintenance on the mayor's city vehicle and doing advance site security as it relates to the mayor's upcoming events. Vappie also stated that if Mayor Nagin was out of town that you would still work your twelve-hour shift. It was also revealed to investigators that the executive protection team would often pick up and drop Mayor Nagin, and his family, off at the city owned Pontalba Apartment. Officer Vappie stated that during the Nagin administration, that Sergeant Wondell Smith was the supervisor of the unit.

After Mayor Landrieu was sworn in, Officer Vappie went back to Asset Forfeiture until May of 2021 when he was assigned to Mayor Cantrell's executive protection team by then NOPD Superintendent Shaun Ferguson. During this time with the Executive Protection team, the schedule and the hours worked were the same as with Mayor Nagin. Investigators learned that during this second assignment with the EP team, Sergeant Wondell Smith had been removed from the team. Investigators asked Vappie who was the supervisor, without hesitation Vappie responded "THE BOSS". When investigators asked for clarification, Vappie stated that he was referring to Mayor Cantrell. During this tour with the EP team Vappie stated that he would receive an email or text, to city phone, with the mayor's schedule and assignments for the next day. Vappie also stated that he would email his time to Sergeant Tokishiba Lane-Hart to be entered into ADP, however, he would not check for accuracy. Officer Vappie and Monlyn would accompany the mayor on travel trips because Officers Martinez was too sick to, and Deputy Ellis did not want to. Vappie also stated that travel with Mayor Cantrell started after she received two threats made on her life. Note: The investigators were unable to verify the Threats discussed by Officer Vappie. Vappie also stated that the mayor appointed him to the HANO Board and she wanted him to attend the meetings. Officer Vappie explained while at the meeting he was not performing the duty of an Executive Protection member. Vappie also indicated that the Protectee was never present at the HANO Board meetings.

Investigators questioned Vappie about his time at the Pontalba apartment. Vappie stated that he would exercise with the mayor some mornings before work and some evenings off the clock. Vappie stated that if he would exercise before duty with the mayor that he would take a shower in the Pontalba and change into business attire to start his shift. Vappie further explained that he was the only member of the Executive Protection team that would work out with the Protectee. Occasionally Officer Monlyn would be present when they worked out in Audubon Park, but he would drive the vehicle. Officer Vappie also indicated Officer Monlyn was not present when he worked out with the Protectee before work I the morning. vi Investigators also learned that several times Officer Vappie would sit at the table with the mayor and have dinner at restaurants, which is a violation of his Executive Protection Training. Investigators learned that September 1, 2022 that Officer Vappie was assigned to the Police Consultant Fausto Pichardo by Mayor Cantrell. Officer Jeffery Vappie concluded his statement at 5:13p.m. A transcribed copy of Officer Vappie's statement will be attached to this investigation as (EXHIBIT HH).

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Captain Kendrick Allen contacted New Orleans Police Department Sergeant Tokishiba Lane-Hart. Captain Allen requested to interview Sergeant Lane-Hart relative to her knowledge of this investigation. Sergeant Lane-Hart informed Captain Allen that she would be willing to provide a statement then requested a date and time to be interviewed. Captain Allen advised Sergeant Lane-Hart the interview will be conducted at Police Head Quarters MSB Office located at 715 S. Broad Street, 4<sup>th</sup> floor. An appointment was set to interview Sergeant Lane-Hart on Thursday, January 19, 2023 at 11:00a.m.

Captain Allen met with Sergeant Lane-Hart on Thursday, January 19, 2023 at 11:00a.m., at Police Head Quarters MSB Office located at 715 S. Broad Street, 4<sup>th</sup> floor. Prior to the interview, Captain Kendrick Allen presented Sergeant Lane-Hart with New Orleans Police Department Internal Investigation Rights and Responsibilities of Employees Under Investigation and Notification to Appear and Render a Statement Form. Both Captain Allen and Sergeant Lane-Hart signed and dated the form, with a duplicated copy to be included with the internal investigation **(EXHIBIT II)**.

Captain Allen inquired from Sergeant Lane-Hart if she had a reasonable time to summon an Attorney or Representative. Sergeant Lane-Hart responded, "Yes," then informed Captain Allen that, Captain Michael Glasser would be present for the interview as her representative present.

Captain Allen commenced the audio and video recorded interview **(EXHIBIT JJ)** by advising Sergeant Lane-Hart of her rights as outlined in the Police Officers Bill of Rights, Louisiana Revised Statute 40:2531. Captain Allen advised Sergeant Lane-Hart she was only being interviewed as a witness. Captain Allen then advised Sergeant Lane-Hart of New Orleans Police Department Chapter 52.1.1 requires all New Orleans Police Department employees to answer questions in official inquiries and refusal to comply will result in termination. Additionally, employees are to be truthful at all times in their spoken, written, or electronic communications, whether under oath or not, in all matters and official investigations relating to the scope of their employment and operations of the Department. Failure to comply will result in termination. Sergeant Lane-Hart indicated she understood her rights and began her statement at 11:07a.m. Sergeant Lane-Hart Martinez stated the following:

**Statement of Sergeant Tokishiba Lane-Hart (Supervisor)**

On Thursday, January 19, 2023, at 11:07am Captain Kendrick Allen interviewed Sergeant Lane-Hart with her representative Captain Michael Glasser present. Before the interview started, Captain Allen read into record the Police Officer Bill of rights and confirmed that Sergeant Lane-Hart understood her rights. During this interview, Sergeant Lane expressed that her job duties as it relates to the Mayor's Executive Protection Team was only administrative and limited to her entering their payroll and assuring that they completed all mandated training.

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Sergeant Lane was very direct in answering that she received the Executive Protection Team member's payroll time by email and sometimes text messages but was not privy to the mayor's schedule nor did she communicate with the mayor's scheduler. Sergeant Lane-Hart stated that she also enters the time from officers assigned to the City Attorney's Office as well as the City Council Chambers. However, she can go to where those officers are assigned to conduct checks on those officers, which she did occasionally. Also, related to the officers in the City Attorney Office and the Council Chambers, she has a civilian point of contact unlike the situation with the Mayors Executive Protection Team. Sergeant Lane-Hart also stated that she has no input into who goes to executive protection and she only find out that a new member of the team has been added when she's contacted by the new officer for payroll entry. Sergeant Tokishiba Lane-Hart concluded her statement at 11:21a.m. A transcribed copy of Sergeant Lane-Hart's statement will be attached to this investigation as **(EXHIBIT KK)**.

On Wednesday, February 8, 2023, Officer Jeffery Vappie returned to the Public Integrity Bureau for a follow-up interview with Lieutenant Jones and Captain Allen. The follow-up interview was conducted in interview #1 of the Public Integrity Bureaus Office. Prior to the interview, Captain Kendrick Allen presented Officer Jeffery Vappie with New Orleans Police Department Internal Investigation Rights and Responsibilities of Employees Under Investigation and Notification to Appear and Render a Statement Form. Both Captain Allen and Officer Vappie signed and dated the form, with a duplicated copy to be included with the internal investigation **(EXHIBIT FF)**.

Captain Allen inquired from Officer Vappie if he had a reasonable time to summon an Attorney or Representative. Officer Vappie responded, "Yes," then informed Captain that Attorney Nicholas Linder and Brandon Villavaso would be present for his statement as his Attorney and representative. Captain Allen commenced the audio and video recorded interview **(EXHIBIT GG)**

#### **Follow-up Statement of Officer Jeffery Vappie (Accused)**

Officer Vappie explained during the follow-up statement that he was assigned to the Consultant Chief by the Protectee. Officer Vappie stated his task was to make sure he got "To/from throughout the department and around the city to investigate things that he needed to investigate; to do his consulting".

Lieutenant Jones inquired from Officer Vappie if he can discuss the HANO Board and his appointment to the Board. Officer Vappie stated, "Okay. So, the reason I was at that HANO board meeting is because I was appointed commissioner by the mayor, and the mayor gave me permission while I was working executive protection to be there at that, to be there at the, uh, the meeting. But at no time, if the mayor was to call at any time, while I'm on that board, on that panel, that I could not or would be prevented from leaving to go take care of my police duties."

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So, it was, it was no issue. I was not being paid. So, uh, yeah, I had the city phone; on call. If I was to get a call, because I'm still on call, I went to that, I went to uh, the HANO board meeting was called, but I'm still on call; I'm still available if needed, I would go. I didn't see the issue. That's it. That's my answer."

Prior to the conclusion of Officer Vappie supplemental statement, Captain Allen presented him and his attorney with a copy of NOPD Chapter 13.38, *Nepotism and Employment Conflicts*. Captain Allen then read to Officer Vappie the definition of Personal Relationship per the Chapter. "Okay. Personal Relationships, including Marriage, Co-habitation, Dating or any other Romantic or Intimate Relationships beyond Mere Friendship. All right. You understand, the definition?" Officer Vappie informed the investigators his relationship with his Protectee, Mayor Latoya Cantrell was only "Professional". The audio taped statement will be attached to this investigation as **(EXHIBIT GG)**. A transcribed copy of Officer Vappie continued statement will be attached to this investigation as **(EXHIBIT HH)**.

### Analysis Review

At the conclusion of the interviews of the Executive Protection team members and Sergeant Lane-Hart, Lieutenant Lawrence Jones began to conduct a review of the previously obtained evidence. Lieutenant Jones began the analysis review with the material obtain from the Housing Authority of New Orleans. To conduct this thorough review Lieutenant Jones obtained a copy of Officer Jeffery Vappie Employee ID#08913 ADP (Payroll) records from January 1, 2022 to December 31, 2022. The payroll records will be attached to this investigation as **(EXHIBIT LL)**.

Per the HANO website it was determined that Officer Jeffery Vappie joined the HANO Board in March of 2022. The March meeting was held on **March 29, 2022, at 4:00p.m.** According to the agenda the meeting was an in-person meeting held at the Helen W. Lang Memorial Boardroom, building "B", located at 4100 Touro Street, New Orleans, LA 70122. Per the agenda the 3<sup>rd</sup> item was "ROLL CALL." The roll call is where the names of the present board members is called to determine if a quorum is present.

The roll call was captured via the recording also obtained from the HANO website. At the 1 minute and 33 seconds mark, you could hear the name Jeffery Vappie called, in response you hear Jeffery Vappie respond "PRESENT", indicating he is present at the meeting. Again, the meeting began at 4:00p.m., 1 minute and 33 seconds into the meeting Officer Jeffery Vappie responds "PRESENT". A review of Officer Vappie payroll records for March 29, 2022, indicated that Officer Vappie was on duty from 8am – 8pm. Officer Vappie was assigned to the Executive Protection Unit and his responsibility was to perform protection of his Protectee the Mayor of New Orleans. During Officer Vappie interview on Monday, January 9, 2023, Officer Vappie stated, he was appointed to the non-paid volunteer Board by Mayor Latoya Cantrell, however, Mayor Cantrell was never present at any of the board meetings.

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Officer Vappie also indicated during his interview that he was not performing Executive Protection duties while at the HANO Board Meeting. According to NOPD Policy Rule 4: Performance of Duty, paragraph 3; devoting entire time to duty, officers shall not engage in activities or personal business which would cause them to neglect or be inattentive to duty. Clearly Officer Vappie was not attentive to his duty as an Executive Protection member when he attended the HANO Board meeting at 4:00p.m., while still on duty until 8:00p.m.

According to the HANO obtained records, the **April Board Meeting was cancelled**. The May meeting was held on **May 24, 2022, at 4:00p.m.** and the June Board meeting was held on **June 28, 2022, at 4:00p.m.** According to the Roll Call Audio Officer Vappie was present for both meetings. The May and June meeting was also held at Helen W. Lang Memorial Boardroom, building "B", located at 4100 Touro Street, New Orleans, LA 70122. A review of Officer Vappie payroll records for May 24, 2022 and June 28, 2022, Officer Vappie was listed as "SICK" and not on duty. Officer Vappie presence at the meetings while "SICK" did not violate any NOPD policy. Reason, according to NOPD Policy Chapter 22.4 Title Sick Leave, Paragraph 13, employees are not required to remain confined to a specific location while sick. The **July 26, 2022**, Board meeting again according to the HANO records Officer Vappie was present at the meeting, but his NOPD payroll records indicate Officer Vappie was OFF DUTY.

The August 30, 2022, HANO Board meeting, started at 4:04p.m. and ended at 5:44p.m. Although, at the August meeting Officer Vappie is not heard on the audio acknowledging present. The meeting minutes indicate that Officer Vappie was present at the meeting, as seen below with ATTACHMENT "1". The minutes also indicate that Officer Vappie made and 2<sup>nd</sup> a Motion on two separate Resolutions during the meeting, as seen below with ATTACHMENT "2". A review of Officer Vappie NOPD Payroll records for August 30, 2022, indicates that Officer Vappie was on Duty from 8:00am to 9:00pm. Again, Officer Vappie was not attentive to his duty as an Executive Protection member when he attended the HANO Board meeting at 4:04p.m. to 5:44pm, while still on duty until 9:00p.m.

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### ATTACHMENT "1"

**HOUSING AUTHORITY OF NEW ORLEANS  
MINUTES OF THE BOARD OF COMMISSIONERS  
REGULAR MEETING  
AUGUST 30, 2022**

The Board of Commissioners of the Housing Authority of New Orleans met in Regular Session in the Helen W. Long Memorial Board Room of the Authority located at 4100 Toussaint Street, Building 11 in the City of New Orleans, Louisiana 70122 at 4:00p.m., on the 30th day of July, 2022.

**PARTICIPANCE**

Erica Heath, HANO Executive Director  
 Cherie Alexander, HANO General Counsel  
 Ronald A. Jones, Section B Representative  
 Willie Johnson, Community United for Change  
 Detraun Jones, Morlan Rights Assembly

**L. STATEMENT BY GENERAL COUNSEL**

**B. CALL TO ORDER**  
 The Board of Commissioners Regular Meeting was called to order by President Jones at 4:04 pm.

**III. ROLL CALL**

**PRESENT**  
 President Jones  
 Commissioner Barros  
 Commissioner Jeter  
 Commissioner Hanson  
 Commissioner Payer  
 Commissioner McPherson  
 Commissioner Vignone

**ABSENT**  
 Vice President Ford  
 Commissioner Hootch

A quorum was present.

### ATTACHMENT "2"

MINUTES OF THE REGULAR MEETING OF THE BOARD OF COMMISSIONERS FOR AUGUST 30, 2022

**IV. NEW BUSINESS**

**Item(s) for Approval**  
**AMENDMENTS**  
**Resolution No. 2022-17** – Disposition of Financial Transition Authority – Presented by Tracy Jackson, Acting Deputy Director of Administrative/General Financial Office  
**Action:** To Approve Resolution No. 2022-17 – Approval for Disposition of Financial Transition Authority

**MOTION BY:** Commissioner Hanson  
**SECOND BY:** Commissioner Vignone  
**DISCUSSION:** None  
**DETERMINATION:** All in favor; none opposed  
**Motion passed. Resolution No. 2022-17 is approved.**

**Resolution No. 2022-19** – Approval to Amend Resolution No. 2022-05 to Amend Contract Award for On-Call HVAC Services – Presented by William Webb, Director of Asset Management

**Motion:** To Approve Resolution No. 2022-19 – Approval to Amend Resolution No. 2022-05 to Amend Contract Award for On-Call HVAC Services  
**MOTION BY:** Council Member Vignone  
**SECOND BY:** Commissioner Richard  
**DISCUSSION:** None  
**DETERMINATION:** All in favor; none opposed  
**Motion passed. Resolution No. 2022-19 is approved.**

**X. PUBLIC COMMENTS**

- Public Comment(s)
  - o Ronald Jones
  - o Willie Johnson
  - o Detraun Jones
  - o Kim Jones
  - o Grace Smith
  - o Gloria Smith
- Board of Commissioners Comment(s)
  - o Sharon Jones

**XI. AMENDMENTS AND REVISIONS**  
 No Amendments or Revisions

The September 20, 2022, Board meeting officer Vappie again was not heard on the roll call audio and the minutes indicate he was not present. The October 25, 2022, Board meeting, Officer Vappie was present for the meeting which began at 4:03p.m., according to the minutes. Officer Vappie payroll records indicate his shift ended at 4:00p.m. on October 25, 2022. According to the HANO website, no meeting information was posted for November 2022 and the December 2022 meeting was cancelled.

Lieutenant Jones analysis review of Officer Jeffery Vappie and the HANO Board meetings indicated that on two separate occasions, March 29, 2022 and August 30, 2022, Officer Jeffery Vappie attended a HANO Board meeting while still on duty with the New Orleans Police Department.

Lieutenant Jones also reviewed Officer Vappie ADP payroll for 16 hours and 35 minutes' violation. The review covers the time frame of May 1, 2021 through December 31, 2022. Lieutenant Jones observed on four (4) different occasion during the review time period where Officer Vappie payroll exceeded 16 hours and 35minutes in single day. The dates were Friday, November 5, 2021 (Attachment 3), Monday, January 10, 2022 (Attachment 4), August 29, 2022, (Attachment 5) and September 28, 2022 (Attachment 6).

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Attachment 3 is a depiction of Officer Vappie ADP time card for the week of October 31, 2021 to November 6, 2021. As you can see, on November 5, 2021, it appears that Officer Vappie worked for 20 hours. The time card was entered by NOPD Sergeant Tokishiba Lane, and the remarks indicate that Officer Vappie was on an out of town Trip with the Mayor at a Climate Control Summit. According to the ADP records for Officer Vappie and the other Executive Protection team members (Martincz and Monlyn), Officer Vappie was the only Executive Protection traveling. The investigator located no evidence that Officer Vappie was not acting in his official capacity as an Executive Protection member.

(Attachment 3)

Date	Pay Code A...	In	Transfer	Out	In	Transfer	Out	S...	Daily	Period
Sun 10/31		7:00AM	POL-0127609HM	3:25PM	3:25PM	UNSCHEDULED	11:00PM		16:00	16:00
Mon 11/01		8:00AM	POL-0127609HM	4:35PM	4:35PM	UNSCHEDULED	10:00PM		14:00	30:00
Tue 11/02		8:00AM	POL-0127609HM	4:35PM	4:35PM	UNSCHEDULED	11:00PM		15:00	45:00
Wed 11/03		8:00AM	POL-0127609HM	4:35PM	4:35PM	UNSCHEDULED	11:00PM		15:00	60:00
Thu 11/04		8:00AM	POL-0127609HM	4:35PM	4:35PM	UNSCHEDULED	10:00PM		14:00	74:00
Fri 11/05		8:00AM	POL-0127609HM	7:55AM	7:55AM	UNSCHEDULED	11:00PM		20:00	94:00
Sat 11/06										114:00

Attachment 4 and 4A is a depiction of Officer Vappie and Robert Monlyn's ADP time card for the week of January 9, 2022 to January September 15, 2022. As you can see, on January 10, 2022, it appears that Officer Vappie worked for 19 hours. The time card was entered by NOPD Sergeant Tokishiba Lane, and the remarks indicate that Officer Vappie worked the Mayor's Inauguration Celebration. Officer Vappie time mirrored his partner Officer Robert Monlyn's time for January 10, 2022. The investigator located no evidence that Officer Vappie or Monlyn was not acting in their official capacity as an Executive Protection member.

(Attachment 4)

(Attachment 4A)

Date	Pay Code A...	In	Transfer	Out	In	Transfer	Out	S...	Daily	Period
Jan 09		7:00AM	POL-0127609HM	3:25PM	3:25PM	UNSCHEDULED	11:00PM		16:00	16:00
Jan 10		8:00AM	POL-0127609HM	4:35PM	4:35PM	UNSCHEDULED	10:00PM		14:00	30:00
Jan 11		8:00AM	POL-0127609HM	4:35PM	4:35PM	UNSCHEDULED	11:00PM		15:00	45:00
Jan 12		8:00AM	POL-0127609HM	4:35PM	4:35PM	UNSCHEDULED	11:00PM		15:00	60:00
Jan 13		8:00AM	POL-0127609HM	4:35PM	4:35PM	UNSCHEDULED	10:00PM		14:00	74:00
Jan 14		8:00AM	POL-0127609HM	7:55AM	7:55AM	UNSCHEDULED	11:00PM		20:00	94:00
Jan 15										114:00

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Attachment 5 is a depiction of Officer Vappie ADP time card for the week of August 28, 2022 to September 3, 2022. As you can see, on August 29, 2022, it appears that Officer Vappie worked for 21 hours. The time card was entered by Tiesha Lewis assigned to the NOPD Management Services Bureau. The remarks indicate that Officer Vappie travelled with the Mayor, no further information. The investigator located no evidence that Officer Vappie was not acting in his official capacity as an Executive Protection member. Officer Vappie was the only Executive Protection traveling.

(Attachment 5)

Date	Pay Code	Amount	In	Transfer	Out	In	Transfer	Out	Schedule	Duty	Period
Sun 8/21			7:00AM	POL 012760H61...	3:25PM	8:35PM	..FT UNSCHEDULED	10:00PM	7:00AM	15:00	15:00
Mon 8/22			7:00AM	POL 012760H61...	3:35PM	8:35PM	..FT UNSCHEDULED	10:00PM	7:00AM	15:00	30:00
Tue 8/23			7:00AM	..FT UNSCHEDULED	3:35PM	3:35PM	..FT UNSCHEDULED	9:00PM		14:00	44:00
Wed 8/24			9:00AM	POL 012760H61...	3:35PM	3:35PM	..FT UNSCHEDULED	9:00PM	9:00AM	12:00	56:00
Thu 8/25			9:00AM	POL 012760H61...	3:35PM	3:35PM	..FT UNSCHEDULED	9:00PM	9:00AM	12:00	60:00
Fri 8/26											60:00
Sat 8/27			9:00AM	..FT UNSCHEDULED	3:35PM	3:35PM	..FT UNSCHEDULED	9:00PM		9:00	77:00
Sun 8/28			9:00AM	..FT UNSCHEDULED	4:35PM	4:35PM	..FT UNSCHEDULED	10:00PM		14:00	91:00
Mon 8/29			1:00AM	..FT UNSCHEDULED	9:25AM	9:25AM	..FT UNSCHEDULED	10:00PM		24:00	115:00
Tue 8/30			8:00AM	POL 012760H61...	4:35PM	4:35PM	..FT UNSCHEDULED	9:00PM	8:00AM	19:00	134:00
Wed 8/31			8:00AM	POL 012760H61...	4:35PM	4:35PM	..FT UNSCHEDULED	9:00PM	8:00AM	12:00	146:00
Thu 9/01			8:00AM	..FT UNSCHEDULED	4:35PM	4:35PM	..FT UNSCHEDULED	9:00PM		12:00	158:00
Fri 9/02			8:00AM	POL 012760H61...	4:35PM	4:35PM	..FT UNSCHEDULED	9:00PM	8:00AM	15:00	173:00
Sat 9/03			8:00AM	POL 012760H61...	4:35PM	4:35PM	..FT UNSCHEDULED	9:00PM	8:00AM	12:00	185:00

Attachment 6 is a depiction of Officer Vappie ADP time card for the week of September 26, 2022, to October 8, 2022. As you can see, on September 28, 2022, it appears that Officer Vappie worked for 18 hours. The time card was also by Tiesha Lewis assigned to the NOPD Management Services Bureau. The remarks indicate that Officer Vappie was assigned to the Consultant Chief Fausto B. Pichardo and not his normal Executive Protection assignment. Therefore, on January 25, 2023, Captain Kendrick Allen emailed Consultant Chief Pichardo and requested an interview relative to his knowledge of Officer Vappie possibly violating NOPD police relative to 16 hour and 35 minutes within a 24-hour period. On Wednesday, January 25, 2022, Consultant Chief responded, “Respectfully, there is nothing that I can contribute to aid this investigation.” A copy of the email will be attached to this investigation as (EXHIBIT MM).

Investigating Officer’s Initials: KA

(Attachment 6)

Date	Pay Code	Amount	In	Transfer	Out	In	Transfer	Out	Schedule	Daily	Period
Sep 25	Vent.	7.00									
Mon 9 26			8:00AM	POL-012760PMA	4:35PM	4:35PM	SHIFT UNSCHEDULED	8:00PM	8:00AM..	12.00	19:00
Tue 9 27			7:00AM	POL-012760PMA	3:35PM	3:35PM	SHIFT UNSCHEDULED	8:00PM	7:00AM..	13.00	32:00
Wed 9 28			4:00AM	POL-012760PMA	12:35PM	12:35PM	SHIFT UNSCHEDULED	10:00PM	4:00AM..	16.00	50:00
Thu 9 29			6:00AM	POL-012760PMA	2:35PM	2:35PM	SHIFT UNSCHEDULED	10:00PM	6:00AM..	16.00	66:00
Fri 9 30			6:00AM	POL-012760PMA	2:35PM	2:35PM	SHIFT UNSCHEDULED	10:00PM	6:00AM..	16.00	82:00
Sat 10 01			5:00AM	SHIFT UNSCHEDULED	1:35PM	1:35PM	SHIFT UNSCHEDULED	8:00PM		15.00	97:00
Sat 10 02											97:00
Mon 10 03			7:00AM	POL-012760PMA	3:35PM	3:35PM	SHIFT UNSCHEDULED	7:00PM	7:00AM..	12.00	109:00
Tue 10 04			8:00AM	POL-012760PMA	4:35PM	4:35PM	SHIFT UNSCHEDULED	8:00PM	8:00AM..	12.00	121:00
Wed 10 05			8:00AM	POL-012760PMA	4:35PM	4:35PM	SHIFT UNSCHEDULED	8:00PM	8:00AM..	12.00	133:00
Thu 10 06			8:00AM	POL-012760PMA	4:35PM	4:35PM	SHIFT UNSCHEDULED	8:00PM	8:00AM..	12.00	145:00
Fri 10 07			8:00AM	POL-012760PMA	4:35PM	4:35PM	SHIFT UNSCHEDULED	8:00PM	8:00AM..	12.00	157:00
Sat 10 08											157:00

Lieutenant Jones further reviewed the surveillance video obtained from the French Market Corporation of the camera located on the light pole on St. Peter Street, in Jackson Square Pedestrian Mall, outside of the Upper Pontalba apartment. The investigator reviewed a representative sample of the video. The dates included January 21, 2022, August 23, 2022, August 30, 2022, April 9<sup>th</sup> and 10<sup>th</sup> 2022 and various dates in September and October of 2022. Lieutenant Jones observed on several occasions Officer Vappie entering the Pontalba apartment, both on duty and not on duty. Lieutenant Jones noticed that Officer Vappie was at times clad in a suit and other times in "Exercise Clothing." The video further depicted Officer Vappie at the residence with his Protectee various hours of the day and night both on and off duty.

During Officer Vappie interview with Captain Allen and Lieutenant Jones, Officer Vappie indicated his Protectee requested to work out and he volunteered to do so. Officer Vappie further explained he was the only member of the Executive Protection team to work out with the Protectee and most of the work out occurred prior to work in morning. Officer Vappie explained after working out he would return to the Upper Potable Apartment with the Protectee, take a shower, change clothes then go to work.

Officer Vappie emails [Jvappie@nola.gov](mailto:Jvappie@nola.gov), from March 1, 2022, to November 30, 2022 (**EXHIBIT N**) and the telephone **5042698509** analysis (**EXHIBIT O**) were also reviewed by Lieutenant Jones. The emails confirmed that Kertrina Simmons would email the Protectee itinerary to the staff. No further evidentiary value was located in the telephone analysis or the emails. The Executive Protection Training certificates for Officers Jeffery Vappie, Louis Martinez and Robert Monlyn will be attached to this investigation as (**EXHIBIT S**)

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On Friday, March 10, 2023, at 4:03p.m. Captain Kendrick Allen presented Officer Vappie with a verbal Notice of Disposition, which signifies the conclusion of his investigation. The notification was verbal because Officer Vappie was out of state and unable to meet with Captain Allen. Therefore, Captain Allen provided Officer Vappie with a verbal notification and will allow Officer Vappie to sign the notification upon his return. Captain Allen informed Officer Vappie of the disposition and completion of the investigation. Officer Vappie acknowledged he understood the disposition was **SUSTAINED** and the investigation under Public Integrity Bureau tracking number **2022-0513-R** was officially concluded (**EXHIBIT NN**).

On Tuesday, March 14, 2023, at approximately 1:30pm, Captain Kendrick Allen and Lieutenant Lawrence Jones met with Senior Police Officer Jeffery Vappie and presented him with a detail (181) page copy of his transcribed statement he provided to Captain Kendrick Allen and Lieutenant Jones on Monday, January 9, 2023 and Wednesday, February 8, 2023. Officer Vappie reviewed the transcribed statements and affixed his initials to each page then signed, dated and printed his signature on the last page. (**EXHIBIT HH**). Note: The transcriptions were completed by Ms. Elise Triplett. Officer Vappie signed his transcriptions upon his return to the City of New Orleans, after he received his verbal notification on Friday, March 10, 2023.

### **Witnesses**

1. **Officer Kristy Johnson-Stokes. Emp.ID#14237, kijohnson@nola.gov, Intelligence Unit.**
2. **Retired Sergeant Wondell Smith.**
3. **Retired Sergeant Todd Henry.**
4. **Mr. John Douglass (Training Expert).**
5. **Louisiana State Police Captain Dewight Robinette (Training Expert).**
6. **Officer Louise Martinez. Emp.ID 6236, lmartinez@nola.gov. Mayor Office**
7. **Officer Robert Monlyn. Emp.ID 06111, Rmonlyn@nola.gov. Mayor Office**
8. **OPCSO Deputy Charles Ellis.**
9. **Sergeant Tokishiba Lane-Hart. Emp.ID 7609, tlane@nola.gov. SID**

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**Credibility Assessment**

**Senior Police Officer Kristy Johnson-Stokes-** Officer Johnson-Stokes was deemed to be credible. Officer Johnson-Stokes provided the investigators with valuable knowledge and insight into the duties of an Executive Protection member.

**Retired Sergeant Wondell Smith-** Retired Sergeant Smith was deemed to be credible. Sergeant Smith provided the investigators with valuable knowledge and insight into the duties of an Executive Protection member. Sergeant Smith provided historical knowledge that was crucial to the investigation after serving as one of the New Orleans Police Department longest serving Executive Protection officer, prior to retirement.

**Retired Sergeant Todd Henry-** Retired Sergeant Henry was deemed to be credible. Like Sergeant Smith, Retired Sergeant Henry also served as a former member of the Executive Protection staff for former Superintendent Richard Pennington. Sergeant Henry provided a historical insight into the duties of an Executive Protection member.

**Mr. John Douglass (Training Expert)** - John Douglass was deemed to be credible. Mr. Douglass is a Law Enforcement Officer from the State of Mississippi and an Executive Protection Instructor for Falcon Group Tactical. Mr. Douglass trained Executive Protection Officers from the New Orleans Police Department and was able to provide an insight of the expert training to the investigators.

**LSP Captain Dewight Robinette (Training Expert)** - Captain Dewight Robinette was deemed to be credible. Captain Robinette is a member of the Louisiana State Police and an Executive Protection Expert and Commander of the State Police Executive Protection Team. Captain Robinette trained Executive Protection Officers from the New Orleans Police Department and was able to provide an insight of the expert training to the investigators.

**Officer Louis Martinez (Witness)** - Officer Louis Martinez was deemed creditable, because Lieutenant Jones as unable to locate any evidence in this investigation that proved otherwise.

**OPCSO Deputy Charles Ellis (Witness)** - Deputy Charles Ellis was deemed creditable, because Lieutenant Jones as unable to locate any evidence in this investigation that proved otherwise.

**Sergeant Tokishiba Lane-Hart (Witness)-** Sergeant Lane-Hart was deemed creditable, because Lieutenant Jones as unable to locate any evidence in this investigation that proved otherwise.

**Officer Robert Monlyn (Witness)** - Officer Robert Monlyn was deemed creditable, because Lieutenant Jones as unable to locate any evidence in this investigation that proved otherwise.

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**Senior Police Officer Jeffery Vappie** – After comparing Officer Vappie administrative statement with the evidence reviewed during this investigation, the investigators were unable to confidently assess his credibility. During his interview Officer Vappie seemed confused about his work schedule rotation, antagonistic regarding his tactical positioning while dining with his Protectee and unable to articulate some of his duties when he was not with the Protectee. However, the investigator does not have any evidence that Officer Vappie made any attempt to willfully misled or was untruthful in any statement that was given during this administrative investigation. During the interview, related to the 16:35 overage, Officer Vappie stated several times that “It’s always been that way” when dealing with overtime. However, the investigators observed when Sergeant Wondell Smith was embedded in the executive protection team he would move the teams time to adjust for the Protectee schedule, if a late event occurred. This in fact is not a blemish on Officer Vappie credibility but rather a paradigm shift in how the executive protection team time was managed after a removal of a supervisor and the lack of a policy governing this unit.

### Summary

On Tuesday, November 8, 2022, approximately 7:00p.m., Public Integrity Bureau Sergeant Lawrence Jones was contacted by Public Integrity Bureau Deputy Chief Keith Sanchez. Deputy Chief Sanchez informed Sergeant Jones that a media request was sent to the Public Integrity Bureau relative to New Orleans Police Department Senior Police Officer Jeffery Vappie assigned to the Investigative Services Bureau, Executive Protection. Deputy Chief Sanchez forwarded the request to Sergeant Lawrence Jones for review.

On Wednesday, November 9, 2022, Sergeant Lawrence Jones reviewed the request and learned that Senior Police Officer Jeffery Vappie was accused of working more than 16 Hours and 35 minutes within a 24-hour period. The request indicated Officer Vappie may have violated this rule when on several occasions while assigned to the Executive Protection Section he may have violated this NOPD policy.

This Administrative Investigation was assigned to Captain Kendrick Allen and Lieutenant Lawrence Jones of the Public Integrity Bureau on Wednesday, November 9, 2022, by Deputy Chief Keith Sanchez, bureau chief of the New Orleans Police Department Public Integrity Bureau.

To complete a thorough investigation, Captain Allen and Lieutenant Jones thought it would be best to obtain a historical information relative to officers assigned to the Executive Protection Detail. Therefore, on Tuesday, November 29, 2022, Lieutenant Lawrence Jones identified and contacted former members of the Mayor’s executive protection team, New Orleans Police Senior Police Officer Kristy Johnson–Stokes now assigned to the New Orleans Police Department Investigative Services Division / Intelligence Unit and New Orleans Police Retired Sergeants Wondell Smith and Todd Henry.

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Officer Kristy Johnson-Stokes, Retired Sergeant Wondell Smith and Retired Sergeant Todd Henry, explained the mission of the Executive Protection team are to the mayor and to the mayor's immediate family. The team members normally work in teams of two and the itinerary is received the day before either by email or text. Sergeant Smith explained he would direct someone to conduct an advance review of the location they would visit the following day. As to pick up, the itinerary received the previous day would discuss pick up, which is normally the Mayor's residence. The Protection team members would leave their take home vehicle at the pickup location and drive the Mayor's assigned SUV for the work day. Once the Protectee is ready they would go to the office or the first appointment. Once the Mayor has gone through the entire schedule, at that point it becomes family time. Sergeant Smith was very clear the Executive Protection team works at the Mayor's discretion. "If Mayor goes to the movies, you got to go to the movies." Sergeant Smith explained he as the Supervisor would direct, instruct and give assignments as the team supervisor. However, he was clear the ultimate authority was the Mayor.

Captain Allen and Lieutenant Jones continued to obtain expert background information as it pertains to Executive Protection. The investigators sought to obtain Education and Training information from experts who previously trained New Orleans Police Members for executive protection. Mr. John Douglass of the Falcon Group Tactical out of the State of Mississippi and Captain Dewight Robinette of the Louisiana State Police were chosen by the investigators because both previously trained members of the NOPD Executive Protection team.

During the interview of Mr. John Douglass, he explained the communication and interaction between the Protectee and any member of the protection detail should be kept on a **PROFESSIONAL LEVEL ONLY**. Mr. Douglass went on to discuss the training provided by the Falcon Group also covers, escorting and eating with the principal. Mr. Douglass stated at no point should a Protection member sit with the principal unless invited and even then they position themselves with the Protectee safety in mind. Mr. Douglass further stated he believes all Executive Protection units should have a supervisor embedded in the group. The supervisor would have the authority to ensure the Protectee request align with the departments rules and regulation. The supervisor would also monitor the other members of the unit and replace them if need be.

During the interview of Captain Robinette, he explained he trained many NOPD members along with other agencies. During the training protection, officers are taught to not only protect the Protectee well-being, but to also protect them from any embarrassment, whether it's your actions or the Protectee actions that may cause them embarrassment. Captain Robinette also explained, your attire should blend in and not overshadow your Protectee. All conversations should remain professional and limited to "Good Morning" not good morning and how was your day.

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The executive protection officer should gain the trust of the Protectee, but never cross the line of being unprofessional. Captain Robinette explained having a supervisor in the unit is intricate with helping to curve unprofessional behavior from either the Protectee or the team members. Captain Robinette further explained it is common for the protection team members to exercise with the Protectee, to include running, biking, walking or weight lifting. Captain Robinette further explained as it relates to the primary living quarters of the Protectee. The team only goes there if it is a security issue.

Captain Robinette explained all protection teams' whether it is federal, state or local are consistent and do the same duties. Those duties are to protect a particular dignitary. Your focus and main goal is to provide cover for that principal, regardless to whether or not you run a one-man detail or multiple man detail.

Captain Robinette concluded his statement with, **"You never do anything – and we preach this: don't do anything that's immoral, illegal or unethical. Those three things can get you in jail, fired or hurt, or get your Protectee in trouble and that's my, that's my, uh, my policy. That is what I preach all the time and I've preached it to a lot of people. And when we teach that class, we always say that: don't ever do anything that's illegal, immoral or unethical."**

Captain Allen and Lieutenant Jones also interviewed the current members of the Executive protection team, Officer Louise Martinez, Robert Monlyn and OPSO Deputy Charles Ellis. During the interview of Senior Police Officer Louis Martinez, he explained Sergeant Wondell Smith was the on team Supervisor prior to his transfer, however no Sergeant is currently assigned to the unit. Officer Martinez also explained, Sergeant Tokishiba Lane only responsibility was to enter payroll and ensure the members were scheduled for annual in-service training. Sergeant Lane had no responsibility to the day to day operations of the team. Officer Martinez then stated, ultimately the Mayor is the Supervisor.

Lieutenant Jones then inquired from Officer Martinez, what was his relationship with the current Protectee. Officer Martinez explained, **"You don't have a relationship with uh, the mayor. it is the mayor's office and then there's the mayor and your executive protection, you don't have a relationship with the mayor period."** Officer Martinez then explained that he started to notice Officer Vappie unprofessional behavior with the Protectee. Officer Martinez explained how Officer Vappie would sit at the table with the Protectee. Officer Martinez stated, **"I found it strange, uh, when I'm waiting for him to get a parking spot to go in, I go in the restaurant; he's sitting, sitting with his back to the door, which we don't do by ourselves. The mayor was sitting at the table, sitting at the table and I just looked at him and I, I said, it just didn't look right. I'm, I'm working for you and I'm sitting down having dinner with you. This didn't look right. We always have a table off to the side, it just didn't look right and I told him again. I said, man, you know you're not following protocol."**

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Martinez stated, he approached Officer Vappie and stated to him **“There’s a line that you, you don’t cross it. And I asked him did he crossed it; did he cross it and he said no. I took him at his word.”** Lieutenant Jones inquired from Officer Martinez if he ever told a supervisor about Officer Vappie’s unprofessional behavior. Officer Martinez stated, “No, I made it known to him that I didn’t approve of what he was doing.

After interviewing the other members of the Executive Protection team, it was clear to Captain Allen and Lieutenant Jones, that the members felt Officer Vappie actions were inappropriate and brought discredit to the team. Deputy Ellis in fact indicated he personally spoke with Officer Vappie about his unprofessional behavior and requested that Officer Vappie stop. According to Deputy Ellis he personally witnessed Officer Vappie inappropriate behavior 4 or 5 times. As to Officer Louis Martinez, Officer Martinez stated he inquired from Officer Vappie if he crossed the line, Officer Vappie stated “No,” Officer Martinez stated, “I took him at his word.”

The investigators found it necessary to gain access to Officer Vappie work issued cell phone **5042698509** and City Emails **Jvappie@nola.gov**. The review will provide evidentiary value in the event instructions are received allowing Officer Vappie to attend HANO meetings while at work and any instructions he may have received as it relates to his time spent in the Upper Pontalba Apartments both on duty and off duty. No emails were located with those instructions.

Members of the Public Integrity Bureau also completed a Public Records request to the French Market Corporation to obtain the video surveillance of the camera located on the light pole on St. Peter Street, in Jackson Square Pedestrian Mall outside of the Upper Pontalba apartment. The date range of the video was July 30, 2022, to November 17, 2022.

To also corroborate the inferences that Officer Vappie may have neglected his duty when he attended a HANO board meeting while on duty. Lieutenant Jones queried the Housing Authority of New Orleans official website “hano.org” and obtained historical data relative to “HANO” Board meetings from the March, 2022 to December 2022. The information obtained consisted of meeting minutes, meeting agenda and an audio recording of the meeting. Lieutenant Jones analysis review of Officer Jeffery Vappie and the HANO Board meetings indicated that on two separate occasions, **March 29, 2022 and August 30, 2022**, Officer Jeffery Vappie attended a HANO Board meeting while still on duty with the New Orleans Police Department.

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Lieutenant Jones reviewed the surveillance video obtained from the French Market Corporation of the camera located on the light pole on St. Peter Street, in Jackson Square Pedestrian Mall, outside of the Upper Pontalba apartment. The investigator reviewed a representative sample of the video. The dates included January 21, 2022, August 23, 2022, August 30, 2022, April 9<sup>th</sup> and 10<sup>th</sup> 2022 and various dates in September and October of 2022. Lieutenant Jones observed on several occasions Officer Vappie entering the Pontalba apartment, both on duty and not on duty. Lieutenant Jones noticed that Officer Vappie was at times clad in a suit and other times in "Exercise Clothing." The video further depicted Officer Vappie at the residence with his Protectee various hours of the day and night both on and off duty.

During Officer Vappie interview with Captain Allen and Lieutenant Jones, Officer Vappie indicated his Protectee requested to work out and he volunteered to do so. Officer Vappie further explained he was the only member of the Executive Protection team to work out with the Protectee and most of the work out occurred prior to work in the morning. Officer Vappie explained after working out he would return to the Upper Potable Apartment with the Protectee, take a shower, change clothes then go to work.

The telephone analysis and Officer Vappie emails were also reviewed by Lieutenant Jones. The emails confirmed that Kertrina Simmons would email the Protectee itinerary to the staff. No further evidentiary value was located in the telephone analysis or the emails.

Lieutenant Jones also reviewed Officer Vappie ADP time card for the week of September 26, 2022, to October 8, 2022. On September 28, 2022, it appears that Officer Vappie worked for 18 hours. The time card remarks indicated Officer Vappie was assigned to the Consultant Chief Fausto B. Pichardo and not his normal Executive Protection assignment.

Therefore, on January 25, 2023, Captain Kendrick Allen emailed Consultant Chief Pichardo and requested an interview relative to his knowledge of Officer Vappie possibly violating NOPD police relative to 16 hour and 35 minutes within a 24-hour period. On Wednesday, January 25, 2022, Consultant Chief responded, "**Respectfully, there is nothing that I can contribute to aid this investigation.**" Officer Vappie indicated in his statement he was assigned to the consultant chief by the Protectee.

The investigators were unable to locate any substantial evidence that proved Officer Vappie and the Protectee relationship was more than mere friendship, the investigators believed that Officer Vappie actions brought discredit to the New Orleans Police Department. The fact that Officer Vappie spent numerous hours alone with the Protectee outside of his regular tour of duty goes against the training and ethics of an Executive Protection member. So much so, that Deputy Charles Ellis and Officer Louis Martinez, brought his behavior to his attention and requested that he stop.

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In fact, Officer Louis Martinez went a step further and asked Officer Vappie **if his relationship with the Protectee was more than Friendship, "Vappie" stated, it was not. Louis Martinez explained to the investigators that he took Vappie at his word so he did nothing further.** Officer Vappie unprofessional behavior with his Protectee caused a major embarrassment to the New Orleans Police Department and discredits the hard work the other members of the Executive Protection team display.

It's the belief of the investigators that the Police Departments failure to have a Supervisor embedded into the Executive Protection team contributed to the behavior of Officer Jeffery Vappie. Not having a Policy specifically for Executive Protection failed to provide a management guide to the members of the team to follow. A dedicated supervisor would give the team members the necessary support when the requests of the Protectee don't align with the Rules, Regulations, Morals and Standards of the New Orleans Police Department. It would also provide a dedicated support network in place; when an issue arises the team members would have a direct contact to confidently turn to. This task should not be the responsibility of the Protectee, but to an immediate supervisor or members of the Officer Chain of Command, Lieutenant, Captain, Deputy Chief or Superintendent. Furthermore, the supervisor will be able to monitor the officer's payroll, actions and delegate tasks based on the current workload. Ultimately, a supervisor will prevent a member of the team from becoming overloaded and ensure each member is contributing equally. If an employee has to be accountable to a supervisor, they are more likely to take ownership and as a result, the team member would self-monitor their behavior or be reminded by a supervisor and if need be properly disciplined.

Based upon this administrative investigation, Captain Kendrick Allen and Lieutenant Lawrence Jones concluded beyond a preponderance of evidence that Senior Police Officer Jeffery Vappie did violate rules and regulations of the New Orleans Police Department.

### **Training, Tactical, and/or Policy Recommendations**

As it relates to training, it is the belief of this investigator that Senior Police Officer Vappie need to be reminded to adhere to all rules and regulations. Along with obeying all City, State and Federal Laws. It is also recommended that a Department Policy and Unit Operating Procedures are created to govern the Executive Protection team members, along with their duties and responsibilities. In addition to a direct supervisor whose sole responsibility is equivalent to retired Sergeant Wondell Smith.

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**Disciplinary Recommendations**

**Senior Police Officer Jeffery Vappie**

Rule 4: Performance of Duty: Paragraph 2: Instructions from an authoritative source; to wit N.O.P.D. Chapter 22.08 Police Secondary Employment Paragraph 32.....**SUSTAINED**

*No member, including Reserve officers, shall work more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period. (The 24-period begins the first time the member reports for either regular duty or police secondary employment.) These hours are cumulative and include normal scheduled work hours, overtime, court time, off-duty police secondary employment, or outside employment*

Captain Kendrick Allen proved beyond a preponderance of evidence that Senior Police Officer Jeffery Vappie violated this rule when on, on September 28, 2022, Officer Vappie worked for 18 hours within a 24 hour period. The remarks indicate that Officer Vappie was assigned to the Consultant Chief Fausto B. Pichardo and not his normal Executive Protection assignment.

**OTHER SUSTAINED VIOLATIONS**

**Rule 3: Professional Conduct, Paragraph 1: Professionalism..... SUSTAINED**

*Employees shall conduct themselves in a professional manner with the utmost concern for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any individual or otherwise act in a manner which brings discredit to the employee or the New Orleans Police Department.*

Senior Police Officer Vappie may have violated this rule when Officer Vappie spent numerous hours alone with the Protectee outside of his regular tour of duty goes against the training and ethics of an Executive Protection member. So much so, that Deputy Charles Ellis and Louis Martinez, brought his behavior to his attention and requested that he stop.

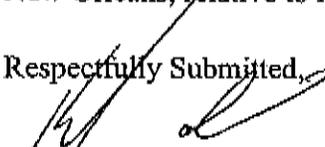
**Rule 4: Performance of Duty, Paragraph 3: Devoting Entire Time to Duty..... SUSTAINED**

*Employees shall not read, play games, watch television/movies, or otherwise engage in entertainment while on duty, except as may be required in the performance of duty, or by authority of their respective Bureau Chief. They shall not engage in activities or personal business which would cause them to neglect or be inattentive to duty.*

Senior Police Officer Vappie was not attentive to his duty as an Executive Protection member when he attended the HANO Board Meeting on two separate occasions, March 29, 2022 and August 30, 2022, while still on duty with the New Orleans Police Department.

Senior Police Officer Jeffery Vappie may also have violated Rule IX of the Civil Service Rules for the City of New Orleans, relative to Maintaining Standards of Service.

Respectfully Submitted,

  
\_\_\_\_\_  
Captain Kendrick Allen  
Public Integrity Bureau

Date: 3-10-2023

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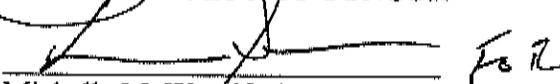
CONCUR / ~~DOES NOT CONCUR~~



Deputy Keith E. Sanchez  
Public Integrity Bureau

Date: 3/14/23

CONCUR / ~~DOES NOT CONCUR~~



Michelle M. Woodfork  
Superintendent of Police

Date: 3/16/23

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**EXHIBITS**

- 1. Exhibit "A"** - P.I.B. Case Investigation Transmittal, Control Tracking Number 2022-0513-R.
- 2. Exhibit "B"** - Initiation of a Formal Disciplinary Investigation Form Control Tracking Number 2022-0513-R, three (3) pages, original.
- 3. Exhibit "C"** - P.I.B. Initial Intake Form (230) for Commendation, Complaint, or Documentation of Minor Violation, three (3) pages, original.
- 4. Exhibit "D"** - Media request sent by WVUE three (3) pages photocopied.
- 5. Exhibit "E"** - Officer Jeffery Vappie reassignment notification dated Wednesday, November 9, 2022.
- 6. Exhibit "F"** - Extension Request sent by Captain Kendrick Allen, dated Thursday, November 17, 2022.
- 7. Exhibit "G"** - Extension request granted by Examiner Ginsberg. Dated Tuesday, November 22, 2022.
- 8. Exhibit "H"** - CD containing Senior Police Officer Kristy Johnson-Stokes Audio Recorded statement.
- 9. Exhibit "I"** - A transcribed copy of Officer Kristy Johnson-Stokes statement completed by Ms. Elise Triplitt. 43 pages photocopied.
- 10. Exhibit "J"** - CD containing Retired Sergeant Wondell Smith Audio recorded statement.
- 11. Exhibit "K"** - A transcribed copy of Retired Sergeant Wondell Smith statement completed by Ms. Elise Triplitt. 56 pages photocopied.
- 12. Exhibit "L"** - CD containing Retired Sergeant Todd Henry Audio recorded statement.
- 13. Exhibit "M"** - A transcribed copy of Retired Sergeant Todd Henry statement. Completed by Ms. Elise Triplitt. 20 pages photocopied.

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- 14.Exhibit "N"** – One external hard drive containing emails of Senior Police Officer Jeffery Vappie, from March 1, 2022 to November 30, 2022.
- 15.Exhibit "O"** - One external hard drive containing Senior Police Officer Jeffery Vappie Cell phone analysis completed by NOPD Digital Forensic Unit.
- 16.Exhibit "P"** - Public records request sent to the French Market Corporation. One page Photocopied.
- 17.Exhibit "Q"** - One external Hard drive containing the surveillance video obtained from the French Market Corporation of the camera located on the light pole on St. Peter Street, in Jackson Square Pedestrian Mall outside of the Upper Pontalba apartment. Dated July 30, 2022 to November 17, 2022.
- 18.Exhibit "R"** - One external Hard drive containing HANO Board meetings obtained from the HANO.ORG website, dated March 2022 to December 2022.  
The information obtained consisted of meeting minutes, meeting agenda and an audio recording of the meeting.
- 19.Exhibit "S"** - Executive Protection Training certificates for Senior Police Officer Jeffery Vappie, Robert Monlyn and Louis Martinez. Five (5) pages photocopied.
- 20.Exhibit "T"** - CD containing Mr. John Douglass Audio recorded statement.
- 21.Exhibit "U"** – A transcribed copy of Mr. John Douglass statement. Completed by Ms. Elise Triplitt. 15 pages photocopied.
- 22.Exhibit "V"** - CD containing Louisiana State Police Captain Dewight Robinette Audio recorded statement.
- 23.Exhibit "W"** – A transcribed copy of Captain Dewight Robinette statement. Completed by Ms. Elise Triplitt. 34 pages photocopied.
- 24.Exhibit "X"** – Notice of NOPD Internal Disciplinary Investigation Rights and Responsibilities of Employee Under Investigation and Notification to Appear to Render a statement form for Senior Police Officer Louis Martinez. one (1) Page, original.
- 25.Exhibit "Y"** - CD containing Senior Police Officer Louis Martinez Audio recorded statement.
- 26.Exhibit "Z"** – A transcribed copy of Senior Police Officer Louis Martinez statement. Completed by Ms. Elise Triplitt. 59 pages photocopied.

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- 27.Exhibit "AA"** – Notice of NOPD Internal Disciplinary Investigation Rights and Responsibilities of Employee Under Investigation and Notification to Appear to Render a statement form for Senior Police Officer Robert Monlyn. one (1) Page, original.
- 28.Exhibit "BB"** - CD containing Senior Police Officer Robert Monlyn Audio recorded statement.
- 29.Exhibit "CC"** – A transcribed copy of Senior Police Officer Robert Monlyn statement. Completed by Ms. Elise Triplitt. 67 pages photocopied.
- 30.Exhibit "DD"** - CD containing Deputy Charles Ellis Audio recorded statement.
- 31.Exhibit "EE"** – A transcribed copy of Deputy Charles Ellis statement. Completed by Ms. Elise Triplitt. 39 pages photocopied.
- 32.Exhibit "FF"** – Notice of NOPD Internal Disciplinary Investigation Rights and Responsibilities of Employee Under Investigation and Notification to Appear to Render a statement form for Senior Police Officer Jeffery Vappie. one (2) Pages, original.
- 33.Exhibit "GG"** - CD containing Senior Police Officer Jeffery Vappie Audio recorded statement. Dated Monday, January 9, 2023 and Wednesday, February 8, 2023.
- 34.Exhibit "HH"** – A transcribed copy of Senior Police Officer Jeffery Vappie statement. For Monday, January 9, 2023 and Wednesday, February 8, 2023, both were Completed by Ms. Elise Triplitt. 181 pages photocopied.
- 35.Exhibit "II"** – Notice of NOPD Internal Disciplinary Investigation Rights and Responsibilities of Employee Under Investigation and Notification to Appear to Render a statement form for Sergeant Tokishiba Lane-Hart. One (1) Page, original.
- 36.Exhibit "JJ"** - CD containing Sergeant Tokishiba Lane-Hart Audio recorded statement.
- 37.Exhibit "KK"** – A transcribed copy of Sergeant Tokishiba Lane-Hart statement. Completed by Ms. Elise Triplitt. 10 pages photocopied.
- 38.Exhibit "LL"** – Officer Jeffery Vappie ADP (Payroll) records from January 1, 2022 to December 31, 2022. 10 pages photocopied.

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**39.Exhibit "MM"** – Email sent to Consultant Chief Fausto B. Pichardo by Captain Kendrick and response from Chief Pichardo. Dated January 25, 2023. One (1) page photocopied.

**40.Exhibit "NN"** - Notice to the Accused of Completed Investigation and Notice of Disciplinary Hearing (form 308) issued to Senior Police Officer Jeffery Vappie One (1) page original.

Investigating Officer's Initials: KA  
CDM069



**Attachment E**

**Monitoring Team Analysis of PIB Report**



**Confidential**

**Monitoring Team Analysis of PIB Investigation of Officer Jeffrey Vappie**

**April 7, 2023**

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## I. Introduction

In early November 2022, local New Orleans TV station Fox8 ran a series of stories involving the Mayor Latoya Cantrell's executive protection detail. The story raised a number of questions regarding the operation of that detail as well as the actions of a particular member, Officer Jeffrey Vappie. PIB opened an investigation into the allegations raised in the story on November 9, 2022.

On November 10, 2022, the New Orleans City Council requested that the Office of the Consent Decree Monitor and the Office of the Independent Monitor conduct their own independent investigation into the Vappie allegations, citing "significant concerns about the apparent conflict of interest with the New Orleans Police Department being allowed to, again, investigate serious allegations involving Mayor Cantrell."<sup>1</sup> The Monitoring Team responded to the City Council on November 11 explaining that it lacked the authority to conduct investigations, but that it would monitor PIB's investigation of Officer Vappie closely to ensure it was effective, efficient, and without bias.<sup>2</sup>

Consistent with its response to the City Council and its obligations under the Consent Decree to closely monitor significant misconduct investigations,<sup>3</sup> the Monitoring Team met with Deputy Chief Keith Sanchez and PIB's investigators Captain Kendrick Allen and Lieutenant Lawrence Jones on an almost weekly basis over the course of PIB's investigation. While we were not involved in the day-to-day affairs of the investigation (the Consent Decree makes clear the Monitoring Team has no role in running the NOPD<sup>4</sup>), the PIB team seemingly was open with us regarding their strategy and the status of their activities. We appreciate the cooperation we received from PIB throughout this matter.

On February 17, 2023, prior to the conclusion of the investigation, the Monitoring Team sent an "immediate action notice" to Deputy Chief Sanchez alerting him to several issues we believed the NOPD should address right away. Rather than waiting until the conclusion of PIB's investigation, we brought these matters to PIB's attention at that time to ensure NOPD would take immediate steps to correct the concerns we identified. Our opinions and recommendations related only to larger policy/process issues that were unrelated to the then-still-forthcoming substantive findings of the PIB

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<sup>1</sup> The City Council letter is attached to this Report as Exhibit A.

<sup>2</sup> The Monitoring Team's response to City Council is attached to this Report as Exhibit B.

<sup>3</sup> See, e.g., Consent Decree paragraphs 377, 444, 454, 455.

<sup>4</sup> Consent Decree paragraph 445.

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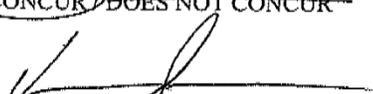


Vappie investigation team. We have incorporated those earlier recommendations into this Report.

PIB completed its investigation into the actions/inactions of Officer Vappie on March 10, 2023, and submitted the investigation report to Deputy Chief Sanchez the same day. Deputy Chief Sanchez and Interim Chief Michelle Woodfork reviewed and concurred with the investigators' findings on March 16, 2023, as reflected in the signature block of the PIB report, copied here:

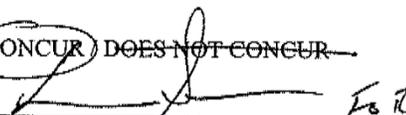
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CONCUR / ~~DOES NOT CONCUR~~

  
 Deputy Keith E. Sanchez  
 Public Integrity Bureau

Date: 3/14/23

CONCUR / ~~DOES NOT CONCUR~~

  
 Michelle M. Woodfork  
 Superintendent of Police

Date: 3/16/23

NOPD, however, refused to share a copy of its investigation report with the Monitoring Team until April 3, 2023.

The Consent Decree requires NOPD to provide every serious misconduct complaint investigation "to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review." CD at 454. This was not done here despite the Monitoring Team making numerous requests for access to the investigators' report. This is a violation of the Consent Decree that impacts the Monitor's obligations to review "each serious misconduct complaint investigation and recommend for further investigation any . . . misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence." *Id.* Further, the Consent Decree directs the Monitoring Team to "provide written instructions for completing any investigation determined to be incomplete or inadequately supported by the evidence." *Id.* By withholding the investigation from the Monitoring Team until well after communicating the disposition of the investigation with the subject, NOPD thwarted the Monitoring Team's ability to meet its obligations under the Consent Decree.

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Nonetheless, the Monitoring Team has performed a careful review of the PIB report shared with us on April 3, and provides the recommendations set out in this Report as contemplated by the Consent Decree.

## II. Analysis of Investigation

NOPD opened its investigation into Officer Vappie on November 9, 2022 and concluded its investigation on March 10, 2023. PIB sustained multiple allegations against Officer Vappie, including violations of the 16.58 hour work day limitation, violations of NOPD’s professionalism rules, and violation of NOPD’s rules requiring officers to devote their entire time on duty to their actual NOPD duties. PIB’s specific findings and recommendations are shown here:

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### Disciplinary Recommendations

#### Senior Police Officer Jeffery Vappie

Rule 4: Performance of Duty: Paragraph 2: Instructions from an authoritative source; to wit N.O.P.D. Chapter 22.08 Police Secondary Employment Paragraph 32.....**SUSTAINED**

*No member, including Reserve officers, shall work more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period. (The 24-period begins the first time the member reports for either regular duty or police secondary employment.) These hours are cumulative and include normal scheduled work hours, overtime, court time, off-duty police secondary employment, or outside employment*

**Captain Kendrick Allen proved beyond a preponderance of evidence that Senior Police Officer Jeffery Vappie violated this rule when on, on September 28, 2022, Officer Vappie worked for 18 hours within a 24 hour period. The remarks indicate that Officer Vappie was assigned to the Consultant Chief Fausto B. Pichardo and not his normal Executive Protection assignment.**

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**OTHER SUSTAINED VIOLATIONS**

**Rule 3: Professional Conduct, Paragraph 1: Professionalism..... SUSTAINED**

*Employees shall conduct themselves in a professional manner with the utmost concern for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any individual or otherwise act in a manner which brings discredit to the employee or the New Orleans Police Department.*

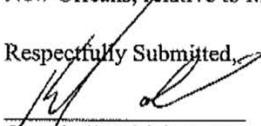
Senior Police Officer Vappie may have violated this rule when Officer Vappie spent numerous hours alone with the Protectee outside of his regular tour of duty goes against the training and ethics of an Executive Protection member. So much so, that Deputy Charles Ellis and Louis Martinez, brought his behavior to his attention and requested that he stop.

**Rule 4: Performance of Duty, Paragraph 3: Devoting Entire Time to Duty..... SUSTAINED**

*Employees shall not read, play games, watch television/movies, or otherwise engage in entertainment while on duty, except as may be required in the performance of duty, or by authority of their respective Bureau Chief. They shall not engage in activities or personal business which would cause them to neglect or be inattentive to duty.*

Senior Police Officer Vappie was not attentive to his duty as an Executive Protection member when he attended the HANO Board Meeting on two separate occasions, March 29, 2022 and August 30, 2022, while still on duty with the New Orleans Police Department.

Senior Police Officer Jeffery Vappie may also have violated Rule IX of the Civil Service Rules for the City of New Orleans, relative to Maintaining Standards of Service.

Respectfully Submitted,  
  
\_\_\_\_\_  
Captain Kendrick Allen  
Public Integrity Bureau

Date: 3-10-2023

Investigating Officer's Initials: KA

As will be discussed below, the Monitoring Team finds these conclusions to be reasonable based upon the facts available to PIB.

The Monitoring Team met regularly with the lead PIB investigators, the Deputy Chief of PIB, and the IPM throughout the PIB investigation. While we were not given access to PIB's report until April 3, 2023, which is a serious violation of the Consent Decree, we otherwise did receive meaningful cooperation from the PIB team.

Overall, we are satisfied that PIB's investigation into the actions and inactions of Officer Vappie met the requirements of the Consent Decree. Captain Allen and Lieutenant Jones took their jobs seriously and pursued the investigation with diligence and integrity. The Monitoring Team reviewed all witness and subject interviews conducted by PIB and can confirm the seriousness of the questions asked by the investigators, their lack of bias, and the appropriate scope of the questions.



We did not see any evidence of “pulling punches” in the interviews. The questions were well thought out, relevant, and meaningful.<sup>5</sup>

Additionally, PIB performed well, particularly in the absence of policies governing the Mayor’s executive protection detail. The absence of policies makes administrative investigations much harder. The absence of policies here almost certainly negatively impacted material elements of the Vappie investigation. Nonetheless, PIB appropriately considered the lack of policies and properly incorporated that fact into its decision-making process.

While PIB’s investigation was reasonable and meaningful, the Monitoring Team does have some concerns, all of which we expressed previously to PIB. These concerns are outlined in the subsections below.

**A. PIB Failed To Include An Analysis Of The Circumstantial Evidence Supporting Its Professionalism Finding.**

The Consent Decree mandates that all investigative findings in a misconduct investigation be supported using the “preponderance of the evidence standard.”<sup>6</sup> Further, the Consent Decree mandates that “in each investigation, NOPD shall consider all relevant evidence, *including circumstantial, direct, and physical evidence*, as appropriate, and make credibility determinations based upon that evidence.”<sup>7</sup> There is much to unpack in these requirements.

- First, it is important to note NOPD has an obligation to consider direct *and circumstantial* evidence in its administrative investigations.
- Second, because facts are often not clear in an investigation, NOPD must make credibility determinations based upon the direct and circumstantial evidence available to it. In doing so, NOPD must not credit an officer’s account of the events simply because he/she is an officer.
- Third, NOPD must apply a “preponderance of the evidence” standard. This means, to sustain a complaint, the NOPD need not have uncontroverted

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<sup>5</sup> We note that we are unable to opine on the quality of PIB’s data analysis (e.g., its review of emails, Officer Vappie’s phone, and video evidence from the French Quarter security cameras) as we were not given detailed insight into the scope of these reviews. We do note, however, that notwithstanding the diligence of Captain Allen and Lieutenant Jones, it is likely PIB lacked the time and resources to conduct fully in-depth reviews of these sources.

<sup>6</sup> Consent Decree paragraph 414.

<sup>7</sup> Consent Decree paragraph 413 (emphasis added).



evidence. Rather, NOPD simply must determine whether the events complained of are more likely than not (i.e., 51%) to have occurred.<sup>8</sup>

While investigators understandably like concrete facts, uncontroverted allegations, and evidence beyond a reasonable doubt, such is not the requirement for sustaining a complaint in an administrative investigation.

Here, the PIB investigators did a good job applying the Preponderance of the Evidence standard and, in our view, came to the correct conclusion regarding the allegations sustained. However, PIB incorporated incorrect and confusing language in its investigation report and missed an important opportunity to explain the basis for its findings by not including an analysis of how it applied the Preponderance of the Evidence standard to the facts before it, especially in the area of the significant time Officer Vappie spent in the Upper Pontalba apartment during work and non-work hours. This gap in the investigation report will make it harder for NOPD to defend its position should Officer Vappie appeal the discipline imposed.

While PIB admittedly did not have visibility into what was going on in that apartment – i.e., whether Officer Vappie was there in service of his executive protection function or was there for more social reasons – there is much circumstantial evidence that suggests Officer Vappie was *not* present in furtherance of his executive protective duties. This circumstantial evidence should have been included in the PIB report since it all is relevant to NOPD's application of the Preponderance of the Evidence standard. For example, a robust Preponderance of the Evidence analysis would have noted and documented the following:

- Officer Vappie spent many hours in the City's Upper Pontalba apartment.<sup>9</sup>
- Officer Vappie was the only officer among the executive protection detail who spent any time in the Upper Pontalba apartment. All other officers stayed outside the apartment while protecting the Mayor. Had the time in the Upper Pontalba apartment truly been work time, other officers presumably would have taken their turn doing the same.

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<sup>8</sup> We note that in the Disciplinary Recommendation section of its report, PIB uses the phrase "proved beyond a preponderance of evidence." The proper phrase is "by a preponderance of the evidence." Incorporating the word "beyond" creates needless confusion since that word most often is used in connection with a criminal finding of "beyond a reasonable doubt," which is a wholly different standard of proof.

<sup>9</sup> According to information made public by Fox8 news, Officer Vappie spent at least 112 hours in the Upper Pontalba apartment during the period analysis by the station.

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- Officer Vappie changed clothes, used the shower, and undertook various non-security tasks (e.g., watering plants) while in the apartment with or without the Mayor.
- Officer Vappie spent time in the Upper Pontalba apartment both on and off duty.
- Even when Officer Vappie left the Upper Pontalba apartment late at night after spending several hours in the apartment, the Mayor often walked alone to her car in the French Quarter without any security, strongly suggesting Officer Vappie was not spending time in the apartment because of any credible threat to the Mayor's safety. If there had been a credible threat to the Mayor's safety, (a) other officers would have rotated through the in-apartment assignment and (b) the executive protection team would not have allowed the Mayor to walk to and from the apartment alone.
- The news story about the time Officer Vappie spent in the Upper Pontalba apartment led to a prompt divorce filing from Officer's Vappie wife, an unlikely reaction to an actual, transparent executive protection detail.
- No officer spent time inside the Mayor's residence, which would have been the case had there been a credible threat to the Mayor's safety.
- Multiple other members of the Mayor's Executive Protection detail testified during the PIB investigation to the unprofessional nature of Officer Vappie's actions, which, they felt, brought discredit to the NOPD.

While these facts do not *prove* beyond the shadow of a doubt Officer Vappie was not working while in the Upper Pontalba apartment, they demonstrate *by a preponderance of the evidence* that Officer Vappie was not working while in the apartment. Yet he was billing the City of New Orleans for much of his time there.

The only evidence refuting this circumstantial evidence is Officer Vappie's own statement in his PIB interview that his relationship with the Mayor was professional and, while in the apartment, he was working and stayed in the common areas (although he couldn't describe what those common areas were). But Officer Vappie's own statement is the only evidence in support of Officer Vappie's position. The one other witness who could have corroborated Officer Vappie's statement, the Mayor, refused to be interviewed by PIB. Indeed, the Mayor's unwillingness to meet with PIB for an interview is further circumstantial evidence that Officer Vappie was not working while in the Upper Pontalba apartment.

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The circumstantial evidence here not only paints a compelling picture in support of PIB's finding that Officer Vappie acted unprofessionally with regard to his time in the Upper Pontalba apartment, it also strongly suggests Officer Vappie's statements regarding what he was doing in the apartment were not credible. As noted above, it is PIB's obligation to assess the credibility of witness and officer statements.<sup>10</sup> It is inappropriate for PIB to accept an officer's account of a situation in the face of more credible circumstantial evidence, especially where the officer has an incentive (i.e., preservation of his job) to not be fully transparent regarding the facts.

Here, PIB found every witness to be credible except Officer Vappie. With regard to Officer Vappie, PIB found that, "After comparing Officer Vappie's administrative statement with the evidence reviewed during this investigation, the investigators were unable to confidently assess his credibility." PIB Report at 31. The Monitoring Team submits that a more robust analysis of the circumstantial evidence available to PIB would have supported a stronger statement regarding Officer Vappie's lack of credibility in several of his interview statements.<sup>11</sup>

We find that the circumstantial evidence available to PIB strongly suggests some manner of a social relationship between Officer Vappie and the Mayor which led to unprofessional actions by Officer Vappie – actions that the other witnesses agreed were unprofessional, not within protocol, and not consistent with executive protection. While PIB came to the correct conclusion regarding the disposition of the professionalism allegation (i.e., Sustained), PIB should have done a better job analyzing *and documenting* the circumstantial evidence supporting its conclusions.

### **B. PIB Created Needless Ambiguity When It Used "May Have Violated" Language In The Context Of Sustaining The Rule 3 Violation.**

PIB's use of the phrase "may have violated this rule" in the context of sustaining the Rule 3 professional violation was a mistake. There is no room for a "may have violated" finding in a PIB investigation. PIB either finds a violation by a preponderance of the evidence (i.e., by 51%), or finds no violation by a preponderance of the evidence. We read PIB's "may have violated" language as ambiguous and likely to be challenged on appeal by the subject of the investigation.

PIB did not create any such confusion regarding its other findings. with regard to its Rule 4 sustain involving the 16.58 hours violation, PIB concluded Officer violated

<sup>10</sup> See, e.g., Consent Decree paragraph 413.

<sup>11</sup> Assessing credibility is not always an easy task. But the complexity of the analysis does not relieve NOPD of the obligation to make the assessment. Saying "we were unable to assess his credibility" is simply another way of saying we did not do what is required of us with regard to credibility assessments.

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NOPD's rules by a preponderance of the evidence. PIB did not equivocate. Likewise, in sustaining the other Rule 4 violation, devoting entire time to duty, PIB found that Officer Vappie "was not attentive to duty." There is no reason PIB should have used weaker language from the Rule 3 violation involving professionalism.<sup>12</sup>

As discussed above, the Monitoring Team sees significant circumstantial evidence that Officer Vappie acted unprofessionally while spending extensive hours in the Upper Pontalba apartment and while dining with the Mayor with his back to the door of the restaurant. We see no reason for ambiguous "may have violated" language in this context. PIB should state it found a violation by a preponderance of the evidence just as it did with the other two violations.

### **C. PIB Failed To Aggressively Pursue All Potential Material Witnesses.**

At the outset of the investigation, PIB identified the witnesses it intended to interview. Neither the Mayor (the only witness beyond Vappie himself who could confirm whether Vappie was working while in the Upper Pontalba apartment), the former Superintendent, nor various supervisors in Vappie's chain of command were included in PIB's initial investigation plan. The Monitoring Team raised this issue and PIB agreed to request an interview from Chief Ferguson and the Mayor. Unfortunately, both declined to be interviewed. These refusals reflect a lack of respect for the NOPD PIB process, and made it harder for PIB to get its job done.

Further, PIB did not attempt to interview the several officers in Vappie's chain of command. The Monitoring Team believes it is critical to interview supervisors – up to and including the cognizant deputy chief – in cases like this. What supervisors knew and didn't know, what they approved and didn't approve, and what steps they took, if any, to provide close and effective supervision are important components of a robust administrative investigation. PIB missed this opportunity here.

Finally, with regard to the sustained 16.58 hour violation relating to the time Officer Vappie was assigned to consultant Fausto Pichardo (and not to the Mayor's executive protection detail), we commend NOPD for attempting to interview Mr. Pichardo. In response to this effort, however, Mr. Pichardo refused to participate in the PIB process, informing PIB "there is nothing that I can contribute to aid this investigation." PIB should not have rolled over so easily in the face of this unprofessional refusal. According to statements made by the Mayor, Mr. Pichardo is serving as the NOPD's Consulting Chief of Operations.<sup>13</sup> Presumably, he must abide by NOPD's rules and

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<sup>12</sup> PIB also used vague language with regard to its finding that Officer Jeffrey Vappie "may also have violated Rule IX of the Civil Service Rules for the City of New Orleans." Here again, PIB should have found a violation or not by a preponderance of the evidence.

<sup>13</sup> While the Mayor has used the title "Consulting Chief of Operations" to describe Mr. Pichardo, we note that that title does not appear in any of NOPD's organizational charts. The Monitoring Team

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procedures, and comply with the directions of his NOPD supervisors. Had NOPD directed Mr. Pichardo to meet with PIB, presumably he would have done so. But there appears to have been no real effort to make that happen.

The quality of PIB investigations hinges on the willingness of material witnesses to participate in the PIB process. Every officer requested to participate, whether current or former, did so. In contrast, retired Chief Ferguson, the Mayor, and NOPD's Consulting Chief of Operations refused to do so. NOPD should have explored whether it had other tools available to it to convince these individuals to participate in such an important process.

**D. PIB Failed To Take Advantage Of Opportunities To Cooperate With The New Orleans Office Of The Inspector General.**

The New Orleans Inspector General reached out to NOPD and PIB on numerous occasions offering to support PIB's investigation. Apparently, the IG is conducting its own investigation into broader issues regarding the French Quarter apartment, and, in the course of that investigation, has reviewed hundreds of hours of video showing the time Officer Vappie spent in the Upper Pontalba apartment while on duty and off duty. PIB, however, failed to accept the IG's offer of assistance. In the Monitoring Team's view this was a mistake. The New Orleans IG has resources – forensic, data analysis, and personnel – NOPD simply does not have.

**E. PIB Failed To Take Adequate Steps To Protect The Confidentiality Of Its Investigation.**

At the outset of the Vappie investigation, the Monitoring Team and the IPM advised PIB to implement additional protections to ensure the confidentiality of its investigation. Because of public and media focus on the investigation and the fact that the Mayor, their boss, likely would be a material witness in the investigation, we felt extra precautions were necessary to protect the integrity of the investigation and avoid any appearance of impropriety. Among other things, the Monitoring Team and the IPM advised PIB to establish a small circle of individuals authorized to have access to investigation materials, and to preclude all others from such access. PIB agreed on the importance of confidentiality and agreed that only a small circle within PIB would have access to investigation materials.

PIB failed to take the necessary steps to implement the protections it promised.

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has asked NOPD numerous times what role Mr. Pichardo is playing and what his responsibilities he has within the NOPD, but has never received a consistent answer.



- First, it appears PIB shared a copy of all witness interview audio recordings with the City Attorney's Office. While we recognize the City Attorney represents PIB and the City and, at some point, may have a need to review those recordings (e.g., as part of a Civil Service appeal), requesting those recordings prior to the conclusion of the investigation created a risk of an inadvertent breach as well as an appearance of impropriety.<sup>14</sup>
- Second, the audio recordings shared with the City Attorney apparently were shared on a non-password protected USB drive, increasing the risk and consequence of an inadvertent disclosure.
- Third, NOPD reassigned the two PIB investigators into the districts during the investigation, which meant they were working on highly confidential matters from their district offices rather than from the protected confines of PIB. This decision created an additional risk of an inadvertent breach of confidentiality.

The confidentiality of PIB investigations is critical for many reasons, including ensuring the integrity of the investigation itself, avoiding improper pressure on the investigation team and the witnesses, and avoiding the risk that information from an administrative investigation could contaminate a parallel or subsequent criminal investigation. It is too early to know whether the failure to ensure the confidentiality of the Vappie investigation will lead to these problems.

**F. PIB Violated The Consent Decree By Refusing To Share A Copy Of The PIB Report With The Monitoring Team When Requested.**

Well before the conclusion of the PIB investigation, the Monitoring Team (and the IPM) requested a copy of the near-final PIB investigation report. NOPD rejected the Monitoring Team's request. The Monitoring Team repeated its request multiple times over the course of the following weeks, to no avail.

The failure to share drafts of the PIB report with the Monitoring Team violates the clear terms of the Consent Decree, paragraph 454 of which provides as follows:

454. City and NOPD shall provide each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence;

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<sup>14</sup> The City Attorney's Office has acknowledged an inadvertent public disclosure of all PIB interview recordings in the Vappie matter.



untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft), to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review. The Monitor shall review each serious use of force investigation and each serious misconduct complaint investigation and recommend for further investigation any use of force or misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence. The Monitor shall provide written instructions for completing any investigation determined to be incomplete or inadequately supported by the evidence. The Superintendent shall determine whether the additional investigation or modification recommended by the Monitor should be carried out. Where the Superintendent determines not to order the recommended additional investigation or modification, the Superintendent will set out the reasons for this determination in writing. The Monitor shall provide recommendations so that any further investigation or modification can be concluded within the timeframes mandated by state law. The Monitor shall coordinate with the IPM in conducting these use of force and misconduct investigation reviews.

It is unclear why NOPD refused to share its report with the Monitoring Team when it was required by the Consent Decree to do so. This is the first time over the course of the Consent Decree NOPD has withheld information from the Monitoring Team.

Ultimately, after multiple requests and a threat to take the matter to Judge Morgan, PIB did turn over its report on April 3, 2023. Such a late production, however, made it much harder for the Monitoring Team to fulfill its obligations under paragraph 454 of the Consent Decree.

**G. PIB Failed To Make An Effort To Secure Officer Vappie's Personal Cell Phone.**

Soon after the launch of the Vappie investigation, it became clear Officer Vappie may have been communicating with the Mayor or the Mayor's staff via cell phone. Consequently, PIB secured Officer Vappie's work phone. However, a forensic analysis of the work phone failed to turn up relevant texts, emails, or voicemails. Yet, clearly, considering the extensive hours Officer Vappie spent in the Upper Pontalba

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apartment both on and off the clock, Officer Vappie and the Mayor's office must have been corresponding somehow. The most likely vehicle for such frequent communications, if not Officer Vappie's work phone, must be Officer Vappie's personal cell phone. The evidence on his personal phone (e.g., texts, locations, voicemails, etc.) could have been relevant to support or rebut Officer Vappie's testimony regarding what he was doing while spending so many hours in the Upper Pontalba apartment both on and off the clock.

While PIB did appropriately secure Officer Vappie's work phone, it chose not even to request Officer Vappie's personal phone. In the view of the Monitoring Team, this was a mistake. While the law is not perfectly clear in this area, the prevailing legal view seems to be a police agency can secure an officer's personal phone where it is reasonable to do so. We submit that, while not without room for an opposing view, NOPD did have adequate reason to do so here. Witnesses confirmed the Mayor's office did communicate with officers on the executive protection detail using cell phones. Since PIB did not find communications regarding the time spent in the Upper Pontalba apartment on Vappie's work phone, it stands to reason such communications must have come via Officer Vappie's personal phone. Consequently, reviewing the content of that phone could have supported Officer Vappie's statement that he was working while in the Upper Pontalba apartment. It also could have countered Officer Vappie's statement. Either way, the information on the personal phone would have been relevant to PIB's investigation.

## **H. Conclusion**

The shortcomings noted above are substantive and material. NOPD should take immediate action to implement a corrective action plan to (a) fix what it can within the timeframe available for the Vappie investigation, and (b) ensure no recurrence of these shortcomings in future investigations. Notwithstanding these shortcomings and opportunities for improvement, however, we reiterate our finding that the PIB investigators did a good job in their investigation of Officer Vappie. Their decision to sustain multiple allegations against Officer Vappie was reasonable and supported by the facts. We commend Captain Allen and Lieutenant Jones for undertaking a quality investigation in a high pressure situation. We also commend Deputy Chief Sanchez for taking this matter seriously.

One final recommendation is worth mentioning here. The NOPD Discipline Review Board should seriously consider "mitigating up" the discipline imposed on Officer Vappie considering the significant circumstantial evidence demonstrating his lack of professionalism stemming from his time in the Upper Pontalba apartment during working and non-working hours, and his meals with the Mayor with his back to the door during working hours.

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The PIB discipline matrix<sup>15</sup> gives NOPD the opportunity to increase discipline beyond the matrix where aggravating circumstances are present. NOPD's Discipline Policy 26.2.1 describes aggravating circumstances as "conditions or events that increase the seriousness of misconduct and may increase the degree of penalty. Aggravating circumstances may be considered at a penalty hearing to deviate from the recommended or presumptive punishment. For example, if an offense carries a penalty range of one to three days' suspension, a hearing officer may choose to impose a three-day suspension in light of aggravating circumstances."

Moreover, NOPD policy 26.2 makes clear "Discipline shall be based upon the nature of the violation, *with consideration of aggravating and mitigating circumstances*, rather than the identity of the accused or his or her status within the NOPD." Further, Chapter 26.2.1 provides that the penalty hearing officer must recommend the presumptive penalty *unless aggravating or mitigating circumstances exist and are specifically articulated in the hearing record*.

In the discussion above, we set out the Monitoring Team's view regarding how PIB should have better documented the circumstantial evidence relating to Officer Vappie's lack of professionalism. While we agree with PIB's decision to sustain on the professionalism count, we see an appropriate use of that same extensive circumstantial evidence to deviate upward from the presumptive discipline set out in the matrix.

### III. Policy Recommendations

On February 17, 2023, prior to the conclusion of the investigation, the Monitoring Team sent an "immediate action notice" to the Deputy Chief of PIB alerting him to several policy and structural issues we believe the NOPD should address right away. Rather than waiting until the conclusion of PIB's investigation, we brought these matters to PIB's attention at that time to ensure NOPD could take immediate steps to correct the concerns we identified. We made clear to PIB we were offering no opinions or recommendations regarding the Vappie investigation itself since we had not seen the investigation report yet. Our opinions and recommendations related only to larger policy/process issues that are not tied to the substantive findings of the Vappie PIB investigation team.

The Monitoring Team recommended the following actions based on our review of the early stages of the PIB investigation into the actions/inactions of Officer Vappie, and reiterates those recommendations here since we have not yet heard back from PIB on our February 17 letter:

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<sup>15</sup> Consent Decree paragraph 422 requires NOPD's use of a discipline matrix.



- **Supervision.** The NOPD officers assigned to the Executive Protection detail receive little if any oversight from NOPD supervisors. This appears to have been the case for years. The members of the detail indicated their belief that their only supervisor was the Mayor herself. While the Mayor seemingly is responsible for assignments and schedules, there is no indication the Mayor played any role in supervision beyond that. NOPD should take immediate action to ensure the members of the Executive Protection detail receive the “close and effective supervision” required by the Consent Decree.<sup>16</sup>
- **Policy.** No written policy guides the operation of the Executive Protection detail or the actions of the officers assigned to that detail. Likewise, no written document (policy or otherwise) sets out the standards and protocols with which members of the Executive Protection team are expected to comply. The lack of written guidance almost certainly hindered PIB’s investigation of Officer Vappie. NOPD should take immediate action to develop clear policies and procedures governing the operation of Executive Protection detail and the officers assigned to that detail. As required by the Consent Decree, such policies and procedures should “define terms clearly, comply with applicable law and the requirements of the Consent Decree, and comport with best practices.”<sup>17</sup>
- **Performance Evaluations.** The Consent Decree requires that “officers who police effectively and ethically are recognized through the performance evaluation process, and that officers who lead effectively and ethically are identified and receive appropriate consideration for promotion” and that “poor performance or policing that otherwise undermines public safety and community trust is reflected in officer evaluations so that NOPD can identify and effectively respond.”<sup>18</sup> Without any meaningful NOPD supervision, it is unclear to us who, if anyone, evaluates the performance of members of the Executive Protection detail. NOPD should take immediate action to ensure members of the Executive Protection detail are evaluated in the same manner as other NOPD officers.
- **Efficiency.** We understand that members of the Executive Protection team are paid for a full shift whether or not the Mayor is in town. It is unclear, however, what work they are performing while the Mayor is not in town beyond occasional administrative tasks like cleaning the Mayor’s car and catching up on Departmental paperwork. At a time when NOPD has vocally complained about its lack of officers – and used the lack of officers to explain its inability to

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<sup>16</sup> See Consent Decree section XV for a discussion of “close and effective” supervision.

<sup>17</sup> See Consent Decree section II.A.

<sup>18</sup> Consent Decree section XIV sets out the requirements regarding Performance Evaluations.



comply with various Consent Decree obligations – it is quite inefficient to have multiple days when 1-2 additional officers are available to perform patrol work, but they are not performing patrol work. NOPD should consider identifying meaningful tasks members of the Executive Protection team can perform while the Mayor is out of town to contribute to the Department's well-publicized efforts to combat its lack of personnel.

- **Legal Conflicts.** The City Attorney provides “legal advice to the Mayor, the City Council, and other city offices, departments, and boards,” including the NOPD.<sup>19</sup> While this joint representation normally creates no conflict, when the Mayor is or may be a material witness in a PIB investigation, the risk of a real or perceived conflict is significant. Indeed, this occurred in the Vappie investigation when the City Attorney visited PIB to monitor the second interview of Officer Vappie. Situations like this can create the perception that City Hall is attempting to intimidate interviewees or investigators, or otherwise interfere in a PIB investigation. Such perception may be avoided when the Mayor is or may be a witness by (i) the imposition of a formal wall to block the exchange of information between the Mayor's office/City Attorney's Office and PIB and (ii) engaging outside counsel to support PIB throughout the investigation. The Office of the Independent Police Monitor made this suggestion in a thoughtful public letter to the City Council on February 9, 2023. The Monitoring Team agrees with the IPM's concerns. NOPD should consider engaging outside counsel to advise PIB on matters when the City Attorney's representation of the City, Mayor's Office, and PIB could create a real or apparent conflict of interest.
- **Reassignment Of Officers Under Investigation.** We understand, pursuant to Policy 13.1, the Superintendent has the discretion to administratively reassign officers during certain PIB investigations. In this case, Officer Vappie had been moved out of the Executive Protection detail pending the PIB investigation, which was a sensible decision considering the nature of the allegations, the public profile of the investigation, and the likelihood that the Mayor would be a material witness in the investigation. Outgoing Superintendent Ferguson, however, hours before his retirement, inexplicably directed the return of Officer Vappie to the Mayor's security detail. While this order, fortunately, was reversed by a deputy chief and the City Attorney, the order itself created at the very least the appearance of interference in a PIB investigation. NOPD should consider revising its policy to prohibit officers reassigned due to a PIB investigation from being assigned back to their previous units until the

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<sup>19</sup> See [www.nola.gov/city-attorney](http://www.nola.gov/city-attorney).



conclusion of the PIB investigation without the express approval of the PIB Deputy Chief.

- **PIB Investigators.** During the course of the PIB investigation, the two investigators assigned to the Vappie investigation were moved out of PIB. The lead investigator, Lawrence Jones, was promoted to lieutenant and moved to a district patrol unit. The PIB Captain, Kendrick Allen, was assigned to command a district. Without at all suggesting these two promotions were not warranted, NOPD should have considered detailing both individuals back to PIB until the completion of the Vappie investigation. While Superintendent Woodfork assured the Monitoring Team both officers would be given adequate time to complete their investigation, as a practical matter, this is difficult to accomplish in practice. PIB readily concedes it lacks adequate personnel to perform aspects of its investigations in the best of times (e.g., reviewing videos and documents). Adding a full time job to Allen's and Jones's schedules on top of their PIB jobs virtually guaranteed both jobs would be compromised to some extent. NOPD should consider adopting a policy of detailing promoted officers back to PIB for limited timeframes when necessary to complete significant pending investigations.
- **Initial Investigation Letters.** At the outset of the investigation, PIB alerted Officer Vappie it had opened an administrative investigation initiated by a public complaint. The letter advised Officer Vappie that PIB would focus on an alleged violation of the 16.58 hour rule as well as other matters. PIB was aware at that time, however, of several other potential violations by Officer Vappie as a result of the Fox 8 coverage, including potential violations of NOPD's professionalism, conflict, and time charging rules. While PIB represented to the Monitoring Team that the general "other matters" language was all that was required to put Officer Vappie on notice of the allegations against him, the limited wording of the initial letter created avoidable problems during the Vappie interview. NOPD should consider the pros and cons of including a more complete description of the conduct under investigation in its initial letters to investigation subjects.

The Monitoring Team believes these recommendations are critical to ensure compliance with the Consent Decree and to ensure the sustainability of the many reforms NOPD has made over the years. While we are aware that the NOPD has taken steps to implement some of these recommendations, PIB has not yet responded to our February 2023 letter outlining these recommendations so we are not in a position to opine on the meaningfulness of NOPD's corrective actions at this time.



#### **IV. Conclusion**

The Vappie investigation was a stressful one for PIB. The City Council made clear it would be reviewing the matter closely. The media made clear they would be reviewing the matter closely. And the Monitoring Team and the IPM made clear they would be reviewing the matter closely. Notwithstanding the stress likely caused by so much oversight, PIB undertook its investigation professionally and with integrity. While the Monitoring Team takes issue with some aspects of the investigation report, as noted in this Report, overall, we find that PIB did a good job with the underlying investigation. Investigators Allen and Jones took the matter seriously, comported themselves professionally, and showed no signs of being influenced by outside pressures. We commend PIB for its investigative work. We are hopeful, however, that the opportunities for improvement outlined in this Report will be taken seriously by PIB and NOPD and will be implemented promptly.

To that end, pursuant to Consent Decree paragraph 454, the NOPD Superintendent now must determine whether or not to order the recommendations set out in this Report. Should the Superintendent decide not to order the Monitoring Team's recommendations, she must "set out the reasons for this determination in writing."

As always, the Monitoring Team will make itself available to discuss any element of this Report or the remedial measures NOPD plans to take in response thereto.



**Attachment F**

**NOPD Response to Monitoring Team Analysis**

CITY OF NEW ORLEANS



LaToya Cantrell  
MAYOR

DEPARTMENT OF POLICE

715 South Broad Street  
New Orleans, LA 70119

*"to protect and to serve"*



Michelle M. Woodfork  
SUPERINTENDENT

April 24, 2023

Mr. Jonathan Aronie  
Consent Decree Monitor (NOPD)  
Leader, Governmental Practice  
Sheppard Mullin Richter & Hampton LLP  
2099 Pennsylvania Avenue, NW, Suite 100  
Washington, DC 20006

**Re: Officer Jeffery Vappie**

Dear Mr. Aronie,

The Officer Jeffery Vappie administrative investigation has drawn an uncanny amount of attention and has become a polarizing jewel for many factions. However, the Public Integrity Bureau (PIB) has not wavered from its goal to fairly and thoroughly investigate misconduct allegations made against employees of the New Orleans Police Department. PIB's overall mission is consistent with the express language of the opening paragraph of section XVII of the Amended and Restated Consent Decree ("Consent Decree") that ensures "all allegations of officer misconduct are received and are fully and fairly investigated". From the moment the allegation was received and assigned, without question, Captain Kendrick Allen and Lieutenant Lawrence Jones fully, thoroughly, and fairly investigated the allegations of misconduct against Officer Vappie. We agree with your assessment that PIB undertook its investigation professionally and with integrity and we further join you in commending the investigators and PIB for a good job.

The highly public nature of the complaint and its subsequent investigation has drawn unprecedented interest, as you stated, from the City Council, the media, the Monitoring Team and the OIPM. This level of review and scrutiny has been fruitful in several ways. First, it allows casual observers an opportunity to learn of the high quality, expertise, and performance of the men and women of the New Orleans Police Department. It specifically showcases the skills and professionalism of the investigators and the completeness of investigations conducted within the Public Integrity Bureau. This is noteworthy and these efforts are worthy of applause.

Second, the numerous monitoring reviews have presented concerned parties with another reason and opportunity to review, with specificity, the tenets of the Consent Decree. We disagree with the Monitoring Team Analysis that PIB violated the Consent Decree by refusing to share a copy of the PIB report with the Monitoring Team when requested. The plain language of Paragraph 454 of the Consent Decree states that "City and NOPD shall provide each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft), to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review".

*"an equal opportunity employer"*

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Here, under the most liberal reading and interpretation, the Consent Decree would not describe the Officer Vappie investigation as one that entitles the Monitor to the investigation before its completion. It would not identify the investigation as a use of force investigation or a serious misconduct complaint investigation. More precisely, the investigation: 1) did not involve a serious use of force; 2) did not involve use of force that is the subject of a misconduct investigation; and 3) was not a serious misconduct complaint investigation further enumerated and clarified as “criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft”. Under the Consent Decree only these three specific types of investigations trigger the requirement of NOPD to provide the Monitor the investigation prior to its conclusion.

No allegation of misconduct, by Officer Vappie, was described, suggested, hinted at or articulated as conduct that requires the release of the investigation pursuant to Paragraph 454. The Monitor is expressly granted limited power and authority to “review each serious use of force investigation and each serious misconduct complaint allegation and recommend for further investigation...”. At its request, the Monitor is not eligible to receive each, every, and all investigations, no matter the stage of the investigation. Therefore, we vehemently disagree with the suggestion that the Public Integrity Bureau violated the Consent Decree by refusing to share a copy of the PIB report with the Monitoring Team.

Third, the NOPD has the occasion to educate and clarify the role of the Public Integrity Bureau. As you know, the PIB is critical to the overall success of the New Orleans Police Department. It is important to note that PIB is not a prosecutorial or disciplinary agency, but it is a fact-finding bureau. Although the governing standard for administrative investigations is a preponderance of the evidence, PIB does not approach investigations with an intention to make the facts fit. We investigate the complaint by following the lead of the facts wherever they lead and when the trail of the facts ends, we begin the conclusion of the investigation.

While we appreciate your suggestion that the investigators should have obtained the Officer’s personal cell phone for further research and investigation. However, we find no legal, fair, or reasonable basis for doing so. Under my administration, we hold constitutional policing as an ongoing and unwavering standard. As we understand it, the Fourth Amendment prohibits warrantless searches of places or seizures of persons or objects where there is a reasonable expectation of privacy. The courts, as you know, apply a test that basically weighs and balances the public interest against the intrusion of privacy.

Here, the initial complaint alleged that the officer may have violated the 16.35-hour rule. Based on an investigation and review of the officer’s timesheets and payroll records it was determined that the Officer violated the NOPD policy. The information that could have been discovered in Officer Vappie’s cellphone was discovered early in the investigation and through other means. Applying the balance test under the facts of the Officer Vappie administrative investigation, to take his personal cellphone reeks of a constitutional violation making this issue ripe for an appeal.

Furthermore, the ramifications of taking an officer's personal cellphone as part of an administrative investigation would deplete and flatten the morale of the entire NOPD. This type of rogue and violative action is not the direction in which I am leading and intend to lead the bureau.

Lastly, it presents opportunities for the New Orleans Police Department to consider ways to improve and make appropriate adjustments. We recognize that NOPD must create new policies and procedures to ensure that our employees' behavior reflects the professional and accountability standards of the NOPD. We are working to upgrade the protocols within the Executive Protection team. We are establishing procedures that incorporate this specialized unit within a clearly defined and delineated chain of command for supervision and accountability. This includes the placement of an immediate supervisor within the EP team.

Through this process we have also recognized the need to adjust our current documents and forms to more clearly reflect our operating procedures. In other words, we have an opportunity to make our documents less confusing and commensurate with our actual protocols. One such example is in the penalty recommendation document wherein the investigators submit their recommendations to their chain of command. These recommendations allow for the investigators' Platoon Commanders, District Captains, and their respective Deputy Superintendent to review the investigation and acknowledge their opinion by circling either "concur" or "does not concur" and then signing their signature above their name.

This recommendation form/document allows for two final signatures, the Deputy Superintendent of the Public Integrity Bureau and the Superintendent of Police. As a matter-of-sequence, the Deputy Superintendent signs in their official capacity, and then signs "for" the Superintendent. While this practice is loosely described in old policies and is subject to various interpretations, we are reviewing to determine its utility at this stage. However, in the Officer Vappie investigation, this process was continued.

By way of clarity, Superintendent Michelle M. Woodfork did not review this investigation, nor did she sign acknowledging that she did at this phase. Perhaps because the practice is commonplace it seems obvious that the signature for the Deputy Superintendent of PIB and the signature for the Superintendent of Police are the same. Additionally, the word "for" after the Deputy Superintendent's signature with an arrow pointing to the Superintendent's name should have been a clear identifier that the Deputy Superintendent was in fact signing for the Superintendent.

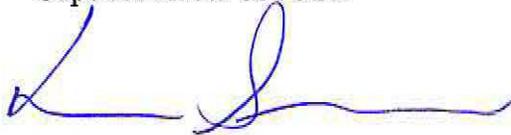
As previously described, Deputy Superintendent Keith A. Sanchez signed his name in his official capacity on the recommendations and as customary Deputy Superintendent Keith A. Sanchez signed for Superintendent Michele M. Woodfork. This customary policy has been in place for many years, and it presents an opportunity to evaluate the reason it has been done this way or should it continue. I would welcome any recommendation or approach you have considered over

the years to change this since it was the practice ever since the Monitoring Team has been convened.

Under my administration, I intend to work in partnership with those who seek to help the New Orleans Police Department improve and operate at its maximum capacity. I appreciate your level of insight and your willingness to separate your strongly held opinions of what could have been done and yet fairly grade our investigators and the PIB on what they did. As stated before, I agree with the Monitoring Team Analysis that PIB did a good job with this investigation. Although we have created new policies, procedures, and protocols to address the issues that we both discovered through this investigation, I look forward to reviewing further your recommendations and seeing how we may utilize them best.

Very truly yours,

MICHELLE M. WOODFORK  
Superintendent of Police



By: Keith Sanchez, Deputy Superintendent  
Public Integrity Bureau

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

**UNITED STATES OF AMERICA**

\*

**CIVIL ACTION NO.  
12-CV-01924**

**Plaintiff**

\*

**v.**

\*

**SECTION E  
JUDGE SUSIE MORGAN  
DIVISION 2  
MAGISTRATE WILKINSON**

**THE CITY OF NEW ORLEANS**

\*

**Defendant**

\*

\* \* \*

**AMENDED AND RESTATED CONSENT DECREE REGARDING**

**THE NEW ORLEANS POLICE DEPARTMENT**

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The City of New Orleans (“City”), including the New Orleans Police Department (“NOPD” or “Department”), and the United States of America (collectively, “the Parties”) enter into this agreement (“Agreement”) with the goal of ensuring that police services are delivered to the people of New Orleans in a manner that complies with the Constitution and laws of the United States. The Parties have a shared recognition that the ability of a police department to protect the community it serves is only as strong as the relationship it has with that community. Public safety, constitutional policing, and the community’s trust in its police force are thus interdependent. The full and sustained implementation of this Agreement is intended to protect the constitutional rights of all members of the community, improve the safety and security of the people of New Orleans, and increase public confidence in the New Orleans Police Department.

To achieve these goals, NOPD agrees to fundamentally change the way it polices throughout the New Orleans Community. This Agreement thus requires the City and the Department to implement new policies, training, and practices throughout the Department, including in the areas of: use of force; stops, searches, seizures, and arrests; photographic lineups; custodial interrogations; discriminatory policing; community engagement; recruitment; training; performance evaluations; promotions; officer assistance and support; supervision; secondary employment; and misconduct-complaint intake, investigation, and adjudication.

Noting the general principle that settlements are to be encouraged, particularly settlements between government entities, and having considered the terms of the measures set forth herein, and that the Defendant agrees to resolve the United States’ claims without resort to adversarial litigation, it is ORDERED, ADJUDGED, AND DECREED that Judgment shall be entered in this matter pursuant to the following terms and conditions:

## **I. INTRODUCTION**

### **A. Background**

In May 2010, the United States Department of Justice (“DOJ”) formally notified the City that it was initiating an investigation of the New Orleans Police Department for an alleged pattern or practice of unlawful misconduct, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”) (recodified at 34 U.S.C. § 12601); the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act

of 1968, 42 U.S.C. § 3789d (“Safe Streets Act”); and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d (“Title VI”).

As part of its investigation, DOJ, in conjunction with its police-practices consultants, conducted a detailed fact-finding review, including numerous tours of NOPD facilities; interviews with New Orleans officials, NOPD command staff, supervisors, and police officers; review of more than 36,000 pages of documents; and meetings with residents, community groups, and other stakeholders within the City. In addition, DOJ participated in detailed exit interviews between its police-practices consultants and NOPD officials following each investigatory tour.

DOJ issued a written report of its findings (“Report”) on March 16, 2011. The Report documents DOJ’s finding of a number of patterns or practices of unconstitutional conduct and details DOJ’s concerns about a number of NOPD policies and practices.

DOJ’s investigation was conducted with the full cooperation of the City and NOPD. This Agreement is the product of a cooperative effort built on the Parties’ mutual commitment to constitutional policing. The Parties acknowledge the many NOPD officers who perform their difficult jobs diligently and with integrity.

**B. General Provisions**

1. This Agreement is effectuated pursuant to the authority granted to DOJ under Section 14141, the Safe Streets Act, and Title VI to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law.

2. Nothing in this Agreement is intended to undermine the lawful authority of NOPD police officers to use reasonable and necessary force, effect arrests, conduct searches or make seizures, or otherwise fulfill their law enforcement obligations to the people of New Orleans in a manner consistent with the requirements of the Constitutions and laws of the United States and the State of Louisiana.

3. Nothing in this Agreement, the United States’ Complaint, or the negotiation process shall be construed as an admission or evidence of liability under any federal, state, or municipal law including, but not limited to, 42 U.S.C. § 1983. Nor is the City’s entry into this Agreement an admission by the City, NOPD, or any officer or employee of either entity, that they have engaged in any unconstitutional, illegal, or otherwise improper activities or conduct.

4. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 14141 (recodified at 34 U.S.C. § 12601) and 42 U.S.C. § 3789d. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1391, because the Defendant is located in, and the claims arose in, the Eastern District of Louisiana.

5. The Parties enter into this Agreement jointly for the purpose of avoiding the burdens of litigation and to support vigorous and constitutional law enforcement. Moreover, joint entry of this Agreement is in the public interest since it provides for the expeditious implementation of corrective measures, promotes the use of the best available policing practices and procedures, and avoids the diversion of federal and City resources to adversarial actions by the Parties.

6. This Agreement resolves all claims in the United States' Complaint filed in this case. This Agreement also constitutes a full and complete settlement of any and all civil claims the United States may have as of the Effective Date against the City and its officers, employees, or agents, regarding any alleged pattern or practice of conduct by New Orleans police officers in carrying out their law enforcement responsibilities.

7. This Agreement shall constitute the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

8. This Agreement is binding upon all Parties hereto, by and through their officials, agents, employees, and successors. If the City establishes or reorganizes a government agency or entity whose function includes overseeing, regulating, accrediting, investigating, or otherwise reviewing the operations of NOPD or any aspect thereof, the City agrees to ensure these functions and entities are consistent with the terms of this Agreement and shall incorporate the terms of this Agreement into the oversight, regulatory, accreditation, investigation, or review functions of the government agency or entity as necessary to ensure consistency.

9. This Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement.

**10.** In the event of any public-records request, requesting drafts of this Agreement or communications among the Parties leading to this Agreement, the Court will maintain continuing jurisdiction over any such request. Further, the Parties may assert in any action, motion, subpoena, or request for disclosure the ongoing applicability of a settlement privilege to all such drafts or communications among the Parties leading to this Agreement. The assertion of such privilege would be decided by the court with jurisdiction over the action, motion, subpoena, or request for disclosure.

**11.** This Agreement is not intended to limit or expand the right of any person or organization to seek relief against the City, NOPD, or any officer or employee thereof, for their conduct or the conduct of NOPD officers; accordingly, it does not alter legal standards governing any such claims by third parties, including those arising from city, state, or federal law. This Agreement does not expand, nor will it be construed to expand, access to any City, NOPD, or DOJ documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the Defendant, and the Monitor.

**12.** The City is responsible for providing necessary support and resources to NOPD to enable NOPD to fulfill its obligations under this Agreement.

**13.** The Defendant, by and through its officials, agents, employees, and successors, is enjoined from engaging in conduct that deprives persons of rights, privileges, or immunities secured or protected by the laws of the United States.

**C. Definitions/Abbreviations**

**14.** The following terms and definitions shall apply to this Agreement:

a) “Active resistance” means a subject attempts to attack or does attack an officer; exhibits aggressive behavior (e.g., lunging toward the officer, striking the officer with hands, fists, kicks or any instrument that may be perceived as a weapon such as a knife or stick); or exhibits defensive resistance (e.g., attempts to leave the scene, flee, hide from detection, or pull away from the officer’s grasp). Verbal statements, bracing, or tensing alone do not constitute active resistance.

b) “Apprehension” means the arrest, capture, or taking into custody of a person.

c) “Arrest” is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him. An

arrest is a restraint of greater scope or duration than an investigatory stop or detention. An arrest is lawful when supported by probable cause.

d) “AVL” means “Automatic Vehicle Locator,” a device that automatically tracks the geographic position of a vehicle and transmits that information to a receiver.

e) “Bilingual staff” means a staff person who has demonstrated and verified proficiency, pursuant to generally accepted objective criteria, in both spoken English and at least one other language as authorized by NOPD.

f) “Bite ratio” means the number of canine apprehensions that result in a bite, divided by the number of canine apprehensions. Accidental and/or unintentional bites shall be included in the numerator.

g) “Body cavity search” means any visual or physical inspection of a person’s genital or anal region with or without any physical contact with or intrusion into a body cavity.

h) “Canine apprehension” means any time a canine is deployed and plays a clear and well-documented role in the capture of a person. The mere presence of a canine at the scene of an arrest shall not count as a canine apprehension.

i) “Canine deployment” means any situation, except one involving an on-leash article search only, in which a canine is brought to the scene and used in an attempt to locate or apprehend a suspect, whether or not a suspect actually is located or apprehended.

j) “CCMS” means Criminal Case Management System.

k) “Civilian Employee” means any non-sworn personnel employed by NOPD, on either a temporary or permanent basis, in either a paid or unpaid capacity.

l) “City” means the City of New Orleans, including its agents, officers, and employees.

m) “CIT” means Crisis Intervention Team.

n) “Clearance” means an arrest leading to prosecution for an offense is made or an offense is cleared by exception. Offenses cleared by exception must be supported by all of the following factors: 1) the identity of the offender is known; 2) probable cause exists to support arrest and prosecution of the offender; and 3) the exact location of the offender is known, but something prevents the immediate arrest, such as the death of the offender, including suicide, or the offender is currently in custody at a correctional facility in another jurisdiction.

o) “Complainant” means any person, including an NOPD officer or employee, who makes a

complaint against NOPD or an officer or employee of NOPD.

p) “Complaint” means any complaint regarding NOPD services, policy or procedure, any claim for damages, or any criminal matter that alleges possible misconduct by an NOPD officer or employee. For purposes of this Agreement, the term “complaint” does not include any allegation of employment discrimination.

q) “Court” means the United States District Judge for the Eastern District of Louisiana presiding over this case.

r) “Critical firearm discharge” means a discharge of a firearm by an NOPD officer, including discharges where no person or animal is struck. Range and training firings, destruction of animals, and off-duty hunting discharges where no person is struck are not critical firearm discharges.

s) “Custodial Interrogation” means words or actions on the part of an officer that the officer knows or should know are reasonably likely to elicit an incriminating response, after a person has been taken into custody.

t) “DA” means the Orleans Parish District Attorney’s Office.

u) “Defensive resistance” means resistance exhibited by a suspect that is between passive resistance and active resistance (e.g., attempts to leave the scene, flee, hide from detection, or pull away from the officer’s grasp).

v) “Demographic Category” means age, race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity.

w) “Discipline” means a personnel action for violation of an established law, regulation, rule, or NOPD policy, including an admonishment, written reprimand, suspension, demotion, or dismissal.

x) “Discriminatory Policing” means selective enforcement or non-enforcement of the law, including the selecting or rejecting of particular policing tactics or strategies based on membership in a demographic category specified in this Agreement. Discriminatory policing does not include using race, ethnicity, or any other status in any reliable and recent suspect-specific description.

y) “District” means one of the eight police service areas of NOPD located throughout New Orleans that is led through the chain of command by a District Commander.

z) “DOJ” means the United States Department of Justice’s Civil Rights Division and its

agents and employees.

aa) “DVU” means Domestic Violence Unit.

bb) “ECW” means Electronic Control Weapon, a weapon designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and overrides the subject’s voluntary motor responses.

cc) “ECW application” means the contact and delivery of electrical impulse to a subject with an Electronic Control Weapon.

dd) “Effective Date” means the day this Agreement is entered by the Court.

ee) “EWS” means Early Warning System.

ff) “FBI” means the Federal Bureau of Investigation.

gg) “Firearm” means a pistol, revolver, shotgun, carbine, or machine gun, as well as any instrument capable of discharging a bullet or shot.

hh) “FIT” means Force Investigation Team, the NOPD unit tasked with conducting investigations of serious uses of force; uses of force indicating apparent criminal conduct by an officer; uses of force by NOPD personnel of a rank higher than sergeant; and uses of force reassigned to FIT by the Superintendent, the Superintendent’s designee, or PIB. FIT shall also investigate all instances where an individual has died while in, or as an apparent result of being in, the custody of NOPD.

ii) “Force Statement” means a written statement documenting a use of force as required by this Agreement.

jj) “FTO” means Field Training Officer.

kk) “IACP” means International Association of Chiefs of Police.

ll) “ICO” means Integrity Control Officer.

mm) “Implement” or “implementation” means the development or putting into place of a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure in actual practice.

nn) “Including” means “including, but not limited to.”

oo) “Interpretation” means the act of listening to a communication in one language (source language) and orally converting it into another language (target language), while retaining the same meaning.

pp) “Interview” means questioning for the purpose of eliciting facts or information.

qq) “Investigatory stop” or “investigatory detention” means a temporary restraint where the subject of the stop or detention reasonably believes that s/he is not free to leave. An investigatory stop or detention may be a pedestrian, vehicle, or bicycle stop.

rr) “IPM” means the Independent Police Monitor.

ss) “Less-lethal force” means force employed that is neither likely nor intended to cause death or serious injury.

tt) “Less-lethal weapon” means any apprehension or restraint tool that, when used as designed and intended, is less likely to cause death or serious injury than a conventional lethal weapon (e.g., firearm).

uu) “Lethal force” means any use of force likely to cause death or serious physical injury, (e.g., the use of a firearm, neck hold, or strike to the head, neck, or throat with a hard object).

vv) “LEP” means Limited English Proficient, and refers to a person who does not speak English as his/her primary language and has a limited ability to read, write, speak, or understand English. LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

ww) “LGBT” means Lesbian, Gay, Bisexual, and Transgender.

xx) “Major Special Events” include Mardi Gras; Jazz Fest; Essence Music Festival; French Quarter Festival; Voodoo Fest; college bowl and college championship events; professional sporting events; and other events as designated by the Mayor, Chief Administrative Officer, the Deputy Mayor for Public Safety, the City Attorney, City Council, or the Superintendent of Police as a “Major Special Event.”

yy) “MCTU” means Mobile Crisis Transportation Unit.

zz) “Monitor” means a person or team of people who shall be selected to monitor and report on implementation of this Agreement.

aaa) “Neck hold” means one of the following types of holds: (1) arm-bar control hold, a hold that inhibits breathing by compression of the airway in the neck; (2) carotid restraint hold, a hold that inhibits blood flow by compression of the blood vessels in the neck; (3) a lateral vascular neck constraint; or (4) a hold with a knee or other object to the back of a prone subject’s neck. A neck hold shall be considered lethal force.

bbb) “NOFJC” means the New Orleans Family Justice Center.

ccc) “Non-disciplinary corrective action” means action other than discipline taken by an NOPD supervisor to enable or encourage an officer to improve his or her performance.

ddd) “NOPD” means the New Orleans Police Department and its agents, officers, supervisors, and employees (both sworn and unsworn).

eee) “NOPD unit” means any designated organization of officers within NOPD, including districts and specialized units.

fff) “NOPDAI” means NOPD Authorized Interpreter, a bilingual NOPD employee, who has been authorized to interpret for others in certain situations, such as interviews, interrogations, or taking and responding to citizen complaints.

ggg) “NOPDAI List” means a list of NOPD personnel who are bilingual and are authorized to act as volunteer interpreters.

hhh) “Passive Resistance” means behavior that is unresponsive to police verbal communication or direction (e.g., ignoring or disregarding police attempts at verbal communication or control; going limp; or failing to physically respond or move) and verbal resistance (e.g., verbally rejecting police verbal communication or direction; telling the officer that he or she will not comply with police direction, to leave alone, or not bother him or her). Bracing, tensing, linking arms, or verbally signaling an intention to avoid or prevent being taken into custody constitutes passive resistance.

iii) “PCAB” means Police-Community Advisory Board.

jjj) “Personnel” means NOPD officers and employees.

kkk) “PIB” means the Public Integrity Bureau, the NOPD unit charged with conducting internal and administrative investigations of NOPD officers and employees.

lll) “Police officer” or “officer” means any law enforcement agent employed by NOPD, including supervisors and cadets.

mmm) “Policies and Procedures” means written regulations or directives, regardless of the name of the regulation or directive, describing the duties, functions, and obligations of NOPD officers and/or employees, and providing specific direction in how to fulfill those duties, functions, or obligations.

nnn) “POST” means the Louisiana Police Officer Standards and Training Council.

ooo) “Probable cause” means that the facts and circumstances known to the officer at the time would justify a prudent person in believing that the suspect committed or was

committing an offense.

ppp) “Reasonable Force” means force that is objectively reasonable under the circumstances and the minimum amount of force necessary to effect an arrest or protect the officer or other person.

qqq) “Reasonable suspicion” means articulable facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been or is about to be committed.

rrr) “RSE” means Recurring Secondary Employment.

sss) “SART” means Sexual Assault Response Team.

ttt) “Seizure” or “detention” occurs when an officer’s words or actions would convey to a reasonable person that he or she is not free to leave.

uuu) “Serious physical injury” means physical injury that creates a substantial risk of death; causes death or serious and protracted disfigurement; or causes impairment of the function of any bodily organ or limb.

vvv) “Serious use of force” means: (1) all uses of lethal force by an NOPD officer; (2) all critical firearm discharges by an NOPD officer; (3) all uses of force by an NOPD officer resulting in serious physical injury or requiring hospitalization; (4) all neck holds; (5) all uses of force by an NOPD officer resulting in a loss of consciousness; (6) all canine bites; (7) more than two applications of an ECW on an individual during a single interaction, regardless of the mode or duration of the application, and whether the applications are by the same or different officers, or ECW application for longer than 15 seconds, whether continuous or consecutive; and (8) any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject.

www) “Service firearm” means any firearm issued to sworn personnel by the Department.

xxx) “Shall” or “Agrees to” means that the provision imposes a mandatory duty.

yyy) “Specialized unit” means a temporary or permanent organization of officers within NOPD, whose operational objectives are focused on a specific law enforcement purpose beyond general patrol or criminal investigations, and that require enhanced training on police tactics, strategies, or techniques.

zzz) “Strip search” means any search of an individual requiring the removal or rearrangement of some or all clothing to permit visual inspection of the suspect’s

groin/genital area, buttocks, female breasts, or undergarments covering these areas.

aaaa) “Superintendent” means the Superintendent of NOPD.

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

cccc) “Translation” means the replacement of written text from one language (source language) with an equivalent written text in another language (target language).

dddd) “Use of force” means physical effort to compel compliance by an unwilling subject above unresisted handcuffing, including pointing a firearm at a person. A reportable use of force is any force above hand control or escort techniques applied for the purposes of handcuffing, or escort techniques that are not used as pressure point compliance techniques, do not result in injury or complaint of injury, and are not used to overcome resistance.

eeee) “Use of force indicating apparent criminal conduct by an officer” means force that a reasonable and trained supervisor would conclude could result in criminal charges due to the apparent circumstances of the use of force, such as the level of the force used as compared to the resistance encountered, or discrepancies in the use of force as described by the officer and the use of force as evidenced by any resulting injuries, witness statements, or other evidence.

ffff) “Use of Force Report” means a written report documenting a supervisor’s investigation of a use of force as required by this Agreement.

gggg) “UFRB” means Use of Force Review Board.

hhhh) “USAO” means the United States Attorney’s Office for the Eastern District of New Orleans.

iiii) “VAW” means violence against women.

jjjj) “Vehicle stop” means any instance where an NOPD officer directs a civilian operating a motor vehicle of any type to stop and the driver is detained for any length of time.

## **II. POLICIES AND TRAINING GENERALLY**

NOPD agrees that its policies and procedures shall reflect and express the Department’s core values and priorities, and provide clear direction to ensure that officers and civilian employees enforce the law effectively and constitutionally. NOPD and the City agree to ensure that all NOPD officers and employees are trained to understand and be able to fulfill their duties

and responsibilities pursuant to NOPD policies and procedures. To achieve these outcomes, NOPD agrees to implement the requirements below.

**A. Policy Development, Review, and Implementation**

**15.** NOPD agrees to develop comprehensive and agency-wide policies and procedures that ensure consistency with, and full implementation of, this Agreement. Unless otherwise noted, NOPD agrees that all policies, procedures, and manuals shall be developed within 365 days of the Effective Date.

**16.** NOPD agrees that its policies and procedures shall define terms clearly, comply with applicable law and the requirements of this Agreement, and comport with best practices.

**17.** NOPD agrees to apply policies uniformly and hold officers accountable for complying with NOPD policies and procedures.

**18.** NOPD agrees to review each policy or procedure 365 days after it is implemented and annually thereafter, to ensure that the policy or procedure provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law. NOPD also agrees to review and revise policies and procedures as necessary upon notice of a significant policy deficiency during audits or reviews. NOPD agrees that Department-wide policies and procedures shall be collected in a Department-level policy and procedure manual, and unit-wide policies and procedures shall be collected in unit-level policy and procedure manuals. NOPD agrees to develop and implement policy and procedure manuals for, at a minimum, the following NOPD functions:

- a) Field operations, including patrol, task forces, and special operations;
- b) Supervisory Procedural Manual;
- c) PIB, including case and records management, administrative investigations, confidential investigations, parallel criminal and administrative investigations, audits, and officer drug testing;
- d) Use of Force Reporting, Investigation, and Review, including both Supervisory and FIT investigations;
- e) Criminal investigations, including sub-units assigned to investigate homicides, sexual assaults, domestic violence, narcotics, vice, and illegal firearms; and
- f) Recruitment and Training, including Academy and In-Service training.

**19.** NOPD agrees that these manuals shall incorporate and otherwise be consistent with the requirements of this Agreement.

**20.** Within 90 days of the Effective Date, NOPD shall set out a schedule for completing all policies, procedures, and manuals within 365 days of the Effective Date.

**21.** NOPD agrees to submit new and revised policies, procedures, and manuals related to: Use, Reporting, and Review of Force; Crisis Intervention Team; Stops, Searches, and Arrests; Custodial Interrogations; Biased Policing; Community Engagement; Academy and In-service Training; Supervision; and Misconduct Investigations (“the specified provisions”), to the Monitor and DOJ for review and comment prior to publication and implementation. If the Monitor or DOJ objects that the proposed new or revised policy, procedure, or manual does not incorporate the requirements of this Agreement, or is inconsistent with this Agreement or the law, it shall note this objection in writing to all parties within 15 business days of the receipt of the policy from NOPD. If neither the Monitor nor DOJ objects to the new or revised policy, procedure, or manual, NOPD agrees to implement it within 30 days of it being provided to DOJ and the Monitor.

**22.** NOPD shall have 15 days to resolve any objections to the new or revised policies, procedures, and manuals implementing the specified provisions. If, after this 15-day period has run, DOJ maintains its objection, then the Monitor shall have an additional 15 days to resolve the objection. If either party disagrees with the Monitor’s resolution of the objection, either Party may ask the Court to resolve the matter. The Monitor shall determine whether in some instances an additional amount of time is necessary to ensure full and proper review of policies. Factors to consider in making this determination include: (1) complexity of the policy; (2) extent of disagreement regarding policy; (3) number of policies provided simultaneously; and (4) extraordinary circumstances delaying review by DOJ or the Monitor. In determining whether these factors warrant additional time for review, the Monitor shall fully consider the importance of prompt implementation of policies, and shall allow additional time for policy review only where it is clear that additional time is necessary to ensure full and proper review. Any extension to the above timelines by the Monitor shall also toll NOPD’s deadline for policy completion.

**23.** For all other new and revised policies, procedures, and manuals related to this Agreement, NOPD agrees to provide the policy, procedure, or manual to DOJ and the Monitor

for review and comment. Within 30 days of receipt, DOJ or the Monitor may notify NOPD of any concerns that it has regarding the policy's compliance with this Agreement or the law. If concerns are expressed, NOPD agrees to review the policy, procedure, or manual and modify as necessary to ensure full implementation of, and compliance with, this Agreement and the law. If DOJ or the Monitor believes that the policy, procedure, or manual remains inconsistent with this Agreement or the law, it may ask the Court to resolve the matter.

**B. Training on Revised Policies, Procedures, and Practices**

**24.** Within 60 days of the Effective Date, NOPD agrees to provide an opportunity for each officer and employee to learn about this Agreement and the responsibilities of each officer and employee pursuant to it.

**25.** Within 90 days of issuing a policy or procedure pursuant to this Agreement, NOPD agrees to ensure that all relevant NOPD personnel have received and read their responsibilities pursuant to the policy or procedure, including the requirement that each officer or employee reports violations of policy; that supervisors of all ranks be held accountable for identifying and responding to policy or procedure violations by personnel under their command; and that personnel be held accountable for policy and procedure violations. NOPD agrees to document that each relevant NOPD officer or other employee has received and read the policy. Training beyond roll call, or similar training, will be necessary for many new policies to ensure officers understand and can perform their duties pursuant to the policy.

**26.** Unless otherwise noted, the training required pursuant to this Agreement shall be delivered within 365 days of the Effective Date, and annually thereafter. Within 180 days of the Effective Date, NOPD shall set out a schedule for delivering all training required by this Agreement within 365 days of the Effective Date.

**III. USE OF FORCE**

NOPD agrees to develop and implement force policies, training, and review mechanisms that ensure that force by NOPD officers is used in accordance with the rights secured or protected by the Constitution and laws of the United States, and that any unreasonable uses of force are identified and responded to appropriately. NOPD agrees to ensure that officers use non-force techniques to affect compliance with police orders whenever feasible; use force only when necessary, and in a manner that avoids unnecessary injury to officers and civilians; and de-

escalate the use of force at the earliest possible moment. To achieve these outcomes, NOPD agrees to implement the requirements set out below.

**A. Use of Force Principles**

**27.** Use of force by NOPD officers, regardless of the type of force or weapon used, shall abide by the following requirements:

- a) officers shall use advisements, warnings, and verbal persuasion, when possible, before resorting to force;
- b) force shall be de-escalated immediately as resistance decreases;
- c) when feasible based on the circumstances, officers will use disengagement; area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units, in order to reduce the need for force and increase officer and civilian safety;
- d) officers shall allow individuals time to submit to arrest before force is used wherever possible;
- e) NOPD shall explicitly prohibit neck holds, except where lethal force is authorized;
- f) NOPD shall explicitly prohibit head strikes with a hard object, except where lethal force is authorized;
- g) NOPD shall explicitly prohibit using force against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons, or, as objectively reasonable, where physical removal is necessary to overcome passive resistance;
- h) NOPD shall explicitly prohibit the use of force above unresisted handcuffing to overcome passive resistance, except that physical removal is permitted as necessary and objectively reasonable;
- i) unholstering a firearm and pointing it at a person constitutes a use of force, and shall accordingly be done only as objectively reasonable to accomplish a lawful police objective;
- j) officers shall not use force to attempt to effect compliance with a command that is unlawful. Any use of force by an officer to subdue an individual resisting arrest or detention is unreasonable when the initial arrest or detention of the individual was unlawful;
- k) immediately following a use of force, officers and, upon arrival, a supervisor shall inspect and observe subjects for injury or complaints of pain resulting from the use of force, and

immediately obtain any necessary medical care. This may require an officer to provide emergency first aid until professional medical care providers are on scene.

**B. General Use of Force Policy**

**28.** NOPD agrees to 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. The comprehensive use of force policy shall include all force techniques, technologies, and weapons, both lethal and less-lethal, that are available to NOPD officers, including standard-issue weapons that are made available to all officers, and weapons that are made available only to specialized units. The comprehensive use of force policy shall clearly define and describe each force option and the circumstances under which use of such force is appropriate. The general use of force policy will incorporate the use of force principles articulated above, and shall specify that the unreasonable use of force will subject officers to discipline, possible criminal prosecution, and/or civil liability.

**29.** In addition to a primary agency-wide use of force policy, NOPD agrees to develop and implement policies and protocols for each authorized weapon, including each of the types of force addressed below. No officer shall carry any weapon, or use force, that is not authorized by the Department. NOPD use of force policies shall include training and certification requirements that each officer must meet before being permitted to carry and use the authorized weapon.

**C. Vehicle Pursuits**

**30.** NOPD agrees to prohibit vehicle pursuits, except where an officer obtains express supervisory approval, and the officer and supervisor have considered multiple factors and determined that the immediate danger to the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large. NOPD agrees to strictly prohibit the creation of roadblocks (i.e., completely blocking the roadway with vehicles or any obstructions, with the exception of approved devices designed to demobilize the pursued vehicle's movement) during a vehicle pursuit, intentionally positioning oneself in the path of the pursued vehicle, boxing in a violator with moving vehicles, and ramming a violator.

**31.** NOPD agrees to track and analyze vehicle pursuits, including the violation that prompted the pursuit; the officer(s) involved in the pursuit; the supervisor approving the pursuit; the outcome of the pursuit; any officer, suspect, or bystander injuries or deaths; property damage;

and related criminal or civil legal actions. This data and analysis shall be included in the EWS and in NOPD's Use of Force Annual report.

**D. Use of Firearms**

**32.** Officers shall not possess or use unauthorized firearms or ammunition while on-duty.

**33.** All officers' firearms shall be filled with the capacity number of rounds while on-duty.

**34.** Critical firearm discharges by officers on- or off-duty shall be reported and investigated.

**35.** 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 itself, against the officer or another person, and such action is necessary for self defense or to protect the other person; shall not intentionally place themselves in the path of, or reach inside, a moving vehicle; and, where possible, shall attempt to move out of the path of a moving vehicle before discharging their weapon.

**36.** Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that a situation may escalate to the point where lethal force would be authorized. NOPD policy and training shall require and teach proper techniques for unholstering, drawing, or exhibiting a firearm.

**37.** Officers shall be required at least once each year to successfully qualify with each firearm they are authorized to use or carry while on-duty. Officers who fail to qualify shall immediately relinquish NOPD issued firearms on which they failed to qualify. Those officers who still fail to qualify after remedial training within a reasonable time shall be subject to disciplinary action, up to and including termination of employment. Critical firearms discharge related data and analysis shall be tracked in the EWS and in NOPD's Use of Force Annual Report.

**E. Use of Canines**

**38.** DOJ acknowledges that NOPD has implemented an interim canine policy and has initiated significant improvements in its canine operations, including improvements in the quality and amount of training of canine teams, improvements in handler control of canines, personnel changes, and equipment procurement. Building on these steps, NOPD agrees to 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.

**39.** Canine handlers shall limit off-leash canine deployments, searches, and other instances where there is an increased risk of a canine bite to a suspect to instances in which the suspect is

wanted for a violent felony or is reasonably suspected to be armed based upon individualized information specific to the subject.

**40.** A canine handler shall keep his or her canine within visual and auditory range during deployments at all times, except when a canine clears a threshold (e.g., rounding a corner, entering a room, ascending/descending a stairwell, or entering a confined space, such as a crawl-space).

**41.** A canine supervisor shall be on call or on-duty at all times. A canine handler shall have approval from a canine supervisor (sergeant or higher) prior to deployment. If the handler is unable to contact a canine-unit supervisor, the handler shall seek approval from the watch commander before the canine can be deployed. The approving supervisor shall not serve as a canine handler in the deployment.

**42.** Canine handlers shall issue three loud and clear warnings that a canine will be deployed and advise the suspect to surrender, unless such warnings impose an imminent threat of danger to the canine handler or other officers on scene. A canine handler shall allow a sufficient period of time between each warning to provide a suspect an opportunity to surrender. These warnings shall be given in either Spanish or Vietnamese if the suspect is reasonably believed to be a Latino or Vietnamese LEP individual.

**43.** Canine handlers will only allow their canines to engage a suspect by biting if: (a) the suspect's actions pose a risk of imminent danger to the handler or others; a risk of serious harm to the canine; or the suspect is actively resisting (active resistance does not include concealment and refusal to surrender without more) and (b) the handler is in visual and auditory range of a suspect, except where the suspect is hiding in a confined space (e.g., a crawl space) and refuses to surrender, or escaping. Handlers will not allow their canine to engage a suspect by biting if a lower level of force could reasonably be expected to control the suspect or allow for the apprehension.

**44.** In instances where a canine apprehends a suspect by biting, the handler will call the canine off at the first moment the canine can be safely released, taking into account that the average person will struggle if seized or confronted by a canine.

**45.** Whenever an individual sustains a canine bite, the handler or an on-scene officer shall immediately contact an NOPD dispatcher to request Emergency Medical Services response. If

additional medical attention is required, the individual shall be transported to a medical facility for treatment.

**46.** For each canine apprehension, the involved handler, as well as all other officers who used or observed force, shall complete a Force Statement before the end of shift. In addition to the information that must be included in all Force Statements, a canine handler's Force Statement documenting a canine apprehension shall include the following: (1) whether there was contact between the canine and the subject, including contact with the subject's clothing; (2) documentation of the duration of the canine's contact with a subject; and (3) the approximate distance of the canine from the handler at time of apprehension. In addition, in all apprehensions where there is canine contact, visible injury to a suspect, or a complaint of injury, an uninvolved supervisor shall be summoned to the scene for the purpose of completing a Use of Force Report consistent with investigative requirements established under this Agreement.

**47.** An uninvolved canine supervisor shall evaluate each canine deployment for compliance with NOPD policy and state and federal law, and document this evaluation.

**48.** NOPD agrees to establish and maintain a canine certification program that ensures that: (1) canines and their handlers demonstrate control and proficiency in specific, widely accepted obedience and criminal apprehension exercises; (2) canines and their handlers receive a minimum of 16 hours of training every four weeks; (3) the trainer keeps detailed records of whether each canine team has met specific control criteria for each control exercise, and what remedial training was given if a canine team was deficient in any area; and (4) the trainer reports all deficiencies to the unit supervisor. The program shall ensure that canines are certified annually by a nationally recognized trainer or organization, and that a canine is not deployed unless its certification is current. NOPD agrees to ensure that the certifying agency's standards are consistent with NOPD policy and standards.

**49.** NOPD agrees to employ the services of a qualified trainer who is capable of providing certified canine training, and who delivers such training and maintains training records in accordance with NOPD policy and this Agreement.

**50.** NOPD agrees to centrally record and track each canine team's training records, certification records, and health records, regardless of whether individual handlers also maintain records.

51. NOPD agrees to track canine deployments and canine apprehensions, and to calculate and track canine bite ratios on a monthly basis to assess its canine unit and individual canine teams.

52. NOPD agrees to include canine bite ratios as an element of the EWS, and to provide for the review, pursuant to the protocol for that system, of the performance of any handler whose bite ratio exceeds 20 percent during a six-month period, or the entire unit if the unit's bite ratio exceeds that threshold, and to require interventions as appropriate. Canine data and analysis shall be included in NOPD's Use of Force Annual Report.

53. NOPD agrees not to request or use the services of any canine, whether owned by NOPD or any other jurisdiction, without first ensuring that the canine is controllable and otherwise able to meet the standards required by NOPD policy.

**F. Electronic Control Weapons**

54. Officers shall use ECWs only when such force is necessary to protect the officer, the subject, or another party from physical harm, and other less intrusive means would be ineffective. Officers shall be authorized to use ECWs to control a violent suspect when attempts to subdue the suspect by other tactics have been, or will likely be, ineffective and there is a reasonable expectation that it will be unsafe for officers to approach the suspect within contact range.

55. 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 its use. Where feasible, the officer will defer ECW application for a reasonable time to allow the subject to comply with the warning.

56. ECWs will not be used where such deployment may cause serious injury or death from situational hazards, including falling, drowning, losing control of a moving vehicle, or igniting a potentially explosive or flammable material or substance, except where lethal force would be permitted.

57. After one standard ECW cycle (5 seconds), the officer shall reevaluate the situation to determine if subsequent cycles are necessary. Officers shall be trained in 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 Force Statements.

- 58.** Officers shall not intentionally activate more than one ECW at a time against a subject.
- 59.** ECWs shall not be used in drive-stun mode as a pain compliance technique. ECWs shall 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 officers and the subject so that officers can consider another force option.
- 60.** ECWs shall not be used against visibly pregnant women, elderly persons, young children, or visibly frail persons, except where lethal force would be permitted, or where the officer has reasonable cause to believe there is an imminent risk of serious physical injury. Officers shall determine the reasonableness of ECW use based upon all circumstances, including the subject's age, size, physical condition, and the feasibility of lesser force options. Officers shall be trained in the increased risks that ECWs may present to the above-listed vulnerable populations.
- 61.** ECWs may not be applied to a subject's head, neck, or genitalia, except where lethal force would be permitted, or where the officer has reasonable cause to believe there is an imminent risk of serious physical injury.
- 62.** ECWs shall not be used on handcuffed subjects, unless doing so is necessary to prevent them from causing serious physical injury to themselves or others, and if lesser attempts of control have been ineffective.
- 63.** Officers shall keep ECWs in a weak-side holster to reduce the chances of accidentally drawing and/or firing a firearm.
- 64.** Officers shall receive annual ECW certifications, which should consist of physical competency; weapon retention; NOPD policy, including any policy changes; technology changes; and scenario-based training.
- 65.** Officers shall be trained in and follow protocols developed by NOPD, in conjunction with medical professionals, on their responsibilities following ECW use, including:
- a) the removal of ECW probes, including requiring medical or specially trained NOPD personnel to remove probes that are embedded in a subject's skin, except for probes that are embedded in a subject's head, throat, groin, or other sensitive area, which should be removed by medical personnel only;
  - b) the risk of positional asphyxia, and training officers to use a restraint technique that does not impair the subject's respiration following an ECW application;
  - c) the transportation to a hospital for evaluation of all subjects who: have been exposed to

prolonged application (more than 15 seconds); are members of one of the vulnerable populations listed above; or had an ECW used against them in circumstances presenting a heightened risk of harm, such as subjects under the influence of drugs and/or exhibiting symptoms associated with excited delirium; or were kept in prone restraint after ECW use; and

d) the monitoring of all subjects who have received ECW application while in police custody.

**66.** Officers shall report all ECW discharges (except for training discharges), laser painting, and/or arcing of weapons to their supervisor and the communications command center as soon as possible.

**67.** NOPD agrees to develop and implement integrity safeguards on the use of ECWs 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 officer's Force Statement. Discrepancies within the audit should be addressed and appropriately investigated.

**68.** NOPD agrees to include the number of ECWs in operation, and the number of ECW uses, as elements of the EWS. Analysis of this data shall include a determination of whether ECWs 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 laser painting and arcing of weapons to measure the prevention/deterrence effectiveness associated with the use of ECWs. ECW data and analysis shall be included in NOPD's Use of Force Annual Report.

**G. Oleoresin Capsicum Spray**

**69.** NOPD agrees to prohibit the use or possession of Oleoresin Capsicum Spray by on-duty officers, including officers working secondary employment.

**H. SWAT Teams**

**70.** The mission of the Special Operation Division's Tactical Platoons (currently known as "SWAT" Teams) shall be limited to providing a specialized response to critical situations where a tactical response is required, such as hostage rescue, barricaded subjects, high-risk warrant service and high-risk apprehension, and terrorism response. The policy shall prohibit SWAT tactics and equipment from being deployed or used for routine or "proactive" patrol functions or crime prevention, or for the service of non-high-risk warrants, unless approved in writing by a

Deputy Superintendent. This provision does not prohibit SWAT Team members from providing uniformed policing services.

**71.** NOPD agrees to provide written guidance on what types of warrants may be considered “high-risk,” and what tactics are permissible for the service of high-risk warrants. Barring emergency circumstances, the SWAT Team shall have the primary responsibility for execution of any high-risk warrant utilizing tactical team officers equipped with special equipment, training, and weapons.

**72.** In addition to any Use of Force Reports, the SWAT Team shall document its activities in detail, including by preparing written operational plans in consistent formats, and written after-action reports subsequent to call-outs and deployments to critical situations, such as hostage rescue, barricaded subjects, high-risk warrant service, high-risk apprehension, and terrorism response. After-action reports shall address any areas of concern related to policy, training, equipment, or tactics.

**73.** Supervisory review of SWAT Team deployments shall be conducted by an uninvolved, command-level supervisor possessing the requisite knowledge and expertise to analyze and critique specialized response protocols, and shall identify any policy, training, equipment, or tactical concerns raised by the action. Command staff shall identify areas of concern or particular successes, and shall implement the appropriate response, including modifications to policy, training, equipment, or tactics.

**74.** [Paragraph stricken]

**75.** NOPD agrees to track and analyze the number of SWAT Team deployments. The analysis shall include the reason for each activation, the legal authority, type of warrant (if applicable), and the result of each deployment, including: (1) the location; (2) the number of arrests; (3) the type of evidence or property seized; (4) whether a forcible entry was required; (5) whether a weapon was discharged by a SWAT Team member; and (6) whether a person or domestic animal was injured or killed. This data analysis shall be entered into the EWS and included in NOPD’s annual Use of Force Report.

**I. Use of Force Reporting Policy and Use of Force Report**

**76.** NOPD agrees to develop and implement a uniform reporting system pursuant to a Use of Force Reporting policy, using a uniform supervisor Use of Force Report, which will include individual officer Force Statements. NOPD uses of force shall be divided into four levels:

a) Level 1 uses of force include pointing a firearm at a person and hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip) applied as pressure point compliance techniques that are not reasonably expected to cause injury; takedowns that do not result in actual injury or complaint of injury; and use of an impact weapon for non-striking purposes (e.g., prying limbs, moving or controlling a person) that does not result in actual injury or complaint of injury. It does not include escorting, touching, or handcuffing a person with minimal or no resistance.

b) Level 2 uses of force include use of an ECW (including where an ECW is fired at a person but misses) and force that causes or could reasonably be expected to cause an injury greater than transitory pain but does not rise to a Level 3 use of force.

c) Level 3 uses of force include any strike to the head (except for a strike with an impact weapon); use of impact weapons where contact is made (except to the head), regardless of injury; or the destruction of an animal.

d) Level 4 uses of force include all serious uses of force, as defined by this Agreement, and shall be investigated by NOPD's Force Investigation Team.

**77.** Hand control or escort techniques applied for the purposes of handcuffing or escorts that are not used as pressure point compliance techniques, do not result in injury or complaint of injury, and are not used to overcome resistance, are not reportable uses of force.

**78.** All officers using a Level 1 through 4 use of force, and officers observing a Level 2, Level 3, or Level 4 use of force, shall write a Force Statement before the end of shift, which shall be included in the Use of Force Report. The officer's Force Statement shall include: (1) a detailed account of the incident from the officer's perspective; (2) the reason for the initial police presence; (3) a specific description of the acts that led to the use of force; (4) the level of resistance encountered; and (5) a description of every type of force used.

**79.** Officers' Force Statements shall completely and accurately describe the force used or observed. The use of force reporting policy shall explicitly prohibit the use of conclusory statements without supporting detail, including "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") in all statements and reports documenting use of force. Officers shall be subject to disciplinary action for material omissions or inaccuracies in their Force Statements.

**80.** Officers who use or observe force shall notify their supervisors immediately following any use of force incident or upon receipt of an allegation of unreasonable or unreported use of force by any officer. Officers who use or observe force and fail to report it shall be subject to disciplinary action, up to and including termination.

**81.** Use of Force Reports, including Force Statements, shall be maintained centrally by PIB.

**82.** At least annually, NOPD agrees to analyze the year's force data, including the force-related outcome data listed in section XIX.C. below, to determine significant trends; identify and correct deficiencies revealed by this analysis; and document its findings in a public report.

**J. Use of Force Supervisory Investigations**

**83.** The direct supervisor of the officer using a Level 1 use of force shall review and approve in writing the Level 1 use of force before the end of the shift during which the Level 1 force was used. Supervisors shall elevate and investigate any use of force that appears to have been inappropriately categorized as a Level 1 use of force. Each month, supervisors shall review all body-worn camera footage for ten percent of the Level 1 uses of force that month by the officers they supervise to determine whether the force was appropriately categorized as a Level 1 use of force.

**84.** The direct supervisor of the officer(s) using force, upon notification of a Level 2, Level 3, or Level 4 use of force incident or allegation of excessive force, shall respond to the location of occurrence. The direct supervisor of the officer(s) involved in the reportable use of force incident shall investigate all uses of force, with the exception of:

- a) those incidents involving a serious use of force (Level 4 uses of force);
- b) uses of force indicating apparent criminal conduct by an officer, as defined in this Agreement;
- c) a use of force incident by NOPD personnel of a rank higher than the supervisor assigned to investigate the incident; or
- d) a use of force investigation reassigned to FIT by the Superintendent or his designee or PIB.

**85.** A supervisor who was involved in a reportable incident, including by participating in or ordering the force being investigated, shall not investigate the incident or review the Force Statements for approval.

- 86.** For all Level 2 and Level 3 uses of force, the investigating supervisor shall:
- a) respond to the scene, examine the subject of the force for injury, interview the subject for complaints of pain after advising the subject of his/her rights, and ensure that the subject receives medical attention from an appropriate medical provider;
  - b) notify PIB immediately of the use of force and obtain a use of force tracking number;
  - c) identify and collect all relevant evidence and evaluate that evidence to determine whether the use of force: (1) was consistent with NOPD policy and/or (2) raises any policy, training, tactical, or equipment concerns;
  - d) ensure that all evidence to establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
  - e) ensure that a canvass for, and interview of, civilian witnesses is conducted. In addition, civilian witnesses should be encouraged to provide and sign a written statement in their own words;
  - f) ensure that all officers witnessing a use of force incident by another officer provide a Force Statement. Officers involved in a use of force incident shall be separated until interviewed. Group interviews shall be prohibited. Supervisors shall ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred. Supervisors shall not ask officers or other witnesses leading questions that improperly suggest legal justifications for the officers' conduct, where such questions are contrary to appropriate law enforcement techniques. Investigating supervisors shall record all interviews with civilian witnesses and all follow-up interviews with officers, and shall record all interviews with subjects, after advising them of their rights and that they seek to question them only about the use of force. The recording requirements set out in Custodial Interrogations do not apply to subject interviews regarding the use of force.
  - g) review all Force Statements and ensure that all reports include the information required by this Agreement and NOPD policy; and
  - h) consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible. Supervisors will make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force claimed by the

officer and the subject's injuries. NOPD will train all of its supervisors on the factors to consider when evaluating credibility, incorporating credibility instructions provided to jurors. Where a reasonable and trained supervisor would determine that there may have been misconduct, the supervisor shall immediately notify FIT to respond to the scene.

**87.** Each supervisor shall provide a written gist to the Division Commander by the end of the shift documenting the use of force, including a summary of the force incident, the level of force used, the location of the incident, all involved officers, and the force tracking number.

**88.** Each supervisor shall complete and document a use of force supervisory investigation using a supervisor's Use of Force Report within 72 hours of learning of the use of force. Any extension to this 72-hour deadline must be authorized by a Division Commander. This Report shall include:

- a) the supervisor's narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the supervisor's independent review of the facts and circumstances of the incident;
- b) documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;
- c) the names of all other NOPD employees witnessing the use of force;
- d) the investigating supervisor's evaluation of the use of force, based on the supervisor's review of the evidence gathered, including a determination of whether the officer's actions appear to be within NOPD policy and consistent with state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options; and
- e) documentation of any non-disciplinary corrective action taken.

**89.** Upon completion of the supervisor's Use of Force Report, the investigating supervisor shall forward the report through their chain of command to the ICO (if applicable) and/or

Division Commander, who shall review the report to ensure that it is complete and that the findings are supported using the preponderance of the evidence standard. The Division Commander and/or ICO shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.

**90.** Where the findings of the Use of Force Report are not supported by a preponderance of the evidence, the investigating supervisor's chain of command shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation. The investigating supervisor's superior shall counsel the investigating supervisor regarding the inadequately supported determination and of any investigative deficiencies that led to it. The Division Commander and/or ICOs shall be responsible for the accuracy and completeness of Use of Force Reports prepared by supervisors under their command.

**91.** Where an investigating supervisor repeatedly conducts deficient investigations, the supervisor shall receive the appropriate corrective action, including training, demotion, and/or removal from a supervisory position in accordance with performance evaluation procedures and/or Civil Service Rules.

**92.** Whenever an investigating supervisor, reviewing supervisor, ICO, or Division Commander finds evidence of a use of force indicating apparent criminal conduct by an officer, he or she shall suspend the force investigation immediately and notify PIB. PIB shall immediately notify FIT, which will take over the investigation.

**93.** When the Division Commander finds that the investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to PIB. PIB shall review the investigation to ensure that it is complete and that the findings are supported by the evidence.

**94.** At the discretion of the Superintendent, his designee, or PIB, a use of force investigation may be assigned or re-assigned for investigation to FIT or to another supervisor, whether within or outside of the District in which the incident occurred, or may be returned to the Unit for further investigation or analysis. This assignment or re-assignment shall be explained in writing.

**95.** Where, after investigation, a use of force is found to be out of policy, the Superintendent shall direct and ensure appropriate discipline. Where the use of force indicates policy, training, tactical, or equipment concerns, the Superintendent shall ensure also that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.

**K. Force Investigation Team**

**96.** NOPD agrees to establish a single, uniform reporting and investigation/review system for all Level 4 uses of force (i.e., serious uses of force, including critical firearm discharges), as defined by this Agreement.

**97.** NOPD agrees to ensure that all serious uses of force are investigated fully and fairly by individuals with appropriate expertise, independence, and investigative skills to ensure that uses of force that are contrary to law or policy are identified and appropriately resolved; that policy, training, equipment, or tactical deficiencies related to the use of force are identified and corrected; and that investigations of sufficient quality to ensure that officers are held accountable, as necessary, are conducted. To achieve this outcome, NOPD agrees to:

a) create a FIT to conduct investigations of serious uses of force, uses of force indicating apparent criminal conduct by an officer, uses of force by NOPD personnel of a rank higher than sergeant, or uses of force reassigned to FIT by the Superintendent or his designee or PIB. FIT also shall investigate all instances where an individual has died while in, or as an apparent result of being in, the custody of NOPD. FIT shall be comprised of personnel who are specially trained in both criminal and administrative force investigations. Members of FIT shall be assigned to PIB and shall not be assigned to any District. FIT investigations may result in criminal charges, administrative action, or both.

b) Within 280 days from the Effective Date, NOPD agrees to recruit, assign, and train a sufficient number of personnel to FIT to fulfill the requirements of this Agreement. Prior to performing FIT duties, FIT members shall receive 40 hours of FIT-specific training in FIT procedures; call out and investigative protocols; proper roles of on-scene counterparts such as crime scene technicians, the Monitor, the DA, the IPM, and the City Attorney's Office; and investigative equipment and techniques. FIT members shall also receive FIT-specific annual in-service training.

c) NOPD agrees to create a FIT procedural manual. The procedural manual shall include:

- (1) definitions of all relevant terms;
- (2) clear statements of the mission and authority of FIT;
- (3) procedures on report writing;
- (4) procedures for collecting and processing evidence;

- (5) procedures to ensure appropriate separation of criminal and administrative investigations in the event of compelled subject officer statements;
- (6) procedures for consulting with the DA, including ensuring that administrative investigations are not unnecessarily delayed while a criminal investigation is pending;
- (7) scene management procedures; and
- (8) management procedures.

**98.** Where appropriate to ensure the fact and appearance of impartiality, for investigations of serious uses of force or force indicating apparent criminal conduct by an officer, NOPD may refer the incident for investigation by an independent and highly competent entity outside NOPD.

**99.** NOPD's Homicide Section shall not investigate any NOPD officer-involved serious use of force as defined by this Agreement, or any in-custody death.

**100.** In every incident involving a serious use of force, or any use of force indicating apparent criminal conduct by an officer, the supervisor shall immediately notify FIT. Unless it can verify that the supervisor has already done so, FIT shall immediately notify PIB of the use of force and obtain a use of force tracking number.

**101.** FIT shall respond to the scene of every incident involving a serious use of force; any use of force indicating apparent criminal conduct by an officer; any use of force by an officer of a rank higher than sergeant; and any incident where an individual has died while in, or as an apparent result of being in, the custody of NOPD, or as ordered by the Superintendent or his designee or PIB.

**102.** The Commander of PIB shall immediately notify and consult with the DA, IPM, FBI, and the USAO regarding any use of force indicating apparent criminal conduct by an officer, evidence of apparent criminal conduct by an officer discovered during a misconduct investigation, any use of force in which an officer discharged his firearm, or where an individual has died while in, or as an apparent result of being in, the custody of NOPD.

**103.** If the case may proceed criminally, or where NOPD requests a criminal prosecution, any compelled interview of the subject officers shall be delayed. No other part of the investigation shall be held in abeyance unless specifically authorized by the Superintendent in consultation with the agency conducting the criminal investigation.

**104.** NOPD agrees to make good faith efforts to work with the Orleans Parish Coroner's Office in requesting that that Office provide a completed Coroner's report within 30 days regarding a death proximate to a use of force and with the DA or other investigating agency regarding any criminal declination within 60 days after the use of force.

**105.** In conducting its investigation, FIT shall:

- a) review all Force Statements to ensure that these statements include the information required by this Agreement and NOPD policy;
- b) respond to the scene, examine the subject for injury, interview the subject for complaints of pain after advising the subject of his or her rights, and ensure that the subject receives medical attention from an appropriate medical provider;
- c) ensure that all evidence to establish material facts related to the use of force, including but not limited to audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
- d) ensure that a canvass for, and interview of, civilian witnesses is conducted. In addition, civilian witnesses should be encouraged to provide and sign a written statement in their own words;
- e) ensure, consistent with applicable law, that all officers witnessing a serious use of force incident by another officer provide a Force Statement regarding the incident. Officers involved in a use of force incident shall be separated until interviewed. Group interviews shall be prohibited. FIT shall ensure that all FIT investigation reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred. FIT shall not ask officers or other witnesses leading questions that improperly suggest legal justifications for the officers' conduct, when such questions are contrary to appropriate law enforcement techniques. FIT shall record all interviews; and
- f) consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible. FIT will make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force claimed by the officer and the subject's injuries. NOPD will train all of its FIT members on the factors to consider when evaluating credibility, incorporating credibility instructions provided to jurors.

**106.** FIT shall complete a preliminary report that shall be presented to the Superintendent or the Superintendent's designee as soon as possible, but in no circumstances later than 24 hours after learning of the use of force.

**107.** FIT shall complete its administrative use of force investigation within 30 days from the use of force. Any request for an extension to this time limit must be approved by the Deputy Superintendent of PIB through consultation with the Superintendent. At the conclusion of each use of force investigation, FIT shall prepare an investigation report. The report shall include:

- a) a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on FIT's independent review of the facts and circumstances of the incident;
- b) documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;
- c) the names of all other NOPD employees witnessing the use of force;
- d) FIT's evaluation of the basis for the use of force, based on FIT's review of the evidence gathered, including a determination of whether the officer's actions appear to be within NOPD policy and consistent with state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options;
- e) if a weapon was used, documentation that the officer's certification and training for the weapon are current; and
- f) documentation of any disciplinary and/or non-disciplinary corrective action recommended.

**L. Use of Force Review Board**

**108.** NOPD agrees to develop and implement a Use of Force Review Board to review all serious uses of force and other FIT investigations. The UFRB shall be comprised of the Deputy Superintendent of the Public Integrity Bureau, the Deputy Superintendent of the Field Operations

Bureau, and the Deputy Superintendent of the Investigations & Support Bureau. The UFRB shall conduct timely, comprehensive, and reliable reviews. The UFRB shall:

- a) review each FIT investigation within 30 days of receiving the FIT investigation report to ensure that it is complete and that the findings are supported by a preponderance of the evidence;
- b) hear the case presentation from the lead investigator and discuss the case as necessary with the investigator to gain a full understanding of the facts of the incident. The officer(s) who used the force subject to investigation, or who are otherwise the subject(s) of the FIT investigation, shall not be present;
- c) order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings. Where the findings are not supported by a preponderance of the evidence, the UFRB shall document the reasons for this determination, which shall be included as an addendum to the original investigation, including the specific evidence or analysis supporting their conclusions;
- d) determine whether the force violated NOPD policy. If the force violated NOPD policy, the UFRB shall refer it to PIB for disciplinary action;
- e) determine whether the incident raises policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate unit within NOPD to ensure they are resolved;
- f) direct District supervisors to take and document non-disciplinary corrective action to enable or encourage an officer to improve his or her performance; and
- g) document its findings and recommendations in a UFRB Report within 45 days of receiving the FIT investigation and within 15 days of the UFRB case presentation.

**M. Use of Force Training**

**109.** NOPD shall provide all NOPD officers with 40 hours of use of force training within 365 days of the Effective Date, and 24 hours of use of force training on at least an annual basis thereafter, including, as necessary, developments in applicable law and NOPD policy. NOPD shall coordinate and review all use of force training to ensure quality, consistency, and compliance with the Constitution, Louisiana law, this Agreement and NOPD policy. NOPD's use of force training shall include the following topics:

- a) NOPD's use of force model, as described in this Agreement;

- b) proper use of force decision-making;
- c) use of force reporting requirements;
- d) the Fourth Amendment and related law;
- e) role-playing scenarios and interactive exercises that illustrate proper use of force decision-making, including training on the importance and impact of ethical decision making and peer intervention;
- f) the proper deployment and use of all intermediate weapons or technologies, including batons, canines, and ECWs;
- g) de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest may be the appropriate response to a situation, even when the use of force would be legally justified;
- h) threat assessment;
- i) basic crisis intervention and interacting with people with mental illnesses, including instruction by mental health practitioners and an emphasis on de-escalation strategies (the Crisis Intervention Training provided to all new and current officers pursuant to this Agreement may be combined with this training);
- j) factors to consider in initiating or continuing a pursuit;
- k) appropriate training on conflict management; and
- l) for supervisors of all ranks, as part of their initial and annual in-service supervisory training, additional training in conducting use of force investigations; strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force; and supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force.

**110.** Included in the use of force training set out above, NOPD shall deliver firearms training to all officers within 365 days of the Effective Date and at least yearly thereafter. NOPD firearms training shall:

- a) require officers to complete and satisfactorily pass firearm training and to qualify for regulation and other service firearms, as necessary, on an annual basis;
- b) require recruits, officers in probationary periods, and officers who return from unarmed

status to complete and satisfactorily pass firearm training and to qualify for regulation and other service firearms before such personnel are permitted to carry and use firearms;

c) incorporate professional night training, stress training (e.g., training in using a firearm after undergoing physical exertion), and proper use of force decision-making training, including continuous threat assessment techniques, in the annual in-service training program; and

d) ensure that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and failure to utilize safe gun handling procedures at all times.

#### **IV. CRISIS INTERVENTION TEAM**

NOPD agrees to minimize the necessity for the use of force against individuals in crisis due to mental illness or a diagnosed behavioral disorder. To achieve this outcome, NOPD agrees to implement the requirements set out below.

##### **A. Crisis Intervention Planning Committee**

**111.** Within 180 days of the Effective Date, NOPD and the City agree to implement a Crisis Intervention Planning Committee (“Planning Committee”) to direct the development and implementation of the CIT. The Planning Committee shall analyze and recommend appropriate changes to policies, procedures, and training methods regarding police contact with persons who may be mentally ill with the goal of de-escalating the potential for violent encounters.

**112.** The Planning Committee shall include representation from NOPD command leadership and City-contracted mental health professionals. NOPD shall also seek representation from the civilian leadership of the MCTU, 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.

##### **B. Program Development**

**113.** NOPD and the City agree to implement a comprehensive first responder CIT program to develop and maintain specially trained CIT officers. This program shall incorporate the following:

a) Within 270 days of the Effective Date, an operations subcommittee, appointed by and reporting to the Planning Committee, shall develop policies and procedures for the transfer of

custody or voluntary referral of individuals between NOPD, receiving facilities, and local mental health and social service agencies. These policies and procedures shall clearly describe the existing roles and responsibilities of the existing MCTU and NOPD patrol officers, and of CIT officers.

b) NOPD agrees to continue using the MCTU and to continue staffing it with well-trained and dedicated community volunteers, to assist NOPD patrol units in the management and transportation of persons suffering a mental health crisis or from a diagnosed behavioral disorder. MCTU shall retain its duties and responsibilities in providing transportation for individuals experiencing a mental health or behavioral crisis.

c) Within 365 days of the Effective Date, the Planning Committee shall select CIT officer volunteers, based upon supervisor recommendations, PIB records, and interviews. Preference should be given to officers with at least three years of field experience.

d) CIT officers shall be assigned to the patrol division and maintain their standard patrol duties, except when called to respond to potential behavioral or mental health crisis events outside of their assigned patrol district.

e) CIT officers who are dispatched to a crisis event shall have the responsibility for the scene and discretion to determine strategies for resolving the event unless an appropriate supervisor is present and affirmatively assumes the scene responsibility.

f) NOPD shall track CIT use through data provided by the CIT officer or MCTU after each response. NOPD shall gather and track the following data at a minimum:

- (1) Date, time, and location of the incident;
- (2) Subject's name, age, gender, and address;
- (3) Whether the subject was armed, and the type of weapon;
- (4) Whether the subject is a U.S. military veteran;
- (5) Complainant's name and address;
- (6) Name and badge number of CIT officer on the scene;
- (7) Whether a supervisor responded to the scene;
- (8) Techniques or equipment used;
- (9) Any injuries to officers, subject, or others;
- (10) Disposition; and
- (11) Brief narrative of the event (if not included in any other document).

g) NOPD shall publicly report this data, aggregated as necessary to protect privacy.

**C. CIT and First Responder Training**

**114.** NOPD shall require officers selected for the CIT program to undergo a 40-hour initial comprehensive training prior to being assigned CIT duties, and eight hours of in-service training annually thereafter.

**115.** Within three years of the Effective Date, NOPD shall train at least 20% of its patrol division in the CIT program to ensure that NOPD can provide a CIT-trained officer in each shift in each District.

**116.** Within 270 days of the Effective Date, a curriculum subcommittee of the Planning Committee shall develop a 40-hour curriculum and in-service training for first responders based on the national CIT model. The curriculum subcommittee may adapt MCTU's existing training curriculum for this purpose. CIT training faculty should include volunteer local area professionals and advocates to the greatest extent possible. This crisis intervention training shall emphasize mental health-related topics, crisis resolution skills, de-escalation training, and access to community-based services.

**117.** Training for all newly selected CIT officers shall begin within 365 days of the Effective Date and shall be completed within three years. This training shall include not only lecture-based instruction, but also on-site visitation and exposure to mental health facilities, intensive interaction with individuals with a mental illness, and scenario-based de-escalation skills training.

**118.** In addition to the more extensive training for CIT officers set out above, NOPD agrees to provide all new recruits at least 16 hours of training on responding to persons in behavioral or mental health crisis, and four hours of in-service training annually thereafter. NOPD and the City further agree to provide all current officers with eight hours of training on responding to persons in behavioral or mental crisis within 365 days of the Effective Date, and four hours of in-service training annually thereafter.

**119.** Within 365 days of the Effective Date, NOPD agrees to offer the 40-hour crisis intervention training to all new and current dispatchers to enable them to identify calls for service that involve behavioral or mental health crisis events. NOPD agrees to offer to provide this training to new dispatchers within 90 days of their start date. NOPD agrees to offer crisis intervention in annual in-service training for dispatchers.

**D. Maintenance of CIT Program**

**120.** NOPD agrees to maintain the CIT Planning Committee after the CIT program is operational. The Planning Committee shall serve as a problem-solving forum for interagency issues and shall monitor ongoing outcome indicators collected by each agency. These indicators may include data such as NOPD CIT use, NOPD CIT behavioral event disposition data, Orleans Parish Prison booking data, the number of individuals with a mental health diagnosis at the jail, and the transfer of custody and voluntary referral rates between NOPD, emergency receiving facilities, and community agencies.

**121.** NOPD agrees to review the outcome data generated through the process described above to: determine whether to recognize individual CIT officer performance that deserves commendation; develop new response strategies for repeat calls for service; identify training needs for the annual CIT in-service; make CIT curriculum changes; and identify other NOPD issues to allow NOPD to provide an appropriate response to a behavioral crisis event.

**V. STOPS, SEARCHES, AND ARRESTS**

NOPD agrees to ensure that all NOPD investigatory stops, searches, and arrests are conducted in accordance with the rights secured or protected by the Constitution and laws of the United States. NOPD agrees to ensure that investigatory stops, searches, and arrests are part of an effective overall crime prevention strategy; are consistent with community priorities for enforcement; and are carried out with fairness and respect. To achieve these outcomes, NOPD agrees to implement the requirements set out below.

**A. Investigatory Stops and Detentions**

**122.** NOPD officers may only conduct investigatory stops or detentions where the officer has reasonable suspicion that a person has been, is, or is about to be engaged in the commission of a crime.

**123.** NOPD officers shall use accurate and specific descriptive language and not rely solely on “boilerplate” or “pat” language in any reports documenting investigatory stops, detentions, or searches. Articulation of reasonable suspicion and probable cause shall be specific and clear.

**124.** NOPD officers shall not use or rely on information known to be materially false or incorrect in effectuating an investigatory stop or detention.

**125.** NOPD officers shall not use race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity as a factor, to any extent or degree, in

establishing reasonable suspicion or probable cause, except as part of an actual and apparently credible description of a specific suspect or suspects in any criminal investigation.

**126.** NOPD officers shall continue to require reasonable suspicion to conduct field interviews, and document investigatory field contacts, including field interviews, in accordance with the stop and search data collection requirements of this Agreement.

**B. Searches**

**127.** NOPD officers shall not use race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity in exercising discretion to conduct a warrantless search or to seek a search warrant, except as part of an actual and apparently credible description of a specific suspect or suspects in any criminal investigation.

**128.** An officer shall immediately notify a supervisor when considering a search based on consent, and the supervisor shall approve the search before it is conducted.

**129.** Where an officer seeks consent for a search, the officer shall affirmatively inform the subject of his or her right to refuse and to revoke consent at any time, and document the subject's consent on a written form that explains these rights.

**130.** NOPD officers shall only conduct searches of individuals on probation or parole where legal authority for the search has been established.

**131.** NOPD agrees to ensure that the consent to search form includes separate signature lines for civilians to affirm that they understand they have a right to refuse, and for officers to certify that they have read and explained the right to refuse to the civilian.

**132.** NOPD agrees to ensure that officers understand how strip and body cavity searches are different than regular searches and are trained on how to conduct proper field strip searches. NOPD shall ensure that field strip searches of arrestees are performed only in the rarest of circumstances under exigent circumstances where the life of officers or others may be placed at risk, under conditions that provide privacy, and with the explicit approval of a supervisory officer. NOPD agrees to ensure that strip searches are only performed when the officer has articulable probable cause that a subject is concealing a weapon or contraband.

**133.** When approval to conduct a strip search is requested, the supervisor shall immediately respond to the scene to approve the strip search. In situations where strip searches are legally justified, necessary under NOPD policy, and authorized by a supervisor, the search shall be conducted in a professional manner by trained personnel; include the least number of personnel

necessary; be performed only by those of the same sex as the identified sex of the individual; and under conditions that provide privacy from all but those authorized to conduct the search.

**134.** NOPD agrees to ensure that body cavity searches are performed only after obtaining a search warrant and by specially trained medical personnel.

**135.** An affidavit or sworn declaration supporting an application for a search warrant shall provide an accurate and clear description of the reasons for the request for the search, the place or thing to be searched, and items or possible evidence that are the purpose of the search.

**136.** A supervisor shall review each request for a search or arrest warrant, including each affidavit or declaration, before it is filed by an officer in support of a warrant application, for appropriateness, legality, and conformance with NOPD policy and this Agreement. The supervisor shall assess the information contained in the warrant application and supporting documents for authenticity, including an examination for “boilerplate” or “pat” language, inconsistent information, and lack of articulation of a legal basis for the warrant.

**137.** As part of the supervisory review, the supervisor shall document in an auditable format those warrant applications that are legally unsupported, are in violation of NOPD policy or this Agreement, or that indicate a need for corrective action or review of agency policy, strategy, tactics, or training. The supervisor shall take appropriate action to address violations or deficiencies, including recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation. The quality and accuracy of search warrants and supportive affidavits or declarations shall be taken into account in officer performance evaluations.

**138.** A supervisor shall assist in developing an operational plan for the execution of a search warrant, be present for execution of the search warrant, and review and document the search in an after-action report within 24 hours of the execution of the warrant.

**139.** NOPD officers shall not detain non-occupants present at the location where a search warrant is executed for longer than reasonably necessary to secure the area, or to determine whether they are occupants of the premises being searched, or where the officer has individualized reasonable suspicion that the non-occupant is involved in criminal activity or poses a danger to officer safety.

**140.** NOPD shall maintain, centrally and in each NOPD District and specialized unit, a log listing each search warrant, the case file where a copy of such warrant is maintained, the officer

who applied for the search warrant, and each supervisor who reviewed the application for a search warrant.

**C. Arrests**

**141.** An NOPD officer shall only arrest an individual where the officer has probable cause.

**142.** In effectuating an arrest, NOPD officers shall not rely on information known to be materially false or incorrect. Officers may not consider race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity in effecting an arrest, except as part of an actual and apparently credible description(s) of a specific suspect or suspects in any criminal investigation.

**143.** An officer shall immediately notify a supervisor when effectuating a felony arrest; an arrest where the officer used force; an arrest for obstructing or resisting an officer; a custodial arrest where the most serious violation was a vehicle infraction, simple drug possession, or, outside the French Quarter and Central Business District, any of the following city or state laws: Disturbing the Peace (City Code 54-103; LSA-R.S. 14:103); Criminal Trespass (City Code 54-153; LSA-R.S. 14:63); Obstructing Public Passages (City Code 54-40; LSA-R.S. 14:100.1); or Begging/Vagrancy (City Code 54-411; 14:107). Upon notification, the supervisor shall respond to the scene. The supervisor is not required to respond to the scene of an arrest involving a Level 1 use of force.

**144.** The responding supervisor shall approve or disapprove the officer's arrest recommendation based on the existence of probable cause and NOPD policy. The supervisor shall take appropriate action to address violations or deficiencies in the officer's arrest recommendation, including releasing the subject, recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation.

**145.** NOPD patrol officers shall complete all arrest reports before the end of shift. NOPD field supervisors shall review each arrest report of officers under their command and shall memorialize their review in writing within 12 hours of receiving the report, absent exceptional circumstances. Supervisors shall review reports and forms for "boilerplate" or "pat" language, inconsistent information, lack of probable cause, or other indications that the information in the reports or forms is not authentic or correct.

**146.** As part of the supervisory review, the supervisor shall document in an auditable format those arrests that are unsupported by probable cause, are in violation of NOPD policy or this Agreement, or that indicate a need for corrective action or review of agency policy, strategy, tactics, or training. The supervisor shall take appropriate action to address violations or deficiencies in making arrests, including recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation. For each subordinate, the supervisor shall track each violation or deficiency and the corrective action taken, to identify officers needing repeated corrective action. The supervisor shall ensure that each violation or deficiency is noted in the officer's performance evaluations. The quality of these supervisory reviews shall be taken into account in the supervisor's own performance evaluations. NOPD shall take appropriate corrective or disciplinary action against supervisors who fail to conduct reviews of adequate and consistent quality.

**147.** A command-level official shall review, in writing, all supervisory reviews related to arrests that are unsupported by probable cause, are in violation of NOPD policy, or that indicate a need for corrective action or review of agency policy, strategy, tactics, or training. The commander's review shall be completed within seven days of receiving the document reporting the event. The commander shall evaluate the corrective action and recommendations in the supervisor's written report and ensure that all appropriate corrective action is taken, including referring the incident to PIB for investigation, if appropriate.

**148.** NOPD shall track centrally and at the District level the DA's acceptance and refusal rates of arrests made by NOPD and reasons for refusals, when made available by the DA, including those factors and information indicating that a failure to prosecute was due to the quality of officer arrests or concerns regarding officer conduct. Each District Commander shall be held accountable for referring to PIB for investigation any information regarding specific incidents of possible officer misconduct related to officer arrests noted in the DA's refusal reasons.

**D. Stop and Search Data Collection and Review**

**149.** Within 270 days of the Effective Date, NOPD shall develop a written or electronic report format to collect data on all investigatory stops and searches, whether or not they result in an arrest or issuance of a citation. This system shall allow for summarization and searches and also shall be integrated into the EWS. NOPD's stop and search data collection system shall be

subject to the review and approval of the Monitor and DOJ, and shall require officers to document the following:

- a) officer's name and badge number;
- b) date and time of the stop;
- c) location of the stop;
- d) duration of the stop;
- e) subject's apparent race, ethnicity, gender, and apparent age;
- f) if a vehicle stop, presence and number of any passengers and the apparent race, ethnicity, gender, and age of each passenger; if a non-vehicle stop (e.g., pedestrian or bicycle), number of individuals stopped and the apparent race, ethnicity, gender, and age of each person;
- g) reason for the stop, including a description of the facts creating reasonable suspicion;
- h) if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and reason;
- i) whether any individual was asked to consent to a search and whether such consent was given;
- j) whether a probable cause search was performed on any individual, including a brief description of the facts creating probable cause;
- k) whether a pat-and-frisk or other search was performed on any individual, including a description of the facts justifying the pat-and-frisk or other search;
- l) whether any contraband or evidence was seized from any individual, and nature of the contraband or evidence; and
- m) disposition of the stop, including whether a citation or summons was issued to, or an arrest was made of, any individual.

**150.** Officers shall document investigatory stops and detentions, and any searches resulting from or proximate to the stop or detention. In all instances where property or evidence is seized, the officer shall immediately complete a police incident report documenting a complete and accurate inventory of the property or evidence seized, and submit the property or evidence seized to Central Property and Evidence before the end of shift. All documentation of stops, detentions, searches, and seizures shall be submitted to the officer's supervisor by the end of shift. Absent exceptional circumstances, field supervisors shall review investigatory stops and detention or search reports by field officers within 12 hours of receiving this report. Supervisors shall report

and shall document: (1) those investigatory stops and detentions that appear unsupported by reasonable suspicion; (2) those searches that appear to be without legal justification; (3) stops or searches in violation of NOPD policy or this Agreement, or (4) stops or searches that indicate a need for corrective action or review of agency policy, strategy, tactics, or training.

**151.** The supervisor shall take appropriate action to address all violations or deficiencies in investigatory stops, detentions, or executions of searches, including recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation. For each subordinate, the supervisor shall track each violation or deficiency and the corrective action taken, if any, in order to identify officers needing repeated corrective action. The supervisor shall ensure that each violation or deficiency is noted in the officer's performance evaluations. The quality and completeness of these supervisory reviews shall be taken into account in the supervisor's own performance evaluations. NOPD shall take appropriate corrective or disciplinary action against supervisors who fail to conduct complete, thorough, and accurate reviews of officers' investigatory detentions and searches.

**152.** NOPD shall develop a protocol for comprehensive analysis, on at least an annual basis, of the stop and search data collected. This protocol shall be subject to the review and approval of the Monitor and DOJ, and shall identify and incorporate appropriate benchmarks for comparison.

**153.** On at least an annual basis, NOPD shall issue a report summarizing the stop and search data collected, the analysis of that data, and the steps taken to correct problems and build on successes. The report shall be publicly available.

**154.** NOPD shall ensure that all databases containing individual-specific data comply fully with federal and state privacy standards governing personally-identifying information. NOPD shall develop a process to restrict database access to authorized, identified users who are accessing the information for a specific and identified purpose.

**E. First Amendment Right to Observe and Record Officer Conduct**

**155.** NOPD shall ensure that, in accordance with their rights secured or protected by the Constitution and laws of the United States, onlookers or bystanders may witness, observe, record, and/or comment on officer conduct, including stops, detentions, searches, arrests, or uses of force. Officers shall respect the right of civilians to observe, record, and/or verbally comment

on or complain about the performance of police duties occurring in public, and NOPD shall ensure that officers understand that exercising this right serves important public purposes.

**156.** Individuals observing stops, detentions, arrests, and other incidents shall be permitted to remain in the proximity of the incident unless one of the conditions in paragraph 160 is met.

**157.** Individuals shall be permitted to record police officer enforcement activities by camera, video recorder, cell phone recorder, or other means, unless one of the conditions in paragraph 160 is met.

**158.** Officers shall not threaten, intimidate, or otherwise discourage an individual from remaining in the proximity of or recording police officer enforcement activities.

**159.** Officers shall not detain, prolong the detention of, or arrest an individual for remaining in the proximity of, recording, or verbally commenting on officer conduct directed at the individual or a third party, unless one of the conditions in paragraph 160 is met.

**160.** Officers shall take appropriate law enforcement action against a bystander only if a bystander's presence would jeopardize the safety of the officer, the suspect, others in the vicinity or crime scene integrity; the bystander violates the law; or the bystander incites others to violate the law.

**161.** Officers shall not seize or otherwise coerce production of recorded sounds or images without obtaining a warrant, or order an individual to destroy such recordings. Where an officer has a reasonable belief that a bystander or witness has captured a recording of critical evidence related to a felony, the officer may secure such evidence for no longer than required to obtain a legal subpoena, search warrant, or other valid order.

**F. Stop, Search, and Arrest Training**

**162.** NOPD shall provide all officers with at least 24 hours within 365 days of the Effective Date, and at least four hours on at least an annual basis thereafter, of training on stops, searches, and arrests, including the requirements of this Agreement. Such training shall be taught by a qualified legal instructor with significant experience in Fourth Amendment issues, and shall:

- a) address Fourth Amendment and related law, NOPD policies, and requirements in this Agreement regarding searches and seizures;
- b) address First Amendment and related law, NOPD policies, and requirements in this Agreement on the rights of individuals to verbally dispute, observe, and record officer conduct;

- c) address the difference between various police contacts by the scope and level of police intrusion; between probable cause, reasonable suspicion, and mere speculation; and between voluntary consent and mere acquiescence to police authority;
- d) provide guidance on the facts and circumstances that should be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention;
- e) provide guidance on the level of permissible intrusion when conducting searches, such as “pat-downs” or “frisks;”
- f) provide guidance on the legal requirements for conducting searches, with and without a warrant;
- g) provide guidance on the permissible nature and scope of searches based on the level of intrusion on an individual’s privacy interests, including searches conducted pursuant to probation or parole release provisions;
- h) specify the procedures for executing searches, including handling, recording, and taking custody of seized property or evidence;
- i) provide guidance on effecting an arrest with and without an arrest warrant; and
- j) provide guidance regarding the nature and scope of searches incident to an arrest.

## **VI. CUSTODIAL INTERROGATIONS**

NOPD agrees to ensure that officers conduct custodial interrogations in accordance with the subjects’ rights secured or protected by the Constitution and laws of the United States, including the rights to counsel and against self-incrimination. NOPD agrees to ensure that custodial interrogations are conducted professionally and effectively, so as to elicit accurate and reliable information. To achieve these outcomes, NOPD agrees to implement the requirements set out below.

### **A. Interrogation Restrictions and Equipment**

**163.** Officers shall not use physical violence or make threats to carry out harm to the individual or the individual’s family during custodial interrogations.

**164.** All custodial interrogations that take place in a police facility, and all interrogations that involve suspected homicides or sexual assaults, shall be video and audio recorded. All recorded custodial interrogations will be recorded in their entirety. NOPD rejects the concept of a “pre-interview” and prohibits any decision not to record any portion of the interrogation based on such categorization. The recording equipment shall not be turned off unless the suspect states

that he/she does not want the interview to be recorded. If the suspect requests that he/she does not want the interview to be recorded, the interviewer will record the subject making this request and shall document this request in the case report.

**165.** If the interrogation is not able to be video and audio recorded because of equipment failure or malfunction, detectives shall record the interrogation by means of a digital or cassette recorder. Any equipment failure shall be explained and documented in the case report, the case file, and in a memo to the Deputy Chief of the Investigation & Support Bureau.

**166.** All officers shall maintain in the case file their notes taken during interviews and interrogations.

**167.** Within 270 days from the Effective Date, NOPD shall designate interview rooms for all Districts and specialized units, and ensure that interview rooms are equipped with functioning audio and video recording technology that allows for recording and maintenance of all phases of interrogations.

**168.** Within 270 days from the Effective Date, NOPD shall use qualified interpreters for any interrogation of an LEP individual, and Miranda warnings shall be provided to the subject in his or her primary language. Because of the dual role bilingual NOPD employees may have when conducting an interrogation and simultaneously acting as an interpreter, they should only be used as an interpreter during an interrogation if they have identified themselves as officers or employees of the Department, are authorized as NOPD interpreters, and are trained in using interpretation protocols consistent with best practices, as required by this Agreement and NOPD's language assistance policy and plan.

**B. Detective Selection and Interrogation Training**

**169.** NOPD shall post all detective openings throughout the Department and shall revise eligibility criteria for detectives in Districts and specialized units to require appropriate experience, writing samples, supervisor recommendations, and an interview.

**170.** Within 365 days of the Effective Date, NOPD shall develop and deliver at least 24 hours of formal training for newly assigned detectives on interrogation procedures and methods. This training shall include legal standards, ethics, the mechanics of conducting effective and constitutional investigations, and causes for investigative failures and false confessions. NOPD shall provide regular, and at least annual, in-service training to all detectives on updates and changes to the law regarding interrogations and confessions.

## **VII. PHOTOGRAPHIC LINE-UPS**

NOPD agrees to ensure that photographic line-ups are conducted effectively and in accordance with the rights secured or protected by the Constitution and laws of the United States, so as to elicit accurate and reliable information. To achieve this outcome, NOPD agrees to implement the requirements set out below.

**171.** No officer who is involved in the investigation shall participate in administering the photographic lineup. The individual who administers the lineup shall not have any knowledge as to which photograph depicts the suspect in the investigation.

**172.** NOPD agrees that, before any lineup is administered, eyewitnesses shall be admonished that the suspect might or might not be present in the lineup.

**173.** NOPD agrees to select “filler” photographs—those that do not depict the suspect—of individuals who generally fit the witness’s description of the perpetrator. When there is a limited or inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.

**174.** NOPD agrees to keep a complete record of each display procedure and results. The record shall include the time, date, location, identity of the viewing person, photograph numbers, and name of the administrator of the line-up.

**175.** NOPD agrees to document other information pertinent to the display procedure, including any statements made by the viewing individual and identities of other persons present during the procedure.

**176.** If a suspect selection is made, NOPD agrees to mark and maintain as evidence the photographs used in the lineup, including a copy of the photo array if one was used. It shall be kept as evidence until the final disposition of the case, at which time it shall become a part of the permanent case file.

## **VIII. BIAS-FREE POLICING**

NOPD agrees to deliver police services that are equitable, respectful, and bias-free, in a manner that promotes broad community engagement and confidence in the Department. In conducting its activities, NOPD agrees to ensure that members of the public receive equal protection of the law, without bias based on race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity, and in accordance with the rights

secured or protected by the Constitution and laws of the United States. To achieve these outcomes, NOPD agrees to implement the requirements below.

**A. Bias-Free Policing Training**

**177.** NOPD agrees to provide all officers with four hours of comprehensive training on bias-free policing within 365 days of the Effective Date, and four hours annually thereafter, based on developments in Louisiana or federal law and NOPD policy. Such training shall emphasize that discriminatory policing in the form of either selective enforcement or non-enforcement of the law, including the selection or rejection of particular tactics or strategies based upon stereotypes or bias, is prohibited by policy and will subject officers to discipline.

This training shall address:

- a) methods and strategies for more effective policing that rely upon non-discriminatory factors;
- b) police and community perspectives related to discriminatory policing;
- c) Constitutional and other legal requirements related to equal protection and unlawful discrimination, including the requirements of this Agreement;
- d) the protection of civil rights as a central part of the police mission and as essential to effective policing;
- e) the existence and impact of arbitrary classifications, stereotyping, and implicit bias;
- f) instruction in the data collection protocols required by this Agreement;
- g) identification of key decision points where prohibited discrimination can take effect at both the incident and strategic-planning levels; and
- h) methods, strategies, and techniques to reduce misunderstanding, conflict, and complaints due to perceived bias or discrimination, including problem-oriented policing strategies.

**B. Ensuring Bias-Free Policing**

**178.** NOPD agrees to apply and administer programs, initiatives, and activities without discrimination on the basis of race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity.

**179.** NOPD agrees to provide clear guidance on prohibited conduct, including selective enforcement or non-enforcement of the law and the selection or rejection of particular tactics or strategies based upon stereotypes or bias.

**180.** NOPD leadership and supervising officers shall consistently reinforce to subordinates that discriminatory policing is an unacceptable tactic, including in making decisions to use particular police tactics in particular communities based upon stereotypes or bias.

**181.** NOPD agrees to incorporate the following elements in its training of officers: (1) introducing themselves at the initiation of contact with a civilian; (2) stating the reason for a investigatory stop or detention as soon as practicable; (3) ensuring that an investigatory stop or detention is no longer than necessary to take appropriate action; and (4) acting with professionalism and courtesy throughout the interaction regardless of any provocation.

**182.** Within 365 days of the Effective Date, NOPD agrees to incorporate requirements regarding bias-free policing and equal protection into its hiring, promotion, and performance assessment processes, including giving significant weight to an individual's history of sustained bias-related violations, as well as using interviews and other methods to assess the individual's ability to effectively practice bias-free policing.

**183.** Within 365 days of the Effective Date, NOPD agrees to develop and implement a plan to provide all individuals within the City essential police services regardless of immigration status, in order to build and preserve trust among community members, and to more effectively prevent and solve crime. As part of this plan:

- a) Officers shall not take law enforcement action on the basis of actual or perceived immigration status, including the initiation of stops or other field contacts;
- b) Officers shall not question victims of, or witnesses to, crime regarding their immigration status. Nothing in this provision shall prohibit NOPD from assisting nonimmigrant victims/witnesses in obtaining U-Visa / T-Visas, where appropriate;
- c) Officers shall not enforce La. R.S.14:100.13, which the Court of Appeals of Louisiana, Fourth Circuit, has found to unlawfully pre-empt federal regulations; and
- d) NOPD shall seek the assistance of community advocates in widely disseminating to the public, in English and in Spanish, NOPD's written policy incorporating these requirements.

**184.** NOPD agrees to develop and implement a specific policy to guide officers' interactions with members of the LGBT community, which shall prohibit discrimination based on sexual orientation, gender identity, or gender expression.

**185.** NOPD agrees that officers will treat LGBT individuals with courtesy, professionalism, and respect, and that officers are specifically prohibited from using harassing, intimidating, or

derogatory language regarding or toward LGBT individuals. This shall include addressing transgender individuals with their chosen name, title, and pronoun.

**186.** NOPD agrees that officers shall not construe sexual orientation, gender identity, or gender expression as reasonable suspicion or probable cause that an individual is or has engaged in any crime, and that officers shall not request identification from or otherwise initiate a contact solely on the basis of sexual orientation or gender identity/expression.

**187.** NOPD agrees that officers will not subject transgender individuals to more invasive or more frequent frisk procedures due to transgender status. Officers shall not frisk any person for the purpose of determining that person's gender or to view or touch the person's genitals. Where same-gender searches are required by law or NOPD policy, the officer shall respect the gender identification expressed by the individual. Where the individual does not self-identify and the gender identity is not clear to a reasonable person or the officer is uncertain, the officer will take reasonable, non-invasive steps to determine the gender identity, such as asking the individual how the individual would like to be addressed.

**188.** Within 365 days of the Effective Date, and at least annually thereafter, NOPD agrees to assess all NOPD programs, initiatives, and activities to ensure that no program, initiative, or activity is applied or administered in a manner that discriminates against individuals on the basis of race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity. As part of its assessment, NOPD agrees to specifically include an assessment of misconduct complaints involving discrimination, use of force, motor vehicle and pedestrian stops, and arrests, including the selection or rejection of particular geographic deployment tactics or strategies based upon stereotypes or bias. NOPD shall base its assessment of programs, initiatives, and activities on accurate, complete, and reliable data, including data contained in the EWS, stop and detention data, use of force analyses, crime trend analysis in relation to population demographics, enforcement practices based on community concerns, operations plans, and after-action reports. NOPD agrees to make this assessment publicly available.

**C. Language Assistance**

**189.** NOPD agrees to effectively communicate with and provide timely and meaningful access to police services to all members of the community, regardless of their national origin or limited ability to speak, read, write, or understand English. To achieve this outcome, NOPD shall:

- a) develop and implement a language assistance plan and policy that complies, at a

minimum, with Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000d et seq.) and other applicable law, and that comports with best practices and current professional standards;

b) ensure that all NOPD personnel take reasonable steps to provide timely, meaningful language assistance services to LEP individuals they encounter and whenever an LEP individual requests language assistance services;

c) identify and assess demographic data, specifically the number of LEP individuals within its jurisdiction and the number of LEP victims and witnesses who seek NOPD services;

d) use collected demographic and service data to identify and meet hiring needs for bilingual staff;

e) regularly assess the proficiency and qualifications of bilingual staff to become an NOPD Authorized Interpreter;

f) create and maintain an NOPDAI List and provide that list to the Orleans Parish Communications District 911 Communications Center;

g) ensure that Orleans Parish Communications District 911 call takers are trained to recognize the need for a NOPDAI to respond to an incident involving an LEP individual and dispatch a NOPDAI as appropriate. If no NOPDAI is available, the personnel shall contact a telephonic interpretation service provider. The call taker shall note in information to the radio dispatch that the 911 caller is an LEP individual and indicate the language;

h) develop protocols for interpretation for interrogations and interviews of LEP individuals to ensure a qualified interpreter is used for the taking of any formal statement from a suspect or witness in order to protect their legal rights;

i) develop and implement a process for taking, responding to, and tracking citizen complaints and resolutions of complaints filed by LEP individuals;

j) identify official and vital documents that are subject to public dissemination, and require translation of such documents into Spanish and Vietnamese, at a minimum. Such vital documents include: consent to search forms; witness and victim statement forms; citation forms; victim rights notification forms; citizen complaint forms; and notices advising LEP persons of free language assistance in connection with NOPD activities;

k) implement a process for recruiting qualified bilingual personnel to meet demonstrated service needs. As part of this process, NOPD agrees to establish meaningful relationships

with local and state-wide institutions and community organizations that can serve as the source of qualified bilingual applicants and facilitate outreach to such advocates; and

l) implement incentives for bilingual employees to become NOPDAIs, such as pay differentials, consideration in performance evaluations, or assignments.

**190.** NOPD agrees to translate the language assistance plan and policy into Spanish and Vietnamese, and if it becomes appropriate, other languages, and post the English and translated versions in a public area of the police department building, District police stations, and the PIB building, as well as online, and in any other locations throughout the City where individuals go to seek police assistance. NOPD agrees to distribute the language assistance plan and policy to a variety of community organizations serving LEP communities encountered by NOPD.

**191.** NOPD agrees to distribute its language assistance plan and policy to all staff and police personnel, and, within 365 days of the Effective Date, provide training to all personnel on providing language assistance services to LEP individuals. This training shall include:

- a) NOPD's LEP plan and policies; and the requirements of Title VI and this Agreement;
- b) how to access NOPD-authorized telephonic and in-person interpreters;
- c) how to work with interpreters in the field;
- d) cultural diversity;
- e) how to communicate with LEP individuals in commonly encountered scenarios; and
- f) basic command of Spanish or Vietnamese, for officers assigned to Districts with significant LEP populations.

**192.** Within 180 days of Effective Date, NOPD agrees to designate a language access coordinator who shall coordinate and monitor compliance with its language assistance plan. The language access coordinator shall assess the effectiveness and efficiency of the plan on an ongoing basis and shall report to the Superintendent or his designee regarding needed improvements and any accountability concerns. The Superintendent or his designee shall consider the information provided by the coordinator and respond as necessary to ensure that NOPD's language assistance plan is effective.

**193.** Within 180 days of the Effective Date, NOPD agrees to 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.

**194.** Within 270 days of the Effective Date, NOPD agrees to develop a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals. As part of this process NOPD shall:

- a) document the number of LEP persons requiring NOPD services and their primary language;
- b) collect data regarding the number of times an interpreter has been used, listed by language and type of interpreter (telephonic or in-person);
- c) document the number of bilingual staff who have been evaluated for language proficiency, by language, job title, and level of proficiency; and
- d) document use of translators, vital documents translated, and languages into which vital documents are translated.

## **IX. POLICING FREE OF GENDER BIAS**

NOPD agrees to respond to and investigate reports of sexual assault and domestic violence professionally, effectively, and in a manner free of gender-based bias, in accordance with the rights secured or protected by the Constitution and laws of the United States. NOPD agrees to appropriately classify and investigate reports of sexual assault and domestic violence, collaborate closely with the DA and community partners, including the NOFJC, and apply a victim-centered approach at every stage of its response. To achieve these outcomes, NOPD agrees to implement the requirements set out below.

### **A. Sexual Assault**

**195.** NOPD agrees to develop and implement clear policies and procedures governing its response to reports of sexual assault. NOPD agrees to ensure its policies and procedures on sexual assault comply with applicable law and comport with best practices and current professional standards. NOPD agrees to clearly delineate in policy the respective duties of patrol officers/first responders, sex crimes detectives, and supervisors, and to provide clear and detailed guidelines for steps at each stage of NOPD's response to a reported sexual assault, including dispatch response, initial officer response, and on-scene and follow-up investigation.

**196.** Patrol officers or other first responders shall document their observations and any actions taken, including any statements of victims, witnesses, and reporting persons, in calls for service related to sexual assaults.

**197.** NOPD protocols for conducting initial and follow-up victim interviews shall reflect the special needs of victims who may be in crisis or suffering from trauma.

**198.** NOPD agrees to provide clear and detailed guidelines for on-scene and follow-up investigation, including identifying, locating, and interviewing witnesses and suspects; collaborating with victim advocates; collecting evidence; special procedures for drug-facilitated sexual assaults; and documentation.

**199.** NOPD agrees to 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.

**200.** Through its on-going training, NOPD agrees to keep officers apprised, and shall inform victims, of available services, referrals, or other assistance.

**201.** Special Victims Section supervisors shall provide direct supervision of their subordinates by:

- a) responding to assist officers investigating felony sexual assaults as defined under the Louisiana Criminal Code of Procedure: RS 14:42, Aggravated Rape; RS 14:42.1, Forcible Rape; RS 14:43, Simple Rape; RS 14:43.1, Sexual Battery; RS 14:43.2, Second Degree Sexual Battery; and RS 14:43.3, Oral Sexual Battery;
  - b) building relationships and enhancing cooperation with victim advocates and forensic examination programs, both to respond to and reduce the risk of sexual assault;
  - c) continually seeking and creating opportunities for training to enhance investigators' skills;
  - d) closely reviewing investigative reports and dispositions;
  - e) demonstrating a detailed understanding of victim issues and setting clear expectations of detectives regarding their treatment of victims;
  - f) incorporating victim interactions and services into subordinates' performance evaluations;
- and
- g) following up all investigative leads generated from CODIS hits developed as a result of

testing of the evidence in the case.

**202.** NOPD agrees to track all CODIS hit outcomes with the CODIS Hit Outcome Program software provided by National Institute of Justice. This software will provide accountability and outcome data for review by appropriate bodies, and provide feedback to the DNA Database Unit maintained by the Louisiana State Police.

**203.** NOPD agrees to incorporate IACP recommendations for VAW Law Enforcement Best Practices into its training, and update procedural requirements annually, to reflect changes in policy and law and developments in research and best practice.

**204.** In addition to annual in-service training, NOPD agrees to provide initial training for sex crimes detectives of no fewer than 32 hours. This training shall include:

- a) realistic dynamics of sexual assault, including issues related to response to trauma and delayed reporting;
- b) overcoming the perception of false/unfounded allegations to successfully investigate non-stranger sexual assault;
- c) drug and alcohol facilitated sexual assault;
- d) skills-based training on interviewing, including taped mock victim interviews;
- e) report-writing;
- f) discovery; and
- g) collection, preservation, and submission of evidence in sexual assault cases, including selecting the evidence to be submitted for testing.

**205.** NOPD agrees to provide detailed initial and recruit training on responding to sexual assault for patrol officers and other first responders of no fewer than four hours, and ongoing annual in-service training. Additionally, NOPD agrees to incorporate fact-based scenarios involving stranger and non-stranger sexual assault into recruit and in-service training on topics such as general investigation, crime scene preservation, and report writing. NOPD's training on sexual assault shall include:

- a) realistic dynamics of sexual assault, including issues related to response to trauma and delayed reporting;
- b) report writing;
- c) victim interviewing; and
- d) initial assessment of victim and crime scene.

**206.** During the first year of this Agreement, neither patrol officers nor detectives shall code reported sexual assaults in a miscellaneous or non-criminal category without the express written approval of the Investigations & Support Bureau Special Victim Section Commander and the Investigations & Support Bureau Criminal Investigations Division Commander. Following this period, patrol officers shall not code reported sexual assaults in a miscellaneous or non-criminal category. Any decision by a detective to do so shall receive close secondary review and shall be approved in writing by an immediate Sex Crimes unit supervisor and the Division commander.

**207.** NOPD agrees to train supervisors and investigators in the Sex Crimes unit in the proper definitions and application of “unfounded,” “false,” and “baseless” classifications in the context of sexual assault. The immediate supervisor in the Sex Crimes Unit and the Special Victims Section Commander shall closely review and approve in writing any decision to classify a report as “unfounded.” NOPD agrees to track each of these conclusions separately in NOPD’s CCMS and publicly report them on at least a semi-annual basis.

**208.** NOPD agrees to separately track all reports of felony sexual assault, including drug-facilitated sexual assault, sexual assaults involving persons with disabilities rendering them unable to consent, sodomy, and male victims of sexual assault. NOPD agrees to collect data on the final disposition of sexual assault investigations, including whether an arrest was made and whether the DA charged the suspect or rejected the case and, if so, the reason for the rejection if the DA provides a reason. NOPD agrees to track this data in NOPD’s CCMS. NOPD further agrees to make a reasonable effort to enter into a Memorandum of Understanding with the DA to track information related to the outcomes of domestic violence cases including whether the case was ultimately dismissed, resulted in a plea agreement, or tried, and the final outcome of the trial.

**209.** NOPD agrees to track in its Justice Trax Laboratory Information Management System the evidence collected and whether it was submitted to a crime lab for testing. Where evidence is not submitted, NOPD agrees to record in this System the justification for this decision.

**210.** NOPD agrees to 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. NOPD agrees to comply with its obligations under the SART collaborative agreement.

**211.** Within 365 days of the Effective Date, NOPD agrees to develop a mechanism to select and permit a committee of representatives from the community, including rape crisis advocates, service providers, and/or legal providers, to review, on a semi-annual basis: (1) sexual assault investigations disposed of as “unfounded;” (2) a random sample of open sexual assault investigations with the approval of the DA; and (3) after the first year of this Agreement, reported sexual assaults placed in a miscellaneous or non-criminal category. NOPD agrees to develop a protocol to ensure that feedback and recommendations from this committee 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. This mechanism shall include appropriate safeguards to protect ongoing criminal or administrative investigations, confidential or privileged information, or personal information that is protected from disclosure by applicable laws.

**B. Domestic Violence**

**212.** NOPD agrees to delineate the respective duties of communications staff, patrol officers/first responders, District-level detectives, domestic violence detectives, and supervisors in its domestic violence policies and procedures, and agrees to provide clear and detailed guidelines for steps at each stage of NOPD’s response to a report of domestic violence, including dispatch response; initial officer response, including entry procedures; and on-scene and follow-up investigation.

**213.** NOPD agrees to prioritize victim safety and protection at each stage of its response to a report of domestic violence and provide, through the New Orleans Integrated Domestic Violence Protocol, clear guidelines for on-scene and follow-up investigation, including identifying, locating, and interviewing suspects and witnesses, including child witnesses; assessment of the crime scene; evidence collection, including documentation of victim injuries; and seizure of weapons.

**214.** NOPD agrees to discourage dual arrests of offenders and victims. NOPD agrees to provide guidance on when dual arrests are permissible and require supervisory approval to effectuate a dual arrest. NOPD policies shall require the custodial arrest of domestic violence offenders who violate the terms of a valid and outstanding protection order, and those the officer has probable cause to believe have committed a domestic violence offense. NOPD training shall include training on how to identify the primary aggressor.

**215.** NOPD agrees to continue to participate in the operation, development, and sustainability of the NOFJC; work in co-location with other civil and criminal agencies and community-based organizations; and support a centralized, multi-agency Family Justice Center model in the handling of domestic violence and sexual assault cases in New Orleans.

**216.** NOPD agrees to collaborate with and refer all victims to the NOFJC.

**217.** NOPD agrees to continue close collaboration with the DA and community providers to ensure that policies and protocols remain victim-centered and effective. To facilitate this collaboration, the Superintendent or a designee at the level of Commander or above shall 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 agrees also to 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. He or she also shall be responsible for identifying training needs with respect to implementing NOPD domestic violence policies, the Integrated Protocol, and/or the Blueprint for Safety.

**218.** NOPD agrees to assign sufficient staff to the DVU at the NOFJC to permit detectives to review, on a weekly basis, District-level reports on incidents of domestic violence, for the purpose of identifying training needs and tracking the Districts' response to domestic violence. The DVU shall have sufficient staff to conduct appropriate follow-up investigation on felony offenses, including incidents where a weapon was involved or the victim suffered serious bodily injury. This follow-up investigation shall include field work and coordination with the DA's Domestic Violence Prosecution Unit. NOPD shall assign sufficient detectives to the DVU based on the calls for service.

**219.** NOPD agrees to offer training on domestic violence that incorporates IACP recommendations for VAW Law Enforcement Best Practices and to annually update the training to reflect changes in policy, law, and developments in research and best practice.

**220.** NOPD agrees to provide at least four hours of initial and recruit training on domestic violence for all officers, and ongoing annual in-service training. Additionally, NOPD agrees to incorporate fact-based scenarios involving domestic violence into recruit and in-service training on such topics as general investigation, crime scene preservation, and report writing. NOPD's training on domestic violence shall include:

- a) NOPD's policies and procedures on domestic violence, including the Integrated Protocol and/or Blueprint for Safety;
- b) dynamics of domestic violence;
- c) identifying the primary aggressor;
- d) responding to and investigating strangulation in the context of domestic violence;
- e) interviewing victims, witnesses and suspects;
- f) report-writing; and
- g) discovery.

**221.** NOPD agrees to provide domestic violence detectives with initial training of no fewer than 32 hours, and ongoing annual in-service training. This training shall include advanced, skills-based instruction in evidence collection; victim assistance; interviewing, including taped mock victim interviews; and other topics.

**222.** NOPD agrees to track dispositions of domestic violence investigations, including arrests and acceptance or refusal by the DA. NOPD further agrees to make a reasonable effort to enter into Memoranda of Understanding with appropriate agencies to track information related to the outcomes of domestic violence cases, including whether the case was ultimately dismissed, resulted in a plea agreement, or tried, and the final verdict or outcome of the trial. NOPD agrees to track dual arrests and domestic violence arrests by gender. NOPD agrees to publicly report this data on at least an annual basis

## **X. COMMUNITY ENGAGEMENT**

NOPD agrees to promote and strengthen partnerships within the community, and to engage constructively with the community, to ensure collaborative problem-solving and ethical and bias-free policing, and to increase community confidence in the Department. To achieve these outcomes, NOPD agrees to implement the requirements set out below.

**A. Community and Problem Oriented Policing**

**223.** Within 180 days of the Effective Date, NOPD agrees to reassess its staffing allocation and personnel deployment, including its use of specialized units and deployment by geographic area, to ensure that core operations support community policing and problem-solving initiatives, and shall agree to modify any deployment strategy found to be incompatible with effective and community-oriented policing.

**224.** NOPD agrees to deploy an adequate number and distribution of officers to ensure that all neighborhoods have a regularly assigned officer who is familiar with the geographic area, its issues, problems, and community leaders; engages in problem identification and solving activities with the community members around the community's priorities; works proactively with other city departments to address quality of life issues; and is not assigned to answer calls to service absent exigent circumstances.

**225.** NOPD agrees to ensure its mission statement reflects its commitment to community-oriented policing and agrees to integrate community and problem-oriented policing principles into its management, policies and procedures, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems.

**226.** Within 365 days of the Effective Date and annually thereafter, NOPD agrees to provide eight hours of structured annual in-service training on community policing and problem-oriented policing methods and skills for all officers, including supervisors, managers and executives.

This training shall include:

- a) methods and strategies to improve public safety and crime prevention through community engagement;
- b) scenario-based training that promotes the development of new partnerships between the police and community, targeting problem solving and prevention;
- c) leadership, ethics, and interpersonal skills;
- d) community engagement, including how to establish formal partnerships and actively engage community organizations, including youth, immigrant, and LGBT communities;
- e) problem-oriented policing tactics, including a review of the principles behind the problem solving framework developed under the "SARA Model" (Scanning, Analysis, Response, Assessment), which promotes a collaborative, systematic process to address issues of the community, including safety and quality of life;

- f) conflict resolution and verbal de-escalation of conflict; and
- g) cultural awareness and sensitivity training. Cultural awareness training shall be designed and delivered in cooperation with City Human Relations Commission staff and community representatives selected by the Commission.

**227.** NOPD agrees to continue to support community groups in each District (e.g., NONPACC) and to meet regularly with the communities each District serves. In addition, within 240 days of the Effective Date, NOPD agrees to 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 agrees to develop and implement partnerships to provide immediate and ongoing support to families of victims of homicides and other serious crimes.

**228.** Within 240 days of the Effective Date, NOPD agrees to develop measurements to assess the effectiveness of its community partnerships and problem-solving strategies, including the effectiveness of the community liaison program. NOPD agrees to prepare a publicly available report on at least a quarterly basis detailing its community policing efforts in each District, including developing community partnerships and participating in public meetings, and its problem-solving activities, including specific problems addressed and steps taken by NOPD and the community toward their resolution. This report also shall identify obstacles faced and recommendations for future improvement. At least annually, NOPD agrees to issue a publicly available report that summarizes these problem-solving and community policing activities.

**229.** Within 180 days of the Effective Date, NOPD agrees to remake the COMSTAT meeting. The COMSTAT meeting will use the underlying collection and reporting of accurate and meaningful data regarding crime trends and other public safety measures to drive discussion of community-policing successes and challenges. NOPD agrees to ensure the COMSTAT meeting includes discussion and analysis of trends in misconduct complaints and community priorities to identify areas of concern, and to better develop interventions to address them. NOPD agrees to use techniques such as spatial mapping and scientific deployment analysis to enable COMSTAT to better support and measure community and problem-solving policing efforts.

**B. Biennial Community Survey**

**230.** Within 180 days of the Effective Date, and every two years thereafter, NOPD and the City agree to conduct a reliable, comprehensive, and representative survey of members of the New Orleans community regarding their experiences with and perceptions of NOPD and of public safety.

**231.** To conduct the biennial community survey, the Monitor shall retain an individual or entity, to be approved by DOJ, that shall:

- a) develop a baseline of measures on public satisfaction with policing, attitudes among police personnel, and the quality of police-citizen encounters;
- b) design, conduct, and analyze baseline and subsequent biennial surveys of a representative sample of City residents, police personnel, and detained arrestees;
- c) review and consider prior law enforcement surveys in New Orleans and other cities, as well as current or recent concerns in New Orleans, in designing the survey;
- d) engage in informal conversations with New Orleans residents, NOPD officers and command staff, and DOJ representatives, and observe community meetings;
- e) ensure that the resident and arrestee surveys are designed to capture a representative sample of New Orleans residents, including members of each demographic category;
- f) conduct the survey in English, Spanish, and Vietnamese, as necessary, to ensure representation of the entire New Orleans community; and
- g) formally discuss the survey methodology with NOPD supervisors and DOJ and consider these opinions in the development of the initial survey and in making improvements to subsequent surveys.

**232.** NOPD and the City agree to cooperate with the design and conduct of the survey by, for example, helping to organize focus groups of officers and obtaining and providing previous survey instruments and data.

**233.** The report of the baseline survey and subsequent biennial surveys shall be publicly distributed and available.

**XI. RECRUITMENT**

NOPD and the City, working with the Civil Service, agree to develop and implement a comprehensive recruitment program that successfully attracts and hires a diverse group of highly qualified and ethical individuals to be NOPD police officers. NOPD and the City, working with

the Civil Service, agree to ensure that NOPD's recruit program assesses each applicant in a manner that is valid, reliable, fair, and legally defensible. To achieve these outcomes, NOPD and the City agree to implement the requirements set out below.

**A. Comprehensive Recruitment Program**

**234.** Within 180 days of the Effective Date, NOPD, working with Civil Service, agrees to develop a written, strategic recruitment plan that includes clear goals, objectives, and action steps for attracting high-quality applicants. The strategic recruitment plan shall clearly identify the duties and goals of NOPD's Recruitment Unit. The recruitment plan shall include specific strategies for attracting applicants with strategic thinking and problem-solving skills, interpersonal skills, emotional maturity, capacity to use technology, fluency in Spanish and Vietnamese (because these languages are spoken by a significant segment of the New Orleans Community), and the ability to collaborate with a diverse cross-section of the community.

**235.** The Recruitment Unit staff shall be publicly identified, shall work with Civil Service, and shall interact directly with candidates applying for NOPD positions. NOPD agrees to develop a protocol that includes specific criteria for assigning officers to the Recruitment Unit, including officers' work history, disciplinary history, length of employment at NOPD, and demonstrated commitment to community-oriented policing.

**236.** NOPD agrees to staff the Recruitment Unit sufficiently to permit the Unit to fulfill its responsibilities as set out in this Agreement, NOPD policy, and applicable law.

**237.** NOPD agrees to train all current and new staff assigned to the Recruitment Unit on recruiting a qualified and diverse workforce, including training on employment law. NOPD agrees to establish specific performance criteria to evaluate recruitment staff effectiveness in hiring increasing numbers of high quality recruits.

**238.** Within 180 days of the Effective Date, NOPD agrees to develop and implement a system for psychological screening and assessment of all NOPD recruit candidates, and to set criteria to ensure that only individuals suitable for policing are accepted into NOPD training academy.

**239.** The Recruitment Unit shall conduct affirmative outreach to a broad group of community members (e.g., college and university initiatives, military outreach, the PCAB, and community meetings in each District), and shall create and foster relationships with those organizations to enhance recruitment efforts.

**240.** NOPD and the City, working with Civil Service, agree to ensure that the dates and times of the officer recruit application period and testing dates are advertised widely.

**241.** Within 180 Days of Effective Date, NOPD and the City, working with Civil Service, agree to establish standardized qualifications and guidance for who may serve on a recruit applicant interview panel. Eligibility for serving on a recruit applicant interview panel shall include a review of the officer's internal disciplinary file and personnel file.

**242.** NOPD and the City, working with Civil Service, agree to ensure that interview panelists and all officials who interview potential NOPD recruits receive specialized training in the goals of NOPD recruitment and hiring, including emphasis on integrity, community policing, and non-discriminatory policing.

**243.** Within 180 days of the Effective Date, NOPD and the City agree to work with Civil Service to establish a standardized scoring system to be used by interview panelists. The scoring system shall be used to assess recruit applicants immediately following the applicant's interview. These assessment forms shall be maintained by the Recruitment Unit.

**244.** The Recruitment Unit will annually report its recruiting activities and outcomes, including the number of applicants, interviewees, and selectees, and the extent to which the Recruitment Unit has been able to recruit applicants with needed skills, such as problem-solving abilities or fluency in Spanish or Vietnamese, and a discussion of any challenges to recruiting highly qualified applicants.

## **XII. ACADEMY AND IN-SERVICE TRAINING**

NOPD is committed to ensuring that all officers and employees receive adequate training to understand the law and NOPD policy and how to police effectively. NOPD training shall reflect and instill agency expectations that officers police diligently, have an understanding of and commitment to the constitutional rights of the individuals they encounter, and employ strategies to build community partnerships to more effectively increase public trust and safety. To achieve these outcomes, NOPD agrees to implement the requirements set out below.

### **A. Training Coordination and Planning**

**245.** The Training Division shall be the central coordination point for all training, including: the recruit training academy; field training; all in-service training, including firearms and other use of force training; roll-call training; supervisory training; tactical and task force training; and all elective training.

**246.** NOPD's Training Division Commander shall be responsible for overseeing all NOPD training, including recruit academy; field training; all in-service training, and for ensuring that training is delivered consistent with NOPD's written training plan.

**247.** Within 90 days of the Effective Date, NOPD agrees to create a full-time Department-wide Training Liaison position within the Training Division, and designate a single training coordinator in each District and central organizational unit to coordinate and document training. The Training Liaison shall establish and maintain communications with each District training coordinator to ensure that all officers complete training as required and that documentation of training is provided to the Training Division.

**248.** Within 120 days of the Effective Date, NOPD agrees to establish a Training Advisory Committee that shall include staff from the NOPD Training Division, NOPD field personnel, high-level NOPD command staff (Deputy Superintendent or above), 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, and a representative from the FBI, the District Attorney's office, the USAO, and the City Attorney's Office.

**249.** Within 270 days of the Effective Date, NOPD shall develop a written training plan for NOPD's recruit academy, field, and in-service training, to ensure that recruits, officers, and civilian personnel are trained to effectively and lawfully carry out their duties in accordance with the Constitution and laws of the United States. The Training Advisory Committee, after review, consideration, and revision, shall approve a Master Training Plan. The plan shall comport with best practices and the requirements of this Agreement and shall:

- a) define responsibilities and authority of personnel involved in managing, supervising, and implementing training;
- b) identify training priorities and broad training goals;
- c) delineate an industry-recognized, systematic approach to training development that includes the following concepts: analysis, design, development, implementation, and evaluation. This approach should enable NOPD to identify and validate job tasks in sufficient detail to derive learning objectives, which, in turn, should drive the selection of instructional strategies and assessments;
- d) develop instructional strategies that incorporate active learning methods such as

problem-solving and scenario-based activities, based on current theories of learning;

e) address program administration policies, classroom/facility use, and instructor training and development; and

f) establish the frequency and subject areas for recruit and in-service training.

**250.** Upon the Superintendent's approval of the training plan, NOPD shall submit the training plan to the Monitor and DOJ. The Monitor shall review the training plan and provide the Parties with written comments within 30 days of receipt thereof. DOJ shall have 30 days from receipt of the Monitor's comments on the training plan to determine whether the training plan is consistent with the requirements of this Agreement and to make its decision on approval. DOJ shall not unreasonably withhold approval.

**251.** NOPD shall annually review and update the training plan. To inform this update, NOPD shall conduct a needs assessment, taking into consideration: trends in misconduct complaints; problematic uses of force; analysis of officer safety issues; input from members at all levels of NOPD; input from members of the community, including community concerns; court decisions; research reflecting the latest in law enforcement trends; individual District needs; and any changes to Louisiana or federal law, or to NOPD policy. The Training Advisory Committee shall review, consider, revise, and approve the updated training plan.

**B. Curriculum Development**

**252.** Within 365 days of the Effective Date, NOPD shall create and staff a full-time position of Curriculum Director to establish and oversee a formal training curriculum development and assessment process consistent with the training plan described above. The Curriculum Director shall ensure that curricula and related lesson plans are based on learning objectives that are directly linked to validated job tasks.

**253.** Within 365 days of the Effective Date, NOPD agrees to develop and implement a lesson plan template that will be used for all training courses at NOPD. At a minimum, each template shall include: course title; course overview; date lesson plan was created or updated; learning objectives; prerequisites (if any); course length; required materials, equipment, and facilities; safety measures required (if applicable); testing/certification, and reference list. The lesson plan shall describe content and instructional strategies in sufficient detail to ensure consistent delivery of instruction by different instructors.

**254.** Within 365 days of the Effective Date, NOPD agrees to develop and implement recruit academy curricula that comport with NOPD's training plan and comprehensively address the subject areas listed in paragraph XII.E., below.

**255.** Within 365 days of the Effective Date, NOPD agrees to develop and implement in-service curricula that comport with NOPD's training plan and that comprehensively address each of the subject areas in which this Agreement requires in-service training.

**256.** The Curriculum Director shall review all training curricula, lesson plans, and procedures for consistency, quality, accuracy, currency, completeness, and compliance with applicable law and NOPD policy. The Curriculum Director shall ensure that a variety of adult learning techniques, scenario-based training, and problem-solving practices, in addition to traditional lecture formats, are incorporated into all training. The Curriculum Director shall also ensure that all curricula, lesson plans, instructor's qualifications, and testing materials are accessible to the Training Advisory Committee and, where appropriate, persons external to NOPD with expertise in the relevant lesson areas, for review and comment.

**257.** NOPD shall submit all new or revised training curricula and lesson plans for training required by this Agreement to the Monitor and DOJ for review and comment at least 90 days prior to the scheduled date of training delivery. The Monitor shall review the curricula or lesson plans and provide the Parties with written comments within 30 days of receipt thereof. Within 30 days of receipt of the Monitor's comments, DOJ shall have the right to review and comment on whether the curricula and lesson plans are consistent with, and incorporate the requirements of, this Agreement and applicable law.

**C. Instructor Selection**

**258.** NOPD agrees to implement the Knowledge, Skills, and Ability Protocols for all staff assigned to the training division and all adjunct instructors within NOPD. NOPD agrees that minimum qualification requirements for Academy staff shall include:

- a) Baccalaureate Degree or exceptional practical law-enforcement or subject matter expertise with at least six years of combined NOPD service;
- b) Successful completion of the POST Instructor Development Course within one year of being assigned to the training division; and
- c) No 'sustained' PIB investigations within 24 months of applying for an Academy position or pending 'open' investigations at time of application, if (1) the minimum punishment for

the sustained or open allegation at issue is at least a 30 day suspension; or (2) the sustained or open allegation involves discrimination, verbal intimidation, failure to report misconduct, fictitious illness or injury reports, abuse of position, inappropriate use of social media, visiting prohibited establishments, or adherence to law (excepting traffic violations and off-duty municipal violations not committed under color of law). In addition, NOPD shall consider the nature and severity of any other sustained or alleged violation or pattern of allegations in determining whether an applicant is fit to serve in the Academy.

**259.** NOPD agrees to 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 agrees to 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.

**260.** NOPD agrees to ensure that all new and current Training Division staff and NOPD adjunct instructors receive 40 hours of initial training, including training on effective teaching, adult-learning techniques, curriculum development, and annual in-service training. NOPD agrees to require and ensure that instructors use only curricula and lesson plans that have been approved by the Training Division. NOPD agrees to further require that instructors use a variety of adult learning techniques, scenario-based training, and problem-solving practices, in addition to traditional lecture formats.

**261.** Annually, NOPD agrees to evaluate the performance of Training Division staff and all adjunct or other training instructors and shall remove staff and instructors who do not meet NOPD criteria. NOPD agrees to document each evaluation using an established set of criteria to be developed pursuant to this Agreement.

**D. Training Evaluation**

**262.** Within 365 days of the Effective Date, NOPD agrees to develop and implement a process that provides for the collection, analysis, and review of data to document the effectiveness of training and to improve future instruction, course quality, and curriculum. This process shall measure and document student reaction to and satisfaction with the training they received; and student learning as a result of training, including the extent to which students are applying the knowledge and skills acquired in training to their jobs.

**263.** Within 365 days of the Effective Date, NOPD agrees to develop and implement documented and approved testing policies and procedures to ensure that that all testing is valid, reliable, and fair. Both knowledge-based and performance-based tests shall be designed, developed, administered, and scored according to established professional standards of practice. All tests shall be job-related, testing knowledge and skills required for successful job performance.

**E. Recruit Training Academy**

**264.** Within 365 days of the Effective Date, NOPD agrees to develop and implement a recruit training program that comports with NOPD's written training plan described above, and that reflects the requirements of this Agreement.

**265.** NOPD agrees to modify the amount and content of recruit academy training to comport with its written training plan and the requirements of this Agreement. NOPD agrees to provide recruits with at least 880 hours of academy instruction.

**266.** In addition to the training requirements reflected in the substantive provisions of this Agreement, NOPD agrees to ensure sufficient recruit academy instructional hours in the following specific areas:

- a) appropriate use of force;
- b) stops, searches, and arrests;
- c) bias-free policing and community/problem-solving policing;
- d) investigations, including crime scene investigations and investigative techniques;
- e) ethics, including preventing and reporting misconduct and peer intervention;
- f) crisis intervention;
- g) crowd control, including consistent application of field-force tactics and crowd management;
- h) report writing;
- i) recognizing, taking, and responding to allegations of misconduct received in the field;
- j) statutory law, including definitions of specific offenses, and scenario-based exercises to determine the specific elements of offenses; and
- k) how to communicate with LEP individuals in commonly encountered scenarios.

**267.** NOPD agrees to structure the recruit training academy so that instruction is delivered in logical progression to ensure that each skill or unit builds on previous skills or units. NOPD

agrees to schedule training modules so that recruits become proficient in fundamental tasks before progressing to more advanced skills and activities.

**268.** In addition to inclusion in separate training modules, NOPD agrees to incorporate training on constitutional and statutory law; ethical decision making; community policing; de-escalation of force; and bias-free policing throughout the course of the recruit training academy. NOPD agrees to reinforce legal concepts in the context of instruction on interviewing and interrogation, crime scene processing, and report writing.

**269.** NOPD agrees to use problem-based learning and scenario-based exercises throughout the course of the recruit academy. NOPD agrees to ensure that scenario-based exercises have specific training objectives, and to evaluate achievement in multiple areas, such as constitutional and statutory law, officer safety, NOPD procedures, and report writing. NOPD agrees to require recruits to produce actual reports and statements at the end of scenario-based exercises.

**270.** NOPD agrees to intersperse skills training in areas such as driving, firearms, and defensive tactics throughout the course of the recruit training academy, to allow recruits to develop and reinforce these skills over time.

**271.** NOPD agrees to not add recruit candidates after the first week of the recruit training academy.

**272.** To ensure continuity of training, NOPD agrees to minimize interruptions to recruit academy training for the purpose of staffing special events and other functions. This does not preclude the use of recruits for Mardi Gras-related service functions or in case of emergencies.

**273.** Within 365 days of the Effective Date, NOPD agrees to ensure that the recruit academy is sufficiently staffed to effectively train recruits, and that the deployment of recruit academy staff to cover patrol shifts or other duties does not disrupt training activities. This does not prohibit academy staff from working 'Mission' patrols. Recruit classes shall not exceed 30 candidates per class.

**274.** Within 365 days of the Effective Date, NOPD agrees to provide recruits and officers with appropriate training facilities to ensure adequate access to safe and effective training. The Parties agree that such training can be provided without constructing any new facilities.

**F. Field Training Program**

**275.** Within 365 days of Effective Date, NOPD agrees to develop and implement a field-training program for recruit academy graduates that comports with NOPD's written training

plan and this Agreement. NOPD's field training program shall follow academy training and shall be at least 16 weeks.

**276.** NOPD's policies and procedures on field training shall delineate the criteria and methodology for selecting FTOs and Field Training Sergeants. Only highly qualified officers shall serve as FTOs and Field Training Sergeants. NOPD agrees to establish formal eligibility criteria for FTOs and Field Training Sergeants based on their performance evaluations, previous superior performance as police officers, and complaint and disciplinary histories. FTO appointments will be subject to review for reappointment at the Training Division Commander's discretion. District commanders will also have discretion, upon consultation with the Training Academy staff, to remove a field-training officer from the FTO program.

**277.** NOPD agrees to ensure that all current and new FTOs and Field Training sergeants receive at least 40 hours of initial supervisory-level training and annual in-service training in the following areas: management and supervision; community-oriented policing; effective problem solving techniques; and field communication. FTOs and Field Training sergeants shall be required to maintain, and demonstrate on a regular basis, their proficiency in managing recruits and subordinates, practicing and teaching community-oriented policing, and solving problems effectively. NOPD shall maintain current documentation of FTOs' evaluations and training.

**278.** NOPD agrees to ensure that recruits in the field-training program are trained in a variety of geographic areas within New Orleans; in a variety of shifts; and with several FTOs.

**279.** Annually, NOPD agrees to review and evaluate the performance of FTOs and Field Training Sergeants, with re-certification dependent on satisfactory prior performance and feedback from the Training Division staff.

**280.** Within 365 days of the Effective Date, NOPD agrees to create a mechanism for recruits to provide confidential feedback regarding the quality of their field training, including the extent to which their field training was consistent with what they learned in the Academy, and suggestions for changes to Academy training based upon their experience in the FTO program. NOPD agrees to consider feedback and to document its response, including the rationale behind any responsive action taken or decision to take no action.

**281.** Within 365 days of the Effective Date, NOPD agrees to review and revise its FTO participation policy to establish and implement a program that effectively attracts the best FTO candidates.

**282.** NOPD's training advisory committee shall conduct, within 365 days of the Effective Date, a study of the feasibility of implementing a Police Training Officer model that would incorporate community- and problem-oriented policing principles, and problem-based learning methods of teaching. If NOPD and the City find it feasible, NOPD and the City agree to implement this program.

**G. In-Service Training**

**283.** Within 365 days of the Effective Date, NOPD agrees to develop and implement a mandatory annual in-service training program that comports with NOPD's written training plan and the requirements of this Agreement. NOPD agrees to provide at least 64 hours of in-service training to each officer pursuant to this program within 365 Days of the Effective Date of this Agreement and annually thereafter. In-service training will be comprised of a 40-hour core curriculum and 24 hours of additional elective training. Specialized training for officers in certain units or assignments (such as the initial 40-hour training for specialized CIT officers) shall be considered additional elective training.

**284.** NOPD agrees to create core-training requirements for the following positions: officers; command staff; lieutenants and sergeants; detectives; narcotics investigators; and specialized units.

**285.** NOPD agrees to plan, develop, and implement a comprehensive roll-call training program. Roll-call training shall be provided at the beginning of each shift. Roll-call training shall include special topics selected by the Training Division Commander or District Commanders that address officer safety, readiness, community concerns, or departmental procedural matters.

**H. Training Records**

**286.** Within 365 days of the Effective Date, NOPD agrees to develop and implement a system that will allow the Training Division to electronically track, maintain, and report complete and accurate records of current curricula, lesson plans, training delivered, and other training materials in a centralized electronic file system. This system shall, at a minimum:

- a) maintain training records for each recruit and each sworn member of the Department;
- b) record the course description, duration, curriculum, date and location of training, name of instructor, and the personnel who completed the training; and
- c) document officers who did not complete required training and all corrective actions taken.

**287.** Within 365 days of the Effective Date, NOPD agrees to develop and implement accountability measures, including disciplinary and non-disciplinary corrective action, to ensure that all officers successfully complete all required training programs in a timely manner.

**288.** NOPD agrees to document all training provided to or received by NOPD officers, whether required or otherwise. Officers shall sign an acknowledgement of attendance or digitally acknowledge completion of training. NOPD shall report training delivered and received annually. This report shall include a:

- a) description of each course, including a summary of the subject matter; the duration, date and location, the name of the instructor, and the number of persons who completed the training; and
- b) listing of all officers who completed in-service, recruit, specialized, or elective training; and
- c) listing of officers who did not complete required training and the corrective action taken for each officer.

### **XIII. OFFICER ASSISTANCE AND SUPPORT**

NOPD agrees to provide officers and employees ready access to the mental health and support resources necessary to facilitate effective and constitutional policing. To achieve this outcome, NOPD agrees to implement the requirements below.

#### **A. Department-Wide Health and Wellness Program**

**289.** NOPD agrees to further develop and offer a centralized and comprehensive range of mental health services that comports with best practices and current professional standards, which include: readily accessible confidential counseling services with both direct and indirect referrals; critical incident debriefings and crisis counseling; peer counseling; and stress management training.

**290.** Within 180 days, NOPD agrees to develop a department-wide mental and physical health and wellness program that:

- a) provides and specifies access to mental health services for officers following traumatic incidents;
- b) ensures that in situations where an officer is referred for a fitness-for-duty evaluation to assess psychological fitness, the evaluation is performed by a provider external to NOPD;
- c) ensures that the roles, duties, and responsibilities of NOPD mental health professionals

are properly delineated to avoid risk of conflict and increase officer confidence in NOPD provided mental health services;

d) provides access to consistent counseling and treatment by mental health professionals; and

e) fosters participation and compliance by ensuring confidentiality under federal and state privacy laws; and

f) incorporates mental health services for NOPD officers and their families into NOPD's crisis response and emergency preparedness planning.

**291.** NOPD agrees to compile and distribute a list of internally and externally available mental health services to all officers and employees. NOPD should periodically consult with community and other outside service providers to maintain a current and accurate list of available providers.

**292.** NOPD agrees to train management and supervisory personnel in officer support services protocols to ensure wide availability and use of officer support services; and agrees to incorporate discussion of currently available officer support services, and how to access those services, into annual officer in-service training.

**293.** NOPD agrees to involve mental health professionals in developing and providing academy and in-service training on mental health stressors related to law enforcement and the mental health services available to officers.

**294.** NOPD agrees to involve mental health professionals in officer training on use of force, to address such topics as: peer intervention by fellow officers to stop the use of excessive force; the interaction of human perception and threat assessment; decision making under highly charged conditions; psychological methods of situation control; patrol de-escalation and defusing techniques that not only provide a tactical response, but also respond to the fear stimulated by confrontations; anger management programs; and training in verbal control and communication, including conflict resolution.

#### **XIV. PERFORMANCE EVALUATIONS AND PROMOTIONS**

NOPD agrees to ensure that officers who police effectively and ethically are recognized through the performance evaluation process, and that officers who lead effectively and ethically are identified and receive appropriate consideration for promotion. NOPD shall further ensure that poor performance or policing that otherwise undermines public safety and community trust is reflected in officer evaluations so that NOPD can identify and effectively respond. To achieve

these outcomes, NOPD, working with Civil Service, agrees to implement the requirements set out below.

**A. Performance Evaluations**

**295.** Within 365 days of the Effective Date, NOPD agrees to work with Civil Service to develop and implement an NOPD-specific system that comports with best practices and the requirements of this Agreement to accurately evaluate officer performance in areas related to integrity, community policing, and critical police functions, on both an ongoing and annual basis.

**296.** As part of this program, NOPD agrees to work with Civil Service to establish a formalized system documenting annual performance evaluations of each officer by the officer's direct supervisor that shall include assessment of:

- a) community engagement and communication with the public as appropriate to assignment;
- b) use of community-policing and problem-solving strategies as appropriate to assignment;
- c) civilian commendations and complaints;
- d) disciplinary actions;
- e) compliance with policies on usage of sick leave and other leave;
- f) compliance with policies on secondary employment;
- g) safety (e.g., POST officer safety standards and vehicle operations);
- h) training;
- i) report writing; and
- j) decision-making skills.

**297.** Annual performance evaluations shall be based upon all work performed during the specific rating period. The officer's current direct supervisor shall complete the performance evaluation.

**298.** Performance evaluations shall include a narrative by the supervisor that discusses any areas in which the officer's performance needs to improve, and areas of particular growth and achievement during the rating period.

**299.** As part of the annual performance review process, supervisors shall meet with the employee whose performance is being evaluated to discuss the evaluation. In addition, supervisors shall meet with their subordinates on an ongoing basis to discuss their performance and shall document the supervisor's ongoing efforts and communications regarding officer performance challenges and areas of growth.

**300.** Supervisors shall complete training consistent with best practices on how to effectively evaluate officer performance. Within 365 days of the Effective Date, and as part of initial supervisory training, supervisors shall be required to complete at least four hours of training, focused on how to effectively evaluate officer performance. This training is in addition to any training on the mechanics of how to complete employee performance evaluations. The performance evaluations for each supervisor (whether first-line or commander) shall include assessment of the supervisor's ability and effectiveness in conducting the supervisory reviews as required by this Agreement, including monitoring, deterring, and addressing misconduct by officers they supervise.

**301.** NOPD agrees to hold supervisors of all ranks accountable for conducting timely, accurate, and complete performance evaluations of their subordinates.

**B. Promotions**

**302.** Within 365 days of the Effective Date, NOPD agrees to work with Civil Service to 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. NOPD agrees to work with Civil Service to provide clear guidance on promotional criteria, and to prioritize effective, constitutional, and community-oriented policing as criteria for promotion.

**303.** NOPD agrees to request that Civil Service remove from the promotional eligibility list any officer whose history does not strongly indicate that the officer is likely to be ethical and effective in the position to which he or she is being considered for promotion. Factors to be considered in making this assessment include:

- a) effective use of community-policing strategies;
- b) number of sustained and not sustained complaints;
- c) number and circumstances of uses of force, including any found out of policy and use of force complaints;
- d) disciplinary history;
- e) problem-solving skills;
- f) interpersonal skills;
- g) education; and
- h) support for departmental integrity measures.

**304.** NOPD agrees to work with Civil Service to establish specific criteria for disciplinary findings, which shall make an officer presumptively ineligible for promotion for a certain time period. Officers with pending investigations or disciplinary action in a matter alleging serious misconduct shall not be eligible for promotion.

**305.** The City agrees to work with Civil Service to create opportunities for officers to be placed on the promotional list at least every two years.

## **XV. SUPERVISION**

NOPD and the City agree to ensure that an adequate number of qualified first-line supervisors are deployed in the field to allow supervisors to provide the close and effective supervision necessary for officers to improve and grow professionally; to police actively and effectively; and to identify, correct, and prevent misconduct. To achieve these outcomes, NOPD agrees to implement the requirements set out below.

### **A. Duties of Supervisors**

**306.** NOPD supervisors shall be held accountable for providing the close and effective supervision necessary to direct and guide officers. Close and effective supervision requires that supervisors: respond to the scene of certain arrests; review each arrest report; respond to the scene of uses of force as required by this Agreement; investigate each use of force (except those investigated by FIT); review the accuracy and completeness of officers' Daily Activity Reports; respond to each complaint of misconduct; ensure that officers are working actively to engage the community and increase public trust and safety; and provide counseling, redirection, and support to officers as needed, and that supervisors are held accountable for performing each of these duties.

**307.** Within 270 days of the Effective Date, all Field Operations Bureau District officers (including patrol, task force, district investigative, and narcotics units) shall be assigned to a single, consistent, and clearly-defined supervisor.

**308.** Task force and narcotics supervisors shall actually work the same days and hours as the officers they are assigned to supervise absent unusual circumstance or when the supervisor is on vacation, in training, or ill. Investigative unit supervisors shall work generally the same days and hours as the officers they are assigned to supervise, taking into account that shift differences will not permit complete supervisory overlap.

**309.** District Platoon Patrol supervisors shall be assigned to the same platoon as the officers they supervise and shall actually work the same days and hours as the officers of that platoon absent unusual circumstances or when the supervisor is on vacation, training, or ill.

**310.** Within 270 days of the Effective Date, first-line patrol supervisors shall be assigned to supervise no more than eight officers. On duty patrol supervisors shall be available throughout their shift to respond to the field to provide supervision to officers under their direct command and, as needed, to provide supervisory assistance to other units.

**311.** [Paragraph stricken]

**312.** District commanders and platoon lieutenants shall be responsible for the close and effective supervision of officers under their command. All NOPD commanders and platoon lieutenants shall ensure that all subordinates under their direct command comply with NOPD policy, state and federal law, and the requirements of this Agreement.

**313.** NOPD shall hold commanders and supervisors directly accountable for the quality and effectiveness of their supervision, including whether commanders and supervisors identify and effectively respond to misconduct, as part of their performance evaluations and through non-disciplinary corrective action, or through the initiation of formal investigation and the disciplinary process, as appropriate.

**B. Supervisor and Command-Level Training**

**314.** NOPD agrees to develop and implement mandatory supervisory training for all new and current supervisors. All current supervisors shall receive 200 hours of mandatory supervisory training within two years of the Effective Date. NOPD shall receive credit for professional police leadership training being provided in 2012 to current NOPD supervisors. All officers becoming supervisors within two years of the Effective Date shall receive 160 hours of initial supervisory training before assuming supervisory duties. All officers becoming supervisors after two years of the Effective Date shall receive 80 hours of initial supervisory training before assuming supervisory duties. In addition to this initial supervisory training, NOPD agrees to require each supervisor to complete at least 40 hours of supervisor-specific training annually thereafter. In-service training for supervisors, including commanders, shall provide necessary updates and refreshers, as well as training in new skills.

**315.** NOPD's supervisory training program shall include instruction in the following topics:

- a) techniques for effectively guiding and directing officers, and for promoting effective and

ethical police practices;

- b) de-escalating conflict, including through peer intervention when necessary;
- c) evaluation of written reports, including what constitutes a fact-based description, and how to identify “pat,” “boilerplate,” or conclusory language that is not explained by specific facts;
- d) investigating officer uses of force;
- e) responding to and investigating allegations of officer misconduct;
- f) operation of supervisory tools such as the EWS, mobile recording equipment, and AVL;
- g) 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 supported;
- h) evaluating officer performance as part of NOPD’s annual performance evaluation system;
- i) fostering positive career development and imposing appropriate disciplinary sanctions and non-disciplinary corrective action;
- j) building community partnerships and guiding officers on same; and
- k) incorporating integrity-related data into COMSTAT reporting.

**C. Early Warning System**

**316.** The City and NOPD agree to develop, implement, and maintain an EWS to support the effective supervision and management of NOPD officers and employees, including the identification of and response to potentially problematic behaviors as early as possible. NOPD will regularly use EWS data to promote constitutional and professional police practices; to manage risk and liability; and to evaluate the performance of NOPD employees across all ranks, units, and shifts.

**317.** Within 90 days of the Effective Date, the City and NOPD agree to create a plan for the implementation of the EWS, which shall include the hiring of at least one full-time-equivalent qualified information technology specialist within 270 days of the Effective Date, to facilitate the development, implementation, and maintenance of the EWS. The City and NOPD agree to maintain sufficient staffing to facilitate EWS data input and provide training and assistance to EWS users.

**318.** The City and NOPD agree to develop and implement a protocol setting out which fields shall include historical data; the historical start date for each field; deadlines for inputting data

related to current and new information; and the individuals responsible for capturing and inputting data. NOPD is not expected to include any historical data prior to January 1, 2006.

**319.** The City and NOPD agree to develop and implement a protocol for using the EWS and information obtained from it. The protocol for using the EWS shall address data storage, data retrieval, reporting, data analysis, pattern identification, identifying officers for intervention, supervisory use, supervisory/departmental intervention, documentation and audit. Among protocol requirements, the City and NOPD agree to include:

- a) comparative data analysis, including peer group analysis, to identify patterns of activity by individual officers and groups of officers;
- b) NOPD commander and supervisor review, on a regular basis, of EWS reports regarding each officer under the commander or supervisor's direct command and, at least quarterly, broader, pattern-based reports;
- c) NOPD commander and supervisor initiation, implementation, and assessment of the effectiveness of interventions for individual officers, supervisors, and units, based on assessment of the information contained in the EWS;
- d) an array of intervention options to facilitate an effective response to identified problems. Interventions may take the form of counseling or training, or of other supervised, monitored, and documented action plans and strategies designed to modify activity. NOPD agrees to seek the services of mental health professionals and others to ensure that interventions are appropriate and effective. All interventions will be documented in writing and entered into the automated system;
- e) specify that the decision to order an intervention for an employee or group using EWS data shall include peer group analysis, including consideration of the nature of the employee's assignment and appropriate thresholds, and not solely on the number or percentages of incidents in any category of information recorded in the EWS;
- f) prompt review by NOPD commanders and supervisors of the EWS system records of all officers upon transfer to their supervision or command;
- g) evaluation of NOPD commanders and supervisors based on their appropriate use of the EWS to enhance effective and constitutional policing and reduce risk; and
- h) mechanisms to ensure monitored and secure access to the EWS to ensure the integrity, proper use, and appropriate confidentiality of the data.

**320.** The EWS shall include a computerized relational database, which shall be used to collect, maintain, integrate, and retrieve:

- a) all uses of force, including critical firearm discharges, both on-duty and off-duty;
- b) the number of ECW units in use;
- c) each canine officer's canine bite ratio;
- d) all injuries to persons in-custody, including in-custody deaths;
- e) all instances in which force is used and a subject is charged with obstructing or resisting an officer, interfering with a law enforcement investigation, or similar charges;
- f) all misconduct complaints (and their dispositions);
- g) data compiled under the stop data collection mechanism;
- h) all criminal proceedings initiated against an officer, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City and/or its officers or agents, resulting from NOPD operations or the actions of NOPD personnel;
- i) all judicial proceedings where an officer is the subject of a protective or restraining order;
- j) all vehicle pursuits and traffic collisions involving NOPD equipment;
- k) all loss or theft of NOPD property or equipment in the custody of the employee, including currency, firearms, force instruments, and identification cards;
- l) all interviews or interrogations in violation of NOPD policy;
- m) all instances in which NOPD learns or is informed by a prosecuting or judicial authority that a declination to prosecute any crime was based upon concerns about the credibility of an NOPD employee or that a motion to suppress evidence was granted on the grounds of a constitutional violation by an NOPD employee;
- n) all disciplinary action taken against employees;
- o) all non-disciplinary corrective action required of employees;
- p) all awards and commendations received by employees;
- q) training history, including firearm qualification and other weapon certifications, for each employee; and
- r) sick leave usage.

**321.** The EWS shall include appropriate identifying information for each involved employee (i.e., name, badge number, shift, and supervisor) and civilian (e.g., race, ethnicity, and gender).

**322.** The City and NOPD agree to maintain computer hardware, including servers, terminals, and other necessary equipment, in sufficient amount and in good working order to permit personnel, including supervisors and commanders, ready and secure access to the EWS system to permit timely input and review of EWS data as necessary to comply with the requirements of this Agreement.

**323.** NOPD shall maintain all personally identifiable information about an officer included in the EWS for at least five years following the officer's separation from the agency except where prohibited by law. Information necessary for aggregate statistical analysis will be maintained indefinitely in the EWS. On an ongoing basis, NOPD will enter information into the EWS in a timely, accurate, and complete manner, and shall maintain the data in a secure and confidential manner. No individual within NOPD shall have access to individually identifiable information that is maintained only within the EWS and is about an officer not within that individual's direct command, except as necessary for investigative, technological, or auditing purposes.

**324.** The EWS computer program and computer hardware will be operational, fully implemented, and used in accordance with policies and protocols that incorporate the requirements of this Agreement pursuant to an interim schedule that includes full implementation within three years of the Effective Date. Prior to full implementation of the new EWS, NOPD will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by employees or groups of officers.

**325.** NOPD agrees to provide in-service training to all employees, including officers, supervisors, and commanders regarding EWS protocols prior to its implementation, as required to facilitate proper understanding and use of the system. NOPD supervisors shall be trained in and required to use the EWS to ensure that each supervisor has a complete and current understanding of the employees under the supervisor's command. Commanders and supervisors shall be trained in evaluating and making appropriate comparisons in order to identify any significant individual or group patterns.

**326.** Following the initial implementation of the EWS, and as experience and the availability of new technology may warrant, the City and NOPD may add, subtract, or modify thresholds, data tables, and fields; modify the list of documents scanned or electronically attached; and add, subtract, or modify standardized reports and queries as appropriate. NOPD will submit all such

proposals for review and approval to the Monitor and DOJ before implementation to ensure it continues to comply with the intent of this Agreement.

**D. Visual and Audio Documentation of Police Activities**

**327.** Within two years of the Effective Date, NOPD agrees to maintain and operate video cameras and AVL in all marked or unmarked vehicles that are assigned to routine calls for service, task forces, tactical units, prisoner transport, or SOD canine and shall repair or replace all non-functioning video cameras or AVL units, as necessary for reliable functioning. One-half of these vehicles will be equipped with video cameras and AVL within one year of the Effective Date. NOPD agrees to ensure that recordings are captured, maintained, and reviewed as appropriate by supervisors, in addition to any review for investigatory or audit purposes, to assess the quality and appropriateness of officer interactions, uses of force, and other police activities.

**328.** NOPD agrees to develop and implement policies and procedures regarding AVL, in-car cameras, ECWs, and similar equipment that require:

- a) activation of in-car cameras for all traffic stops and pursuits until the motor vehicle stop is completed and the stopped vehicle departs, or until the officer's participation in the motor vehicle stop ends;
- b) activation of ECW cameras when the ECW's safety switch is turned off;
- c) activation of in-car cameras, where vehicle is so-equipped, to record requests for consent to search a vehicle, deployment of drug- detection canines, and vehicle searches;
- d) activation of in-car cameras for incidents in which a prisoner being transported is violent or resistant;
- e) supervisors to review AVL, in-car camera recordings, and ECW recordings of all officers listed in any NOPD report regarding any incident involving injuries to a prisoner or an officer, Level 2-4 uses of force, vehicle pursuits, or misconduct complaints;
- f) supervisors to review recordings regularly and to incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers;
- g) NOPD to retain and preserve recordings for at least three years, or, if a case remains under investigation or litigation longer than three years, at least three years after the final disposition of the matter, including appeals; and
- h) an officer to notify a supervisor immediately when an event was not recorded.

**329.** Within 90 days of the Effective Date, NOPD agrees to develop and implement a schedule for testing AVL, in-car camera, and ECW recording equipment to confirm that it is in proper working order. Officers shall be responsible for ensuring that recording equipment assigned to them or their car is functioning properly at the beginning and end of each shift and shall report immediately any improperly functioning equipment.

**330.** Supervisors shall be responsible for ensuring that officers under their command use in-car camera recording equipment, AVL equipment, ECW cameras, and similar equipment, as required by policy. Supervisors shall report equipment problems and seek to have equipment repaired as needed. Supervisors shall refer for investigation any officer found to fail to properly use or care for in-car camera recording, AVL, ECW camera, or similar equipment.

**331.** Within 365 days of the Effective Date, NOPD agrees to provide each supervisor with handheld digital recording devices or body-worn cameras and require that supervisors use these devices to record complainant and witness statements taken as part of use of force or misconduct complaint investigations.

## **XVI. SECONDARY EMPLOYMENT SYSTEM**

The City shall completely restructure what is currently known as its Paid Detail system to ensure that officers' and other NOPD employees' off-duty secondary employment does not compromise or interfere with the integrity and effectiveness of NOPD employees' primary work as sworn police officers serving the entire New Orleans community. To achieve this outcome, the City shall develop and implement an off-duty secondary employment system that comports with applicable law and current professional standards, and which shall include the requirements set out below.

### **A. Secondary Employment Coordinating Office**

**332.** The Secondary Employment Coordinating Office ("Coordinating Office") shall have sole authority to arrange, coordinate, arrange fully-auditable payment, and perform all other administrative functions related to NOPD employees' off-duty secondary law enforcement employment (historically referred to as paid details) and shall be operated in accordance with the requirements of this Agreement.

**333.** The Coordinating Office shall be directed by a civilian with no actual conflict of interest or appearance of conflict of interest. This Coordinating Office Director ("Director") shall not be a present or former NOPD employee. The Director shall be an unclassified civil servant

appointed by and serving at the pleasure of the Mayor, and shall remain independent from actual or perceived influence by NOPD.

**334.** The Coordinating Office shall employ a civilian in the role of “Major Special Events” Coordinator with no actual conflict of interest or appearance of conflict of interest. This Major Special Events Coordinator shall not be a present or former NOPD employee. This Coordinator will report to the Director.

a) Major Special Events include Mardi Gras, Jazz Fest, Essence Music Festival, French Quarter Festival, Voodoo Fest, college bowl and college championship events, professional sporting events, and other events as designated by the Mayor, Chief Administrative Officer, the Deputy Mayor for Public Safety, the City Attorney, City Council, or the Superintendent as a Major Special Event.

**335.** The Director’s and all other Coordinating Office employees’ salaries shall be independent of the number of off-duty secondary jobs worked or the amount of revenue generated by secondary employment.

**336.** The Coordinating Office shall be staffed with civilians with no actual conflict of interest or appearance of conflict of interest, and shall not have been NOPD employees within the previous two years.

**337.** The Coordinating Office shall not be located in, or immediately adjacent to, NOPD Headquarters, District Headquarters, or a District Substation.

**B. Coordinating Office Responsibilities**

**338.** Within 365 days of the Effective Date, or as funding is established, the City shall develop and implement and the Coordinating Office shall maintain a searchable list of off-duty secondary employment opportunities, which can be accessed through either the existing NOPD employee web site or another accessible database.

**339.** The Coordinating Office shall maintain a roster of NOPD employees interested in working off-duty secondary employment.

**340.** The Coordinating Office shall establish a rotation system that provides a fair and equitable number of secondary employment opportunities to all NOPD employees in consideration of preferences for assignment and availability.

**341.** The Coordinating Office shall fill all new secondary employment opportunities and temporary vacancies pursuant to written and consistently applied criteria. NOPD employees

shall not be permitted to select substitutes or allow another employee to work an assigned secondary job in place of the employee.

**342.** The Coordinating Office shall establish an after-hours notification system, which provides them the capability of accepting information and making assignments 24 hours a day, 365 days per year.

**343.** The Coordinating Office shall remove NOPD employees from the secondary employment roster where the employees are performing unsatisfactorily, are under suspension, administrative reassignment, or have been charged with a crime.

**344.** Approval to work secondary employment is not automatically based on assignment through the Coordinating Office. Members shall also be required to comply with all NOPD internal procedures governing off-duty secondary employment, including the completion of an NOPD Secondary Employment Authorization Form.

**345.** The Coordinating Office shall identify secondary employment jobs to be inspected based on the frequency worked, and the NOPD's Performance Standards Section shall conduct these inspections according to established, written criteria. The results of these inspections shall be maintained by NOPD and communicated to the Coordinating Office. Supervisory oversight at Major Special Events or larger venues, which meet minimum supervisor staffing level requirements specified under this Agreement, shall be the responsibility of those ranking officers who were selected by the Coordinating Office to work the secondary employment assignment. The required number of supervisory officers specified under minimum staffing requirements for Major Special Events or larger venues must be present for the duration of the secondary employment assignment.

**346.** The Coordinating Office shall ensure that no NOPD employee is supervising another employee of higher rank. For Major Special Events requiring greater than 50 officers where all supervisory positions are filled and where reasonably necessary to ensure public safety, officers in the ranks of commander, major, captain, or lieutenant who have volunteered to do so may serve in positions with no supervisory authority or less supervisory authority than their rank would warrant, provided that: 1) the roles assigned to these ranking supervisors are ones that do not depend upon close supervision by a lower-ranking member and 2) they retain their command authority.

**347.** The Coordinating Office shall be responsible for collecting and maintaining a searchable database of all secondary employment worked. This database shall be searchable by secondary employment assignment and by employee and shall identify the employee working the secondary employment, secondary employment hours, and assignment locations. This database shall maintain historic and current information on all employees' secondary employment.

**348.** A schedule of fees will be established by the Court to offset costs associated with the coordination and required support provided through the Coordinating Office to take into account costs, including but not limited to, administrative fees, hourly wage rates, and equipment usages. The schedule of fees shall be publicly available.

**349.** The Coordinating Office shall be responsible for the annual, public release of the following information:

- a) The number of NOPD employees who worked secondary employment by District and rank;
- b) The average number of secondary employment hours worked by District and rank;
- c) The salaries of Coordinating Office employees and the Coordinating Office's administrative operational costs; and
- d) The net and gross amounts of City income derived through secondary employment.

**350.** a) The Coordinating Office shall ensure that all potential employers are notified of their responsibilities, including:

(1) Agreeing that individuals or entities seeking to employ off-duty NOPD employees to work secondary employment must work through the Coordinating Office;

(2) Making all payments in advance and acknowledgement that advanced payments may be subject to forfeiture or penalty assessment associated with late cancellations;

(3) Agreeing to have secondary employees sign in and sign out every work day; and

(4) Acknowledging that they are prohibited from providing any compensation, either cash or in-kind, including bonuses or gifts, beyond nominal compensation in the form of food or beverages, to an NOPD employee or the friend or relative of an NOPD employee in exchange for any secondary employment services offered.

b) An employer may be exempt from the advance payment requirement of section (a)(2) of this paragraph if:

- (1) the employer is a state or governmental agency; or

(2) the employer satisfies the specific criteria which have been delineated by the Director of the Coordinating Office, and approved by the Monitor and the DOJ, to determine financial stability.

c) Any further modifications or revisions to the criteria delineated by the Director pursuant to section (b)(2) of this paragraph are subject to an approval process similar to the one contained in consent decree paragraphs 21 and 22.

**C. Secondary Employment Compensation**

**351.** The Coordinating Office, working with NOPD and the City, shall develop and implement an auditable payment system that ensures that secondary employment pay is made to NOPD employees.

**352.** NOPD employees working secondary employment shall not be permitted to receive any compensation, either cash or in-kind, including bonuses or gifts, unless such compensation, bonus, or gift, is provided through and documented by the Coordinating Office and is in accordance with the Louisiana Ethics Code for public employees. Nominal compensation in the form of food or beverages is permitted in accordance with the Louisiana Ethics Code for public employees.

**353.** Travel time to and from secondary employment shall not be compensated, unless it involves specialized patrol services or use of specialized equipment.

**354.** NOPD employees are not permitted to solicit secondary compensation or employment. Individuals or entities seeking to employ NOPD employees to work secondary employment must work through the Coordinating Office.

**355.** NOPD shall advise all officers that attempting to circumvent or circumventing the secondary employment policy or the Coordinating Office shall subject officers to discipline as warranted, up to and including dismissal.

**D. Limitations on Secondary Employment Work**

**356.** NOPD and the Coordinating Office shall establish a standard form by which NOPD employees can register to work secondary employment assignments. No employee shall be eligible to work secondary employment without first registering with the NOPD Compliance Section and obtaining authorization from the employee's direct supervisor and unit commander. Secondary employment authorization shall be valid for one calendar year. When determining

whether an NOPD employee qualifies for authorization to work secondary employment, NOPD and the Coordinating Office shall evaluate factors that include:

- a) The quality of the employee's primary employment performance, assessed pursuant to written criteria;
- b) Whether the employee is an active member of the NOPD or grandfathered Reserve officer in good standing;
- c) The applicant's disciplinary record, complaint history, and work performance history;
- d) The applicant's level of experience; and
- e) Whether the employee is seeking a supervisory or non-supervisory position.

Non-supervisory NOPD employees may not supervise secondary employment.

**357.** Only a POST certified commissioned member who has successfully completed his/her FTO training may work police-related secondary employment assignments.

**358.** [Paragraph stricken]

**359.** POST certified commissioned members hired as lateral transfers successfully completing FTO training may work authorized secondary employment unsupervised.

**360.** Regardless of prior approval, members shall not engage in secondary employment while absent in the following status: sick; Injured On-Duty; Worker's Compensation; Maternity Leave; Leave Without Pay; or Suspended or under Administrative Reassignment with a restricted police commission. Members must return to full duty status and have completed a full tour of duty prior to working a secondary employment opportunity.

**361.** Secondary employment for City departments and agencies shall be prohibited. Instead, departments and agencies shall cover compensation for employees through authorized City reimbursement procedures.

**362.** In addition to the secondary employment positions prohibited under current NOPD policy, the following types of work or services shall be prohibited as secondary employment:

- a) Work in or for Alcoholic Beverage Outlets as defined under NOPD policy;
- b) Private investigations;
- c) Chauffeur services; except where chauffeur services to public officials, executives or celebrities is secondary to a primary purpose of security. Notwithstanding the foregoing prohibition, motorcycle escorts for chauffeur services and limousines are permitted;
- d) Security at sexually oriented businesses;

- e) Employment requiring that the employee act as a civil process server; and
- f) Security at pawn shops.

**363.** NOPD employees are prohibited from working secondary employment that conflicts with the employee's NOPD duties and ethical obligations. Prohibitions include:

- a) Representing anyone before any court or agency of the City, with or without compensation, on a matter in which the City is a party or has a substantial interest;
- b) Serving as an expert witness in his or her private capacity in any civil or criminal proceeding in which the City is a party or has a substantial interest;
- c) Working secondary employment during court hours while the employee is under a conflicting subpoena;
- d) Disclosing confidential information acquired in an official capacity to any secondary employer;
- e) Using on-duty time to conduct investigations or take other law enforcement action on behalf of a secondary employer where there would be an actual conflict of interest or appearance of a conflict of interest;
- f) Knowingly participating in, or soliciting the creation of, any corporation, company, trust, fund, or cooperative banking account for the purpose of billing, receiving compensation, or coordinating services of secondary employment; and
- g) Taking an assignment that will interrupt or occur during the employee's assigned on-duty NOPD shift.

**364.** Secondary employment by NOPD employees will be limited to a maximum of 24 hours per seven-day work week (Sunday through Saturday). Exceptions to the hour limitation may be granted for Major Special Events where manpower requirements are so intensive that sufficient resources may not be available for the safe operation of the event (e.g., Jazz Fest, Mardi Gras). Application for such an event exception will be made in advance via interoffice correspondence (NOPD Form 105) by an employee or event commander that estimates the number of hours an employee can exceed the maximum threshold. The application will be forwarded through the appropriate chain of command for final approval by the Superintendent. Secondary employment in excess of the 24-hour limitation cannot be worked unless approved in advance by the Superintendent.

**365.** No employee, including Reserve officers, shall work more than 16 hours 49 minutes within a 24-hour period. (The 24-hour period begins the first time the employee reports for either regular duty or secondary employment allowing for a minimum of eight hours of rest within each 24-hour period.) These hours are cumulative and include normal scheduled work hours, overtime, off-duty secondary employment, and outside employment.

**366.** Commissioned Reserve officers are allowed to register for and work secondary employment assignments through the Coordinating Office if they are full time active duty officers in good standing or Commissioned Reserve Officers on the Effective Date. The following further limitations and restrictions shall apply to all Reserve members, however:

- a) Plain clothes secondary employment coordinated through the Coordinating Office must be approved by the Superintendent or his designee prior to allowing any Reserve officer to work in plain clothes;
- b) Reserve officers shall not work secondary employment for their current employer or for anyone for whom they have worked full time during any period within two years of the Effective Date;
- c) Reserve officers shall not work secondary employment during the first year after graduation from the Reserve Police Academy;
- d) Reserve officers must have volunteered a minimum of 480 hours in the prior calendar year to be eligible to work secondary employment during the following calendar year. Officers who have met this requirement may work the same number of hours as a full-time, paid commissioned member of the NOPD. This requirement is waived for resigned or retired commissioned officers in their first year in the Reserve Division;
- e) [Subparagraph stricken]
- f) [Subparagraph stricken]
- g) The Coordinating Office shall monitor annual authorization forms for reserve officers to ensure compliance with this agreement; and
- h) Reserve officers shall follow all policies and procedures of NOPD, the NOPD Reserve Division and this Agreement while working secondary employment.
- i) [Subparagraph stricken]

**E. Secondary Employment Employee Responsibilities**

**367.** NOPD employees seeking to work any secondary employment shall submit a signed Secondary Employment Registration Form (“Registration Form”) initially and annually thereafter to the Coordinating Office. This Registration Form shall include acknowledgment that:

- a) the employee understands that working secondary employment is a privilege subject to strict criteria;
- b) the employee represents NOPD while working secondary employment;
- c) the employee must abide by all NOPD policies while working secondary employment; and
- d) the employee may be disciplined by NOPD for policy violations committed while working secondary employment.

**368.** Employees working secondary employment shall have the same responsibility to carry appropriate departmental equipment (e.g., police radios) and document their activities in the same manner as if they were on-duty, including completing incident, arrest, and use of force reports, and reporting allegations of misconduct or observed misconduct.

**F. Secondary Employment Supervision**

**369.** Working with NOPD, the Coordinating Office shall determine the number of employees and supervisors necessary to work a secondary job, considering factors that include:

- a) The anticipated number of people attending the function;
- b) Whether alcoholic beverages will be served;
- c) Whether the event is open to the public or is private/by invitation only;
- d) The location of the event; and
- e) The history of the event and employer.

**370.** The minimum supervisory requirements for any secondary employment assignment shall be:

- a) Secondary employment requiring the simultaneous or overlapping schedule of one to four officers may be worked without a ranking officer. In these instances, the most senior officer accepts responsibility for secondary employment related notifications. Supervisory oversight shall be the responsibility of a patrol supervisor in the District of the secondary employment assignment, though officers engaged in secondary employment are expected to abide by general directions from the coordinating office;

- b) Secondary employment requiring the simultaneous or overlapping schedule of five to nine officers shall include at least one ranking officer of at least the grade of sergeant or lieutenant;
- c) Secondary employment requiring the simultaneous or overlapping schedule of 10 to 14 officers shall include at least two ranking officers of at least the grade of sergeant or lieutenant;
- d) Secondary employment requiring the simultaneous or overlapping schedule of 15 to 19 officers shall include at least two ranking officers of at least the grade of sergeant and one supervisor of at least the grade of lieutenant;
- e) Secondary employment requiring the simultaneous or overlapping schedule of 20 to 24 officers shall include at least three ranking officers of at least the grade of sergeant and one supervisor of at least the grade of lieutenant;
- f) Secondary employment requiring the simultaneous or overlapping schedule of 25 to 29 officers shall include at least three ranking officers of at least the grade of sergeant and two supervisors of at least the grade of lieutenant;
- g) Secondary employment requiring the simultaneous or overlapping schedule of 30 officers or more shall include supervisory coverage in addition to that specified above based on the following graduated scale:
  - (1) One sergeant or above for every five members;
  - (2) One lieutenant or above for every two sergeants;
  - (3) One captain or above for every three lieutenants.

**371.** Sergeants and lieutenants shall be allowed to back-fill a police officer opening, but those supervisors electing to fill such a vacancy are eligible for compensation at the hourly rate approved for the police officer position as negotiated between the Coordinating Office and the employer. Captains or above shall only be allowed to fill open vacancies at a supervisory staffing level equivalent to a captain's position.

**372.** Supervisors shall supervise NOPD employees working secondary employment in the same manner as if they were working their primary employment.

**373.** The City will implement a system so that on-duty NOPD patrol supervisors are aware of each secondary job within that supervisor's geographical coverage area and the identity of each employee working each secondary job.

374. [Paragraph stricken]

**XVII. MISCONDUCT COMPLAINT INTAKE, INVESTIGATION, AND  
ADJUDICATION**

NOPD and the City agree to ensure that all allegations of officer misconduct are received and are fully and fairly investigated; that all investigative findings are supported using the preponderance of the evidence standard and documented in writing; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair and consistent. To achieve these outcomes, NOPD and the City agree to implement the requirements set out below.

**A. Reporting Misconduct**

375. NOPD agrees to continue to require any Department employee who observes or becomes aware of any act of misconduct by another employee to report the incident to a supervisor or directly to PIB for review and investigation. Where an act of misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to PIB. Failure to report or document an act of misconduct or criminal behavior is an egregious offense and shall be grounds for discipline, up to and including termination of employment.

**B. Non-Investigative Responses to Allegations of Misconduct**

376. Notwithstanding the requirement that all allegations of misconduct be fully and fairly investigated, NOPD through PIB may elect to address certain allegations of misconduct through one of the following alternative mechanisms as set forth herein:

**1) Non-Disciplinary Counseling**

In certain limited circumstances, a supervisor may elect to address a minor violation/infraction through non-disciplinary counseling or remedial training. A minor violation/infraction that is eligible for non-disciplinary counseling is a violation of a Department rule, policy, procedure, regulation, or instruction that a supervisor believes requires minimal intervention through retraining and counseling (e.g., tardiness, uniform requirement, forgetting to complete an FIC, cleanliness of vehicle). The behavior must not be the subject of a civilian complaint and must be sufficiently minor that it is correctable by simple counseling and minimal intervention, with the goal of non-repetitive behavior. Repetition of similar violations within a 12-month period (based on the date of the observed violation) may require discipline. When a member repeatedly

(i.e., more than three times within a 12-month period) commits the same minor violation/infraction, the supervisor shall not handle the minor violation/infraction through a non-disciplinary response.

If a supervisor elects to address a minor violation/infraction through non-disciplinary counseling, the supervisor shall document the minor violation/infraction, as well as the specific counseling imposed, and transmit that documentation to PIB within five days of the supervisor becoming aware of the minor violation/infraction. PIB shall review the documentation and shall have authority to require a full investigation into the alleged minor violation/infraction.

NOPD agrees to develop and incorporate into policy specific protocols for employing non-disciplinary counseling in a manner that is consistent with the terms of the Decree.

## **2) Negotiated Settlement**

In certain limited circumstances, NOPD through PIB may elect to address and resolve a rank-initiated violation (i.e., an allegation of misconduct reported by an NOPD supervisor) through a negotiated settlement agreement between the department and the officer. To be eligible for negotiated settlement, a rank-initiated violation must be an infraction or set of infractions that is (1) subject to discipline ranging from reprimand to a maximum of ten days suspension; and (2) listed in the penalty schedule set out in the effective and DOJ- and Monitor- approved NOPD Negotiated Settlement Agreement and Complaint Resolution Procedure (Procedure 1023). Complaints initiated by citizens shall not be eligible for negotiated settlement. PIB shall have sole authority to determine whether a rank-initiated violation is eligible for negotiated settlement. Negotiated Settlement Agreements are not a “right” or “entitlement” even if a rank-initiated violation is eligible. At any point prior to the final approval by the Superintendent, the matter may be handled through the formal investigation process.

NOPD agrees to develop and incorporate into policy specific protocols for employing negotiated settlement agreements in a manner that is consistent with the terms of the Consent Decree.

## **3) Mediation**

In certain limited circumstances, NOPD through PIB may elect to address and resolve an allegation of misconduct brought by a civilian through an OIPM-led mediation program. The goal of the mediation process is to increase the level of trust between NOPD and the community.

PIB shall have sole authority to determine eligibility for mediation. Only certain civilian complaints shall be eligible for mediation, for example: professionalism, discourtesy, and neglect of duty. NOPD shall develop and incorporate into policy specific guidelines for determining eligibility for mediation. Further, a complaint will be ineligible for mediation if the NOPD employee against whom the complaint is made has already had two complaints mediated within the previous twelve months. Once PIB deems a complaint eligible for mediation, OIPM shall have sole authority to determine if resolution of the complaint through the mediation process would be appropriate.

Complaints that are either ineligible, inappropriate, or otherwise not selected for mediation will be returned to PIB for formal disciplinary investigation.

NOPD agrees to develop and incorporate into policy specific protocols for employing mediation in a manner that is consistent with the terms of the Consent Decree.

**C. Preventing Retaliation**

**377.** The City and NOPD agree to expressly prohibit all forms of retaliation, including discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct. Within 270 days of the Effective Date, and annually thereafter, the City, through PIB, shall review NOPD's anti-retaliation policy and its implementation. This review shall consider the alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and the supervisors' performance in addressing and preventing retaliation. Following such review, the City shall modify policy and practice as necessary to protect individuals, including other NOPD officers and employees and civilians, from retaliation for reporting misconduct. Retaliation for reporting misconduct or for cooperating with an investigation of misconduct is an egregious offense and shall be grounds for discipline, up to and including termination of employment.

**D. Staffing, Selection, and Training Requirements**

**378.** NOPD agrees to continue to have a civilian serve as PIB commander.

**379.** NOPD and the City agree to ensure that a sufficient number of well-trained staff is assigned and available to complete and review thorough and timely misconduct investigations in accordance with the requirements of this Agreement. NOPD and the City further shall provide sufficient resources and equipment to ensure that thorough and timely criminal and administrative misconduct investigations are conducted.

**380.** Within 365 days of the Effective Date, NOPD agrees to review the staffing of PIB and ensure that misconduct investigators and commanders possess excellent investigative skills, a reputation for integrity, the ability to write clear reports, and the ability to be fair and objective in determining whether an officer committed misconduct. Officers with a sustained complaint of, or who have been disciplined for, excessive use of force, false arrest, unlawful search or seizure, sexual harassment, discrimination, or dishonesty shall be presumptively ineligible for assignment to PIB.

**381.** Officers promoted to the rank of Lieutenant shall, within a reasonable time frame, serve a rotation in PIB.

**382.** All personnel conducting NOPD officer misconduct investigations, whether assigned to PIB, a District, or elsewhere, shall receive at least 40 hours of initial training in conducting officer misconduct investigations within 365 days of the Effective Date, and shall receive at least eight hours of training each year. This training shall include instruction in:

- a) investigative skills, including proper interrogation and interview techniques; gathering and objectively analyzing evidence; surveillance; and data and case management;
- b) the particular challenges of administrative police misconduct investigations, including identifying alleged misconduct that is not clearly stated in the complaint or that becomes apparent during the investigation; properly weighing credibility of civilian witnesses against officers; using objective evidence to resolve inconsistent statements; and the proper application of the preponderance of the evidence standard;
- c) relevant state, local, and federal law, including state employment law related to officers and the rights of public employees, including but not limited to **La. Rev. Stat. 40:2531**, “Rights of Law Enforcement Officers While Under Investigation,” and local Civil Service Commission requirements, as well as criminal discovery rules such as those set out in *Garrity v. New Jersey*, **385 U.S. 493** (1967), and *Brady v. Maryland*, **373 U.S. 83** (1963); and

d) NOPD rules and policies, including the requirements of this Agreement, and protocols related to criminal and administrative investigations of alleged officer misconduct.

**383.** Within 365 days of the Effective Date, NOPD agrees to develop and implement a plan for conducting regular, targeted, and random integrity audit checks, or “sting” audits, to identify and investigate officers engaging in at-risk behavior, including: unlawful stops, searches, and seizures (including false arrests); discriminatory policing; use of excessive force; secondary employment abuse; failure to take a complaint; failure to report misconduct or complaints; or other patterns of misconduct or potentially criminal behavior.

**E. Complaint Information**

**384.** Within 365 days of the Effective Date, the City and NOPD agree to develop and implement a program to ensure broad knowledge throughout the New Orleans community about how to make misconduct complaints, and the availability of effective mechanisms for making misconduct complaints. The requirements below shall be incorporated into this program.

**385.** The City and NOPD agree to make complaint forms and informational materials, including brochures and posters, available at appropriate government properties, including, at a minimum, NOPD headquarters, District stations, NOPD and City websites, City Hall, courthouses within New Orleans, all public libraries, the IPM, the Orleans Public Defenders, and at the offices or gathering places of community groups. Individuals shall be able to submit misconduct complaints through NOPD and City websites and these websites shall include complaint forms and information regarding how to file misconduct complaints.

**386.** NOPD agrees to post and maintain a permanent placard at all police facilities describing the external complaint process. The placards shall include relevant contact information, such as telephone numbers, email addresses, and internet sites. Officers shall provide the officer’s name and badge number upon request. If an individual indicates that he or she would like to make a complaint or requests a complaint form, the officer shall immediately inform his or her supervisor who will respond to the scene to assist the individual in providing appropriate forms and/or other available mechanisms for filing a misconduct complaint.

**387.** Complaint forms and related informational materials shall be made available and posted in Spanish, Vietnamese, and English.

**F. Complaint Intake, Classification, Assignment, and Tracking**

**388.** NOPD agrees to, within 365 days of the Effective Date, revise policy and train all officers and supervisors to ensure that they properly handle complaint intake, including how to properly provide complaint materials and information and the consequences for failing to take complaints.

**389.** The refusal to accept a misconduct complaint, discouraging the filing of a misconduct complaint, or providing false or misleading information about filing a misconduct complaint, shall be grounds for discipline, up to and including termination.

**390.** NOPD agrees to accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. Any LEP individual who wishes to file a complaint about an NOPD officer or employee shall be provided with a complaint form in English, Spanish, or Vietnamese, as appropriate, and the appropriate translation services required to file a complaint, and such complaints will be investigated in accordance with this Agreement.

**391.** All officers and employees who receive a misconduct complaint in the field shall immediately inform a supervisor of the misconduct complaint so that the supervisor can ensure proper intake of the complaint. All misconduct complaints received outside of PIB shall be documented and submitted to PIB by the end of the shift in which it was received.

**392.** Upon notification by the City Attorney's Office, the DA, or judges or magistrates, NOPD agrees to ensure that allegations of officer misconduct are identified and investigated as misconduct complaints. The City Attorney's Office agrees to forward copies of all civil suits alleging misconduct by an NOPD officer to PIB.

**393.** NOPD agrees to track, as a separate category of misconduct complaints, allegations that an officer has in any way interfered with a civilian's First Amendment right to observe, record, and/or verbally comment on the performance of police duties in an area open to the public, or where the individual has a right to be, such as a person's home or business. Improper interference with this right includes improperly detaining or arresting individuals for interfering with a law enforcement investigation, disorderly conduct, or similar charges.

**394.** NOPD agrees to track, as a separate category of misconduct complaints, allegations of discriminatory policing, along with characteristics of the complainants. NOPD agrees to ensure that complaints of discriminatory policing are captured and tracked appropriately.

**395.** Within 365 days of the Effective date, PIB shall develop and implement a centralized numbering and tracking system for all misconduct complaints. Upon the receipt of a complaint, PIB shall promptly assign a unique numerical identifier to the complaint, which shall be provided to the complainant at the time the complaint is made. Where a misconduct complaint is received in the field, a supervisor shall obtain the unique numerical identifier and provide this identifier to the complainant.

**396.** NOPD's centralized numbering and tracking system shall maintain accurate and reliable data regarding the number, nature, and status of all misconduct complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the investigation. This system shall be used to determine the status of complaints and to confirm that a complaint was received, as well as for periodic assessment of compliance with NOPD policies and procedures and this Agreement, including requirements on the timeliness of administrative investigations.

**397.** Where a supervisor receives a misconduct complaint in the field alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide this information and evidence to PIB. This information includes the names and contact information for all complainants and witnesses, the names of all NOPD officers and employees involved in or witnessing the alleged misconduct, and any available physical evidence, such as voluntarily provided video or audio recordings, or documentation of the existence of such recordings where the witness chooses not to provide the recording. The supervisor shall take photographs of apparent injuries, or the absence thereof, unless the complainant/subject objects or declines.

**398.** Within three business days of the receipt of a misconduct complaint, PIB shall determine whether the complaint will be: assigned to an ICO or supervisor; retained by PIB for investigation or referred to the appropriate outside agency; and whether it will be investigated criminally.

**399.** NOPD agrees to develop and implement a complaint classification protocol that is allegation-based rather than anticipated outcome-based to guide PIB in determining where a

complaint should be assigned. This complaint classification protocol shall ensure that PIB or an authorized outside agency investigates allegations including:

- a) serious misconduct, including but not limited to: criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft;
- b) misconduct implicating the conduct of the supervisory or command leadership of the subject officer; and
- c) subject to the approval by the Deputy Superintendent of PIB, allegations that any commander requests be conducted by PIB rather than the subject officer's District/Division.

**400.** Where NOPD or the City determines that an externally-generated complaint contains no allegations of misconduct, the complaint shall receive a disposition of "exonerated" or "unfounded" and include for tracking purposes an indication that it was a complaint regarding service or otherwise contained no allegations of misconduct. NOPD agrees to cease the use of "No Violation Observed," "NIMS," or similar dispositions of misconduct allegations. NOPD will use the classification "No Formal Investigation Merited" to resolve only the following types of complaints:

- a) complaints disputing traffic citations, except that allegations of misconduct contained in such complaints (e.g., racial profiling, illegal search, excessive force) will be classified and investigated according to its merits;
- b) complaints alleging a delay in police service such as patrol response or detective follow-up, where the preliminary investigation demonstrates that the delay is due to workload. However, if the preliminary investigation discloses that misconduct such as negligence rather than workload caused the delay, the complaint will be classified according to its merits;
- c) complaints regarding off-duty officer conduct of a civil nature, unless the alleged conduct or its effects constitute misconduct or have a substantial nexus to the officer's employment; and
- d) complaints in which the preliminary investigation demonstrates that the subject officer does not work for NOPD or where the identity of the subject officer cannot be determined, despite the best efforts of PIB.

**401.** A misconduct complaint investigation may not be conducted by any officer who used force during the incident; whose conduct led to the injury of a person; who authorized the conduct that led to the reported incident or complaint; or who witnessed or was involved in the incident leading to the allegation of misconduct.

**G. Investigation Timeframe**

**402.** NOPD and the City agree to make good faith efforts to have state law amended to permit a reasonable timeframe for the completion of administrative investigations of officer misconduct so that such investigations can be thorough, reliable, and complete.

**403.** All administrative investigations conducted by PIB shall be completed within the time limitations mandated by state law and within 90 days of the receipt of the complaint, including assignment, investigation, review and final approval, unless granted an extension as provided for under state law or Civil Service exemption, in which case the investigation shall be completed within 120 days. Where an allegation is sustained, NOPD shall have 30 days to determine and impose the appropriate discipline, except in documented extenuating circumstances, in which case discipline shall be imposed within 60 days. All administrative investigations shall be subject to appropriate interruption (tolling period) as necessary to conduct a concurrent criminal investigation or as provided by law.

**H. Collection of Evidence**

**404.** Officer misconduct investigations shall be as thorough as necessary to reach reliable and complete findings. The misconduct complaint investigator shall interview each complainant in person, absent extenuating circumstances, and this interview shall be recorded in its entirety, absent specific, documented objection by the complainant. If the investigator determines the complaint is clearly unfounded or exonerated based on camera footage and no other misconduct is evident, the investigator may submit the recommended disposition for supervisory review and conclude the investigation after supervisory approval. In such an event, the investigator need not conduct additional investigatory requirements.

**405.** All witnesses, including officers witnessing or involved in an incident that becomes the subject of a misconduct complaint, shall provide a written statement regarding the incident or be interviewed as described below.

**406.** Where the alleged misconduct is particularly serious or interviews of the subject officer(s) or other witnesses may be necessary to sufficiently investigate the allegation, the

investigator shall conduct an in-person interview. The interview shall be recorded in its entirety, absent, in the case of non-officer witnesses, specific documented objection.

**407.** Each officer, witness, and complainant shall be interviewed separately. A NOPDAI not involved in the underlying complaint will be used when taking statements or conducting interviews of any Vietnamese or Spanish speaking LEP complainant or witness.

**408.** The misconduct investigator shall seek to identify all persons at the scene giving rise to a misconduct allegation, especially all NOPD officers. The investigator shall note in the investigative report the identities of all officers and other witnesses who were on the scene but assert they did not witness and were not involved in the incident. The investigator shall conduct further investigation of any such assertions that appear unsupported by the evidence.

**409.** All misconduct investigation interview recordings shall be stored and maintained in a secure location within PIB.

**410.** NOPD agrees to require officers to cooperate with administrative investigations, including appearing for an interview when requested by an NOPD or Inspector General investigator and providing all requested documents and evidence. Supervisors shall be notified when an officer under their supervision is summoned as part of an administrative investigation, and shall facilitate the officer's appearance, absent extraordinary and documented circumstances.

**411.** If at any time during complaint intake or investigation the investigator determines that there may have been criminal conduct on the part of any officer or employee, the investigator shall immediately notify the PIB commander. The PIB commander shall immediately notify the Superintendent, the DA and/or USAO, and the Monitor of the initiation of a criminal investigation. The subject officer shall not be compelled to provide a statement to administrative investigators where there is a potential criminal investigation or prosecution of the officer until the remainder of the investigation has been completed, unless after consultation with prosecuting agency (e.g., DA or USAO) and the PIB commander, such compulsion is deemed appropriate by the Superintendent. NOPD and the City agree to consult with the DA to develop and implement protocols to ensure that the criminal and administrative investigations can be conducted in parallel as appropriate and are kept separate after a subject officer has provided a compelled statement.

**412.** Nothing in this Agreement or NOPD policy shall hamper an officer's obligation to provide a public safety statement regarding a work related incident or activity. NOPD agrees to

make clear in policy and training that all officer statements in incident reports, arrest reports, use of force reports, and similar documents, and statements made in interviews such as those conducted in conjunction with NOPD's routine use of force review and investigation process, are part of each officer's routine professional duties.

**I. Analysis of Evidence**

**413.** In each investigation, NOPD shall consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations based upon that evidence. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will NOPD disregard a witness' statement merely because the witness has some connection to the complainant or because of any criminal history. NOPD shall make efforts to resolve material inconsistencies between witness statements.

**414.** The resolution of any misconduct complaint must be based upon the preponderance of the evidence. A misconduct investigation shall not be closed simply because the complaint is withdrawn or because the alleged victim is unwilling or unable to provide additional information beyond the initial complaint. In such instances, the investigation shall continue as necessary within the allowable investigation timeframes established under this Agreement to resolve the original allegation(s) where possible based on the evidence and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense shall not be the deciding factor as to whether an NOPD officer committed the alleged misconduct, nor shall it justify discontinuing the investigation.

**415.** The misconduct investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:

- a) "Unfounded," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did not occur or did not involve the subject officer;
- b) "Sustained," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur;
- c) "Not Sustained," where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred; or
- d) "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate NOPD policies, procedures, or training.

**416.** The PIB commander shall accept the investigator's recommended disposition and the Superintendent shall approve the disposition, unless the disposition is unsupported by a preponderance of the evidence or additional investigation is necessary to reach a reliable finding. Where the disposition is unsupported by a preponderance of the evidence, the PIB Commander may correct the disposition or order additional investigation, as necessary.

**417.** In addition to determining whether the officer committed the alleged misconduct, administrative investigations shall assess and document whether: (a) the police action was in compliance with training and legal standards; (b) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures; and (d) the incident suggests that NOPD should revise its policies, strategies, tactics, or training. This information shall be shared with the relevant commander(s) who shall document the commander's disagreement or agreement with these findings, refer any recommendations to the appropriate individual to implement the recommended change, document the implementation of these recommendations, and return the documentation to PIB.

**J. Integrity of Investigative File and Evidence**

**418.** Division/District-Level investigation reports and all related documentation and evidence shall be provided to PIB immediately upon completion and approval by the appropriate supervisor of the investigation, but no later than three business days.

**419.** All investigation reports and related documentation and evidence shall be securely maintained in a central and accessible location until the officer who was a subject of the complaint has severed employment with NOPD.

**K. Communication with Complainant**

**420.** Each misconduct complainant will be kept informed periodically regarding the status of the investigation. The complainant will be notified of the outcome of the investigation, in writing, within 10 business days of the completion of the investigation, including regarding whether any disciplinary or non-disciplinary action was taken.

**L. Discipline Process and Transparency**

**421.** NOPD agrees to ensure that discipline for sustained allegations of misconduct will be based on the nature of the allegation and defined and consistent mitigating and aggravating factors, rather than the identity of the officer or his or her status within NOPD or the broader

community. NOPD and the City agree to develop and implement procedures to ensure that discipline is fair and consistent.

**422.** NOPD agrees to use a disciplinary matrix that:

- a) establishes a presumptive range of discipline for each type of rule violation;
- b) increases the presumptive discipline based both on an officer's prior violations of the same or other rules;
- c) sets out defined mitigating or aggravating factors;
- d) requires that any departure from the presumptive range of discipline must be justified in writing;
- e) provides that NOPD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and
- f) provides that NOPD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed.

**423.** NOPD and the City agree to establish a unified system for reviewing sustained findings and assessing the appropriate level of discipline pursuant to NOPD's disciplinary matrix, in order to facilitate consistency in the imposition of discipline. All disciplinary decisions shall be documented, including the rationale behind any decision to deviate from the level of discipline set out in the disciplinary matrix.

**424.** NOPD and the City agree to develop and establish written policies and procedures to ensure that the City Attorney's Office provides close guidance to NOPD at the disciplinary stage to ensure that NOPD's disciplinary decisions are as fair and legally defensible as possible.

**425.** The City agrees to request the Civil Service Commission to, within 90 days of the Effective Date, post online its full decisions related to NOPD discipline in a timely manner.

**M. Annual Report**

**426.** PIB shall include in its annual report a summary of each misconduct complaint, including a description of the allegation, the final approved disposition, and any discipline imposed. PIB's annual report shall also include aggregate misconduct complaint data showing the number of each type of complaint and the number and rate of sustained cases after final approval, and shall provide an analysis of this data that identifies trends and concerns and documents NOPD's response to the identified trends and concerns. The PIB and IPM should coordinate and confer

with each other in collecting, analyzing, and reporting this data to avoid or minimize duplication of efforts or resources.

### **XVIII. TRANSPARENCY AND OVERSIGHT**

To ensure comprehensive, effective, and transparent oversight of NOPD, NOPD and the City agree to develop, implement, and maintain systems that are meant to be sustained after the completion of this Agreement. To facilitate effective and constitutional policing and increase trust between NOPD and the broader New Orleans community, these oversight systems shall ensure that improper incidents, practices, or trends are identified and corrected in an equitable and timely manner. To achieve these outcomes, NOPD and the City agree to implement the requirements set out below.

#### **A. Data Collection and Public Reporting**

**427.** All NOPD audits and reports related to the implementation of this Agreement shall be publicly available via website and at the Police Department, City Hall, and other public locations, to the fullest extent permissible under law.

**428.** Within 30 days of its implementation, each NOPD policy, procedure, and manual, including those created pursuant to this Agreement, shall be posted online and otherwise made publicly available, unless NOPD documents a reasonable security reason for keeping the policy, procedure, or manual private. Where a portion of a manual may not be suitable for public availability, NOPD agrees to make the remainder of the manual publicly available.

**429.** NOPD shall collect and maintain all data and records necessary to facilitate and ensure transparency and wide public access to information related to NOPD decision making and activities, as permitted by law.

#### **B. United States Attorney Criminal Justice Coordination Group**

**430.** Within 120 days of the Effective Date, NOPD shall develop and implement a system of formal coordination between a command-level NOPD official and the DA, municipal and state court judges, the Orleans Public Defenders, the FBI, the USAO, and the IPM. This criminal justice coordination group shall be convened by the USAO and shall meet quarterly to share regular feedback regarding the quality of NOPD arrests and indicia of misconduct; to refer specific allegations of misconduct for investigation; and to receive an update on the status of previous referrals.

**431.** The NOPD command-level official shall be accountable for documenting feedback and referrals received; ensuring that operational changes based upon this feedback are considered and made as appropriate; ensuring that all allegations of misconduct are investigated; and providing an update each month to the USAO-convened criminal coordination group regarding the status of investigations of previously referred allegations of misconduct, and the status of consideration of operational changes as a result of feedback received from the group.

**C. District Community Outreach Programs and Meetings**

**432.** Within 180 days of the Effective Date, NOPD agrees to develop and implement a Community Outreach and Public Information program in each NOPD District.

**433.** The Community Outreach and Public Information program shall include at least one semi-annual open meeting in each of NOPD's eight Districts for the first year of this Agreement, and one meeting in each District annually thereafter. These open meetings shall be led by the Superintendent or Deputy Superintendent and shall inform the public about the requirements of this Agreement; NOPD's progress toward meeting these requirements; and address areas of community concern related to public trust and constitutional policing. At least one week before such meetings, the City shall widely publicize the meetings using earned media opportunities. In determining the locations of the meetings, NOPD shall consider factors such as easy access to public transportation and child care.

**434.** The Community Outreach and Public Information meetings shall 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.

**435.** For at least the first two years of this Agreement, every NOPD officer and supervisor assigned to a District shall 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.

**D. Police-Community Advisory Board**

**436.** DOJ acknowledges that NOPD and community representatives have acted jointly to create a PCAB to facilitate regular communication and cooperation between the Department, the City, and community leaders, including youth leaders, such as through the development of a community advisory panel and the collaborative development of policing strategies and priorities.

**437.** NOPD agrees to 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. To the extent specified below, NOPD agrees to seek PCAB's assistance, counsel, and input to build community consensus on potential recommendations in areas including the following:

- a) community policing strategies;
- b) accountability for professional/ethical behavior by individual police officers;
- c) special task forces that meet high priority community need;
- d) central policy changes, where applicable, that improve quality of life;
- e) resource allocations to meet high priority, difficult issues;
- f) strategies for a qualified and diverse workforce;
- g) providing information to the community and conveying feedback from the community to NOPD; and
- h) ways to provide data and information, including information about NOPD's compliance with this Agreement, to the public in a transparent and public-friendly format, to the greatest extent allowable by law.

**438.** NOPD further agrees to participate in quarterly meetings scheduled by PCAB; to allow the meeting agenda to be determined by the PCAB; and to have command/executive level staff representation present at all regularly scheduled meetings.

**E. Community-Based Restorative Justice Project**

**439.** NOPD and the City agree to participate in a community-based restorative justice project. NOPD, the City, and DOJ will work to identify an entity to fund and administer this 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.

**F. Office of the Independent Police Monitor**

**440.** This Agreement in no way diminishes the authority and oversight provided by the IPM pursuant to city ordinance and the related Memorandum of Understanding between the IPM and NOPD.

**441.** NOPD and the City agree to provide the IPM ready and timely access to the information necessary to fulfill its duties. The IPM shall have all access to confidential information,

including all protections and authority of state law, as does New Orleans' Office of Inspector General.

**442.** NOPD and the City agree to abide by the November 10, 2010, Memorandum of Understanding between the NOPD and the IPM. This MOU is hereby incorporated by reference into this Agreement.

**443.** In determining the timing and content of its reviews and audits, the IPM may coordinate with the Monitor and NOPD to minimize duplication of effort, recognizing that overlapping or redundant audits may be necessary on occasion to assess the quality and reliability of various internal and external oversight mechanisms.

**XIX. AGREEMENT IMPLEMENTATION AND ENFORCEMENT**

**A. Role of the Monitor**

**444.** The Monitor shall assess and report whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in the constitutional and professional treatment of individuals by NOPD.

**445.** The Monitor shall be subject to the supervision and orders of the Court, consistent with this Agreement. The Monitor shall only have the duties, responsibilities, and authority conferred by this Agreement. The Monitor shall not, and is not intended to, replace or assume the role and duties of the City and NOPD, including the Superintendent.

**446.** In order to assess and report on the Defendant's implementation of this Agreement and whether implementation is resulting in the constitutional and professional treatment of individuals by NOPD, the Monitor shall conduct the reviews, audits, and assessments specified below, and such additional audits, reviews, and assessments as the Monitor or the Parties jointly deem necessary to determine whether this Agreement has been implemented as required.

**B. Compliance Reviews and Audits**

**447.** The Monitor shall conduct compliance reviews or audits as necessary to determine whether the City and NOPD have implemented and continue to comply with the material requirements of this Agreement. Compliance with a material requirement of this Agreement requires that the City and NOPD have: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) ensured that the requirement is being carried out in actual practice. Compliance reviews and audits shall contain the elements necessary for reliability and comprehensiveness.

Compliance reviews and audits may be conducted using sampling and compilation data as consistent with reliability and comprehensiveness. Outcome Assessments in Section XIX.C. may not require a review of all NOPD data on a specific statistic or category.

**C. Outcome Assessments**

**448.** In addition to compliance reviews and audits, the Monitor shall conduct assessments to measure whether implementation of this Agreement is resulting in constitutional policing. These outcome assessments shall include collection and analysis of the following outcome data:

a) Use of force measurements, including:

- (1) Rate of force used per arrest by NOPD overall and by force type, geographic area (i.e., zone), type of arrest, age, race, gender, and ethnicity;
- (2) Canine bite ratio;
- (3) Rate of force complaints that are sustained and rate that are not sustained, overall and by force type; geographic area (i.e., zone), source of complaint (internal or external), type of arrest, age, race, gender and ethnicity;
- (4) Uses of force that were found to violate policy, overall and by force type, geographic area (i.e., zone), type of arrest, age, race, gender and ethnicity;
- (5) Number and rate of Use of Force administrative investigations/reviews in which each finding is supported by a preponderance of the evidence; and
- (6) Number of officers who frequently or repeatedly use force, or have more than one instance of force found to violate policy.

b) Stop, Search, and Arrest measurements, including:

- (1) Number and rate of arrests for which there is documented reasonable suspicion for the stop and probable cause for the arrest, overall and broken down by geographic area (i.e., zone), type of arrest, age, race, gender, and ethnicity;
- (2) The DA's acceptance and refusal rates of arrests made by NOPD and reasons for refusals, when made available by the DA, including those factors and information indicating that a failure to prosecute was due to the quality of officer arrests or concerns regarding officer conduct, overall and broken down by geographic area (i.e., zone), type of arrest, age, race, gender, and ethnicity; and

(3) Number and rate of searches that result in a finding of contraband, overall and broken down by geographic area (i.e., zone) type of arrest, age, race, gender, and ethnicity.

c) Bias-Free Policing and Community Engagement measurements, including:

- (1) Number and variety of community partnerships, including particular partnerships with youth;
- (2) Homicide clearance rate;
- (3) Comparative response time between LEP and non-LEP individuals seeking assistance from NOPD, and change in response time to LEP individuals.;
- (4) Accurate classification of reports of sexual assault and domestic violence; and
- (5) Clearance rate of sexual assault and domestic violence cases, overall and broken down by whether the case was cleared by arrest or by exception, including accuracy of clearance type.

d) Recruitment and Training measurements, including:

- (1) Number of highly-qualified recruit candidates;
- (2) Officer and agency reports of adequacy of training in type and frequency; and
- (3) Role of insufficient training reflected in problematic incidents or by performance trends.

e) Officer Assistance and Support measurements, including:

- (1) Availability and use of officer assistance and support services; and
- (2) Officer reports of adequacy of officer assistance and support.

f) Performance Evaluation and Promotion measurements, including:

- (1) Promotions of qualified candidates with a history of ethical decision-making; and
- (2) Uses of force found to be unreasonable, misconduct complaints sustained and not sustained, and other performance-related indicators for supervisors/commanders promoted pursuant to the requirements of this Agreement, and for the units these supervisors/commanders command.

g) Supervision measurements, including:

- (1) Initial identification of officer violations and performance problems by supervisors, and effective response by supervisors to identified problems.

h) Secondary Employment measurements, including:

- (1) Policy and legal violations related to secondary employment.

i) Accountability measurements, including:

- (1) Number of misconduct complaints, and whether any increase or decrease appears related to access to the complaint process;
- (2) Rate of sustained, not sustained, exonerated, and unfounded misconduct complaints;
- (3) Number and rate of misconduct complaint allegations supported by a preponderance of the evidence;
- (4) Number of officers who are subjects of repeated misconduct complaints, or have repeated instances of sustained misconduct complaints;
- (5) Arrests/summons of officers for on or off-duty conduct;
- (6) Criminal prosecutions of officers for on or off-duty conduct; and
- (7) Number and nature of civil suits against NOPD officers and amount of judgments or settlements against the City or NOPD for civil suits filed against NOPD officers for work-related conduct.

**449.** In conducting these outcome assessments the Monitor may use any relevant data collected and maintained by NOPD (e.g., crime trend pattern analysis), the Office of the Inspector General, or the IPM, provided that it has determined, and the Parties agree, that this data is reasonably reliable and complete.

**D. Monitoring Plan and Review Methodology**

**450.** Within 90 days of assuming duties as Monitor, the Monitor shall develop a plan for conducting the above outcome assessments and compliance reviews and audits, and shall submit this plan to the Parties for review and approval. This plan shall:

- a) clearly delineate the requirements of the Agreement to be assessed for compliance, indicating which requirements will be assessed together;
- b) set out a schedule for conducting outcome measure assessments for each outcome measure at least annually, except where otherwise noted, with the first assessment occurring within 365 days of the Effective Date;

c) set out a schedule for conducting a compliance review or audit of each requirement of this Agreement within the first two years of the Agreement, and a compliance review or audit of each requirement at least annually thereafter.

**451.** Within 120 days of assuming duties as Monitor, the Monitor shall review and recommend any changes to the Outcome Assessment measurements set out in section XIX.C, above, that the Monitor deems useful in assessing whether implementation of the Agreement is resulting in constitutional policing. The Parties shall adopt any recommendations upon which they agree. If the Parties disagree whether to adopt a particular outcome measurement, the Party seeking adoption may seek Court resolution.

**452.** Where the Monitor recommends and the Parties agree, the Monitor may refrain from conducting a compliance audit or review of a requirement previously found to be in compliance by the Monitor pursuant to audit or review, or where outcome assessments indicate that the outcome intended by the requirement has been achieved.

**453.** At least 90 days prior to the initiation of any outcome measure assessment or compliance review or audit, the Monitor shall submit a proposed methodology for the assessment, review, or audit to the Parties. The Parties shall submit any comments or concerns regarding the proposed methodology to the Monitor within 45 days of the proposed date of the assessment, review, or audit. The Monitor shall modify the methodology as necessary to address any concerns or shall inform the Parties in writing of the reasons it is not modifying its methodology as proposed.

**E. Review of Use of Force and Misconduct Investigations**

**454.** City and NOPD shall provide each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft), to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review. The Monitor shall review each serious use of force investigation and each serious misconduct complaint investigation and recommend for further investigation any use of force or misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence. The Monitor shall provide written instructions for completing any investigation determined to be

incomplete or inadequately supported by the evidence. The Superintendent shall determine whether the additional investigation or modification recommended by the Monitor should be carried out. Where the Superintendent determines not to order the recommended additional investigation or modification, the Superintendent will set out the reasons for this determination in writing. The Monitor shall provide recommendations so that any further investigation or modification can be concluded within the timeframes mandated by state law. The Monitor shall coordinate with the IPM in conducting these use of force and misconduct investigation reviews.

**F. Monitor Recommendations and Technical Assistance**

**455.** The Monitor may make recommendations to the Parties regarding measures necessary to ensure timely, full, and effective implementation of this Agreement and its underlying objectives. Such recommendations may include a recommendation to change, modify, or amend a provision of the Agreement; a recommendation for additional training in any area related to this Agreement; or a recommendation to seek technical assistance. In addition to such recommendations, the Monitor may also, at the request of DOJ or the City and based on the Monitor's reviews, provide technical assistance consistent with the Monitor's responsibilities under this Agreement.

**G. Comprehensive Re-Assessment**

**456.** Two years after the Effective Date, the Monitor shall conduct a comprehensive assessment to determine whether and to what extent the outcomes intended by this Agreement have been achieved, and any modifications to the Agreement that are necessary for continued achievement in light of changed circumstances or unanticipated impact (or lack of impact) of the requirement. This assessment also shall address areas of greatest achievement and the requirements that appear to have contributed to this success, as well as areas of greatest concern, including strategies for accelerating full and effective compliance. Based upon this comprehensive assessment, the Monitor shall recommend modifications to the Agreement that are necessary to achieve and sustain intended outcomes. Where the Parties agree with the Monitor's recommendations, the Parties shall stipulate to modify the Agreement accordingly, and shall submit such stipulation to the Court for approval. This provision in no way diminishes the Parties' ability to stipulate to modifications to this Agreement as set out in section XIX.P, below. Nothing in this assessment shall empower the Monitor to unilaterally modify the terms of this Agreement.

**H. Monitor Reports**

**457.** The Monitor shall file with the Court quarterly written, public reports covering the reporting period that shall include:

- a) a description of the work conducted by the Monitor during the reporting period;
- b) a listing of each Agreement requirement indicating which requirements have been: (1) incorporated into implemented policy; (2) the subject of sufficient training for all relevant NOPD officers and employees; (3) reviewed or audited by the Monitor in determining whether they have been fully implemented in actual practice, including the date of the review or audit; and (4) found by the Monitor to have been fully implemented in practice;
- c) the methodology and specific findings for each audit or review conducted, redacted as necessary for privacy concerns. An unredacted version shall be filed under seal with the Court and provided to the Parties. The underlying data for each audit or review shall not be publicly available but shall be retained by the Monitor and provided to either or both Parties upon request;
- d) for any requirements that were reviewed or audited and found not to have been fully implemented in practice, the Monitor's recommendations regarding necessary steps to achieve compliance;
- e) the methodology and specific findings for each outcome assessment conducted; and
- f) a projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of the Agreement.

**458.** The Monitor shall provide a copy of quarterly reports to the Parties in draft form at least 10 business days prior to Court filing and public release of the reports to allow the Parties to informally comment on the reports. The Monitor shall consider the Parties' responses and make appropriate changes, if any, before issuing the report.

**I. Coordination with IPM**

**459.** In conducting its assessments, reviews, and audits, and in developing its monitoring plan and review methodologies, the Monitor shall coordinate and confer with the IPM to avoid duplication of effort and expenses.

**J. Communication Between Monitor, Parties, and Public**

**460.** The Monitor shall maintain regular contact with the Parties in order to ensure effective and timely communication regarding the status of the implementation of and compliance with

this Agreement. To facilitate this communication, the Monitor shall conduct monthly meetings that shall include participation by the Superintendent, representatives of the City Attorney's Office, and DOJ.

**461.** The Monitor shall meet with community stakeholders to explain the Monitor's reports, to inform the public about the Agreement implementation process, and to hear community perspectives of police interactions.

**K. Public Statements, Testimony, Records, and Conflicts of Interest**

**462.** Except as required or authorized by the terms of this Agreement or the Parties acting together, the Monitor, including any agent, employee, or independent contractor thereof, shall not make any public statements or issue findings with regard to any act or omission of the City or its agents, representatives, or employees; or disclose non-public information provided to the Monitor pursuant to the Agreement. Any press statement made by the Monitor regarding its employment or monitoring activities under this Agreement shall first be approved by DOJ and the City.

**463.** The Monitor may testify as to its observations, findings, and recommendations before the Court with jurisdiction over this matter, but shall not testify in any other litigation or proceeding with regard to any act or omission of the City or any of its agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of its performance under this Agreement. This paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

**464.** Unless such conflict is waived by the Parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents, or employees.

**465.** The Monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection.

**466.** The Monitor shall not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement brought by non-parties to this Agreement.

**L. NOPD Consent Decree Implementation Unit**

**467.** The City and NOPD agree to hire and retain, or reassign current NOPD employees to form, an inter-disciplinary unit with the skills and abilities necessary to facilitate implementation of this Agreement. This unit will serve as a liaison between the Parties and the Monitor and will assist with the implementation of and compliance with this Agreement. At a minimum, this unit will: coordinate the City and NOPD's compliance and implementation activities; facilitate the provision of data, documents, materials, and access to the City and NOPD personnel to the Monitor and DOJ, as needed; ensure that all data, documents, and records are maintained as provided in this Agreement; and assist in assigning implementation and compliance related tasks to NOPD personnel, as directed by the Superintendent or his designee.

**M. Implementation Assessment and Report**

**468.** NOPD and the City agree to collect and maintain all data and records necessary to: (1) document implementation of and compliance with this Agreement, including data and records necessary for the Monitor to conduct reliable outcome assessments, compliance reviews, and audits; and (2) allow NOPD or other City entities to perform ongoing quality assurance in each of the areas addressed by this Agreement.

**469.** Within 180 days of the Effective Date, the City agrees to file with the Court, with a copy to the Monitor and DOJ, a status report. This report shall delineate the steps taken by NOPD during the reporting period to implement this Agreement; the City's assessment of the status of its progress; plans to correct any problems; and response to any concerns raised in the Monitor's previous quarterly report. Following this initial status report, the City agrees to file a status report every six months thereafter while this Agreement is in effect.

**N. Access and Confidentiality**

**470.** To facilitate its work, the Monitor may conduct on-site visits and assessments without prior notice to the City and NOPD. The Monitor shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement related trainings, meetings, and reviews, such as critical incident reviews, use of force review boards, and disciplinary hearings. NOPD shall notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, in-custody death, or arrest of any officer.

**471.** The City and NOPD agree to ensure that the Monitor shall have timely, full and direct access to all City and NOPD staff, employees, critical incident crime scenes, and facilities that

the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement. The Monitor shall cooperate with the City and NOPD to access people and facilities in a reasonable manner that, consistent with the Monitor's responsibilities, minimizes interference with daily operations.

**472.** City and NOPD shall ensure that the Monitor has full and direct access to all City and NOPD documents and data that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement, except any documents or data protected by the attorney-client privilege. The attorney-client privilege may not be used to prevent the Monitor from observing reviews and trainings such as use of force review boards, or disciplinary hearings. Should the City and NOPD decline to provide the Monitor access to documents or data based on privilege, the City and NOPD shall inform the Monitor and DOJ that they are withholding documents or data on this basis and shall provide the Monitor and DOJ with a log describing the documents or data and the basis of the privilege for withholding.

**473.** For the purpose of implementing this Agreement, DOJ and its consultants and agents shall have full and direct access to all City and NOPD staff, employees, facilities, documents, and data. DOJ and its consultants and agents shall cooperate with the City and NOPD to access involved personnel, facilities, and documents in a reasonable manner that, consistent with DOJ's responsibilities to enforce this Agreement, minimizes interference with daily operations. Should the City and NOPD decline to provide DOJ with access to documents or data based on privilege, the City and NOPD shall inform DOJ that they are withholding documents or data on this basis and shall provide DOJ with a log describing the documents or data and the basis of the privilege for withholding.

**474.** The Monitor and DOJ shall provide the City and NOPD with reasonable notice of a request for copies of documents. Upon such request, the City and NOPD shall provide in a timely manner copies (electronic, where readily available) of the requested documents to the Monitor and DOJ.

**475.** The Monitor shall have access to all records and information relating to criminal investigations of NOPD officers as permissible by law. The Monitor shall have access to all documents in criminal investigation files that have been closed by NOPD after the Effective Date. The Monitor also shall have reasonable access to all arrest reports, warrants, and warrant applications initiated after the Effective Date whether or not contained in open criminal

investigation files. Where practicable, arrest reports, warrants, and warrant applications initiated after the Effective Date shall be obtained from sources other than open criminal investigation files.

**476.** The Monitor and DOJ shall maintain all non-public information provided by the City and NOPD in a confidential manner. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right the City and NOPD may assert, including those recognized at common law or created by statute, rule or regulation, against any other person or entity with respect to the disclosure of any document.

**O. Selection and Compensation of the Monitor**

**477.** Within 90 days of the Effective Date, or additional time if agreed to by both Parties, the City and DOJ shall together select a Monitor, acceptable to both, which shall assess and report on NOPD's implementation of this Agreement. This process shall be implemented in a manner consistent with this Agreement, including the requirement that the Monitor be jointly selected and acceptable to both DOJ and the City. The Parties' Monitor selection shall be subject to the approval of the Federal Court with jurisdiction over this Agreement. The Monitor's team shall consist of individuals of the highest ethics.

**478.** If the Parties are unable to agree on a Monitor or an alternative method of selection within the timeframe agreed to by both parties as of the Effective Date, then the Court shall resolve the disagreement.

**479.** The Monitor shall be appointed for a period of four years from the Effective Date and the appointment shall be extended automatically should the City and NOPD not demonstrate full and effective compliance at the end of this four-year period. The extension of the Monitor beyond six years shall be allowed only if the Court determines that it is reasonably necessary in order to assess and facilitate full and effective compliance with this Agreement.

**480.** The City shall bear all reasonable fees and costs of the Monitor. DOJ and the City recognize the importance of ensuring that the fees and costs borne by the City are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Monitor. In the event that any dispute arises regarding the reasonableness or payment of the Monitor's fees and costs, the City, DOJ, and the Monitor shall attempt to resolve such dispute cooperatively prior to seeking the assistance of the Court to resolve such dispute.

**481.** The City shall provide the Monitor with permanent office space and reasonable office support such as office furniture, telephones, access to internet, secure document storage, and photocopying.

**482.** The Monitor, at any time after its initial selection, may request to be allowed to hire or employ or contract with such additional persons or entities as are reasonably necessary to perform the tasks assigned to the Monitor by this Agreement. Any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement shall be subject to the provisions of this Agreement. The Monitor shall notify the City and DOJ in writing if the Monitor wishes to select such additional persons or entities. The notice shall identify and describe the qualifications of the person or entity to be hired or employed and the monitoring task to be performed. If the City and DOJ agree to the Monitor's proposal, the Monitor shall be authorized to hire or employ such additional persons or entities. The City or DOJ have 10 business days to disagree with the proposal. If the City and DOJ are unable to reach agreement within 10 business days of receiving notice of the disagreement, the Court shall resolve the dispute.

**483.** In the event that full and effective implementation of this Agreement requires technical assistance beyond the scope of the Monitor's duties, DOJ, NOPD, and/or the Monitor shall inform the City of the need for technical assistance and its relation to implementation of the Agreement. The Monitor, with assistance from the City, shall arrange for the prompt initiation of the required technical assistance, to be performed by the Monitor or its agent or independent contractor; the IPM; or a separate entity. The City shall set aside \$100,000.00 for this purpose, and shall allocate additional funds as necessary. If either Party disagrees with the need for the technical assistance requested, the Party shall, within 15 days of being informed in writing of the requested technical assistance, inform the Court, which shall resolve the dispute.

**484.** Should either of the Parties to this Agreement determine that the Monitor's individual members, agents, employees, or independent contractors have exceeded their authority or failed to satisfactorily perform the duties required by this Agreement, the Party may petition the Court for such relief as the Court deems appropriate, including replacement of the Monitor, and/or any individual members, agents, employees, or independent contractors.

**P. Court Jurisdiction, Modification of the Agreement, and Enforcement**

**485.** This Agreement shall become effective upon entry by the Court.

**486.** To ensure that the requirements of this Agreement are properly and timely implemented, the Court shall retain jurisdiction of this action for all purposes until such time as the City has achieved full and effective compliance with this Agreement and maintained such compliance for no less than two years. At all times, the City and NOPD shall bear the burden of demonstrating full and effective compliance with this Agreement. DOJ acknowledges the good faith of the City in trying to address measures that are needed to promote police integrity and ensure constitutional policing in New Orleans. DOJ, however, reserves its right to seek enforcement of the provisions of this Agreement if it determines that the City has failed to fully comply with any provision of this Agreement. DOJ agrees to consult with officials from the City before instituting enforcement proceedings.

**487.** The City and DOJ may jointly stipulate to make changes, modifications, and amendments to this Agreement, which shall be submitted to the Court for approval. Such changes, modifications, and amendments to this Agreement shall be encouraged when the Parties agree, or where the reviews, assessments, and/or audits of the Monitor demonstrate, that the Agreement provision as drafted is not furthering the purpose of the Agreement, or that there is a preferable alternative that will achieve the same purpose. Where the Parties or the Monitor are uncertain whether a change to the Agreement is advisable, the Parties may agree to suspend the current Agreement requirement for a time period agreed upon at the outset of the suspension. During this suspension, the Parties may agree to temporarily implement an alternative requirement. The Monitor shall assess whether the suspension of the requirement and the implementation of any alternative provision is as, or more, effective at achieving the purpose as was the original/current Agreement requirement, and the Parties shall consider this assessment in determining whether to jointly stipulate to make the suggested change, modification, or amendment.

**488.** The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement. In the event any provision of this Agreement is challenged in any City court, removal to a federal court shall be sought by the Parties.

**489.** The City and NOPD agree to promptly notify DOJ if any term of this Agreement becomes subject to collective bargaining consultation and to consult with DOJ in a timely manner regarding the position the City and NOPD take in any collective bargaining consultation connected with this Agreement.

**490.** The City and NOPD agree to require compliance with this Agreement by their respective officers, employees, agencies, assigns, or successors.

**Q. Termination of the Agreement**

**491.** The City and NOPD will endeavor to reach full and effective compliance with this Agreement within four years of its Effective Date. The Parties may agree to jointly ask the Court to terminate this Agreement after this date, provided that the City and NOPD have been in full and effective compliance with this Agreement for two years. “Full and Effective Compliance” shall be defined to require sustained compliance with all material requirements of this Agreement or sustained and continuing improvement in constitutional policing, as demonstrated pursuant to the Agreement’s outcome measures.

**492.** If after six years from the Effective Date, the Parties disagree whether the City has been in full and effective compliance for two years, either Party may seek to terminate this Agreement. In the case of termination sought by the City, prior to filing a motion to terminate, the City agrees to notify DOJ in writing when the City has determined that it is in full and effective compliance with this Agreement and that such compliance has been maintained for no less than two years. Thereafter, the Parties shall promptly confer as to the status of compliance. If, after a reasonable period of consultation and the completion of any audit or evaluation that DOJ and/or the Monitor may wish to undertake, including on-site observations, document review, or interviews with the City and NOPD’s personnel, the Parties cannot resolve any compliance issues, the City may file a motion to terminate this Agreement. If the City moves for termination of this Agreement, DOJ will have 60 days after the receipt of the City’s motion to object to the motion. If DOJ does not object, the Court may grant the City’s motion. If DOJ does make an objection, the Court shall hold a hearing on the motion and the burden shall be on the City to demonstrate that it is in full and effective compliance with this Agreement and has maintained such compliance for at least two years.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA \* 12-CV-1924  
\*  
versus \* Section E  
\*  
CITY OF NEW ORLEANS \* June 21, 2023  
\* \* \* \* \*

TRANSCRIPT OF STATUS CONFERENCE BEFORE  
THE HONORABLE SUSIE MORGAN  
UNITED STATES DISTRICT JUDGE

Appearances:

For the United States of America: R. Jonas Geissler, Esq.  
  
For the City of New Orleans: Charles F. Zimmer II, Esq.  
Ashley M. Spears, Esq.  
  
For the Monitoring Team: Jonathan Aronie, Esq.  
David Douglass, Esq.  
  
For the Office of the Independent Police Monitor: Stella Cziment, Esq.  
Bonycle Sokunbi, Esq.  
  
Official Court Reporter: Toni Doyle Tusa, CCR, FCRR  
500 Poydras Street, Room B-275  
New Orleans, Louisiana 70130  
(504) 589-7778

Proceedings recorded by mechanical stenography using  
computer-aided transcription software.

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1 PROCEEDINGS

2 (June 21, 2023)

3 (Call to Order of the Court.)

4 **THE COURT:** Be seated.

5 **THE DEPUTY CLERK:** Calling Civil Action 12-1924,  
6 *United States of America v. City of New Orleans*, if counsel  
7 could make their appearance for the record.

8 **MR. ZIMMER:** Good afternoon, Your Honor. Charles  
9 Zimmer on behalf of the City of New Orleans and the NOPD.

10 **MS. SPEARS:** Good afternoon, Your Honor. Ashley  
11 Spears standing in for Donesia Turner on behalf of the City of  
12 New Orleans.

13 **THE COURT:** Well, hello, Ms. Spears. I don't know  
14 that we have met before.

15 **MS. SPEARS:** No, ma'am, we haven't.

16 **THE COURT:** It's nice to meet you.

17 **MS. SPEARS:** It's nice to meet you as well. Thank  
18 you.

19 **MR. GEISSLER:** Good afternoon, Your Honor. Jonas  
20 Geissler, senior trial attorney with the U.S. Department of  
21 Justice, Civil Rights Division, for the United States.

22 **MR. DOUGLASS:** Your Honor, David Douglass for the  
23 monitoring team. With me here today is Dr. Ashley Burns, also  
24 part of the monitoring team. As the Court knows, our lead  
25 monitor, Jonathan Aronie, will be participating by video.

02:05

1           **MR. ARONIE:** Hello, Your Honor. Thank you.

2           **MS. CZIMENT:** Good afternoon, Your Honor.

3 Stella Cziment on behalf of the Office of the Independent  
4 Police Monitor. I am joined today with Bonycle Sokunbi from  
5 the Office of the Independent Police Monitor.

6           **THE COURT:** It's nice to have you all here. I also  
7 want to welcome all the interested citizens who we have in the  
8 courtroom today and also any representatives of the media that  
9 we have here today. You know you are always welcome.

10           The Court set this in-court status conference to  
11 allow the monitor to present to the Court regarding the status  
12 of implementation of the consent degree and the monitor's  
13 current observations, findings, and recommendations in  
14 accordance with paragraph 463. Today we are focusing on  
15 Sections VII.B, C, and D of the monitor's PIB report, which is  
16 in the record at record document 694, and the monitor's report  
17 on the Public Integrity Bureau's investigation into Officer  
18 Jeffrey Vappie, which is on the record at document 714.

19           DOJ filed a response to the monitor's reports  
20 that is in the record at document 715. The city filed a  
21 response, which is in the record at document 718. Both DOJ and  
22 the city informed the Court that they would like an opportunity  
23 to respond in court today to the monitor's reports, and of  
24 course I will offer them that opportunity. Our lead monitor,  
25 Jonathan Aronie, is going to begin our presentation.

02:07

1 Jonathan, we are looking forward to when you can  
2 be back in court with us, but this is the next best thing.  
3 Thanks for being here today.

4 **MR. ARONIE:** Yes. Well, I am looking forward to it  
5 as well, and thank you for accommodating my little medical  
6 issue by letting me do this by Zoom. I really appreciate it.

7 Would you like me to jump in, Your Honor?

8 **THE COURT:** Yes.

9 **MR. ARONIE:** Very good. Just quickly logistically,  
10 am I coming through loud and clear?

11 **THE COURT:** Can everyone hear Mr. Aronie?

12 Yes. They are nodding their heads yes.

13 **MR. ARONIE:** Okay. Well, give me one second, and I'm  
14 going to see if my screen share works just like it did when we  
15 got ready.

16 Can you see my screen?

17 **THE COURT:** Yes.

18 **MR. ARONIE:** Thank you. So, yes, this is our  
19 presentation about our review of the PIB investigation  
20 processes. I think it's useful, Your Honor, to start kind of  
21 where it all began, back in 2011 with the Department of  
22 Justice's investigation. I want to start there because there's  
23 some language used in the investigation that is just  
24 troublingly related to what we are still talking about today  
25 this many years into the consent decree.

02:08

1                   What DOJ found was that the police department's  
2 system for receiving, investigating, and resolving misconduct  
3 complaints, despite strengths and improvements, does not  
4 function as an effective accountability measure. Policies and  
5 practices for complaint intake do not ensure that the  
6 complaints are complete and accurate, and that they don't  
7 systematically exclude investigations of certain types of  
8 misconduct.

9                   Now, that's an important point because back  
10 before the consent decree, there was a pattern of hearing  
11 complaints but not recording the complaints, and "recording" I  
12 mean documenting the complaints. Complaints from citizens  
13 could just mysteriously disappear. If they were never  
14 documented, then they were never investigated, and then no one  
15 was ever held accountable. DOJ found a pattern and practice  
16 of that, and thus the misconduct function of NOPD was a  
17 critical part of DOJ's findings.

18                   DOJ went on to find that discipline and  
19 corrective actions are meted out inconsistently and too often  
20 without sufficient consideration of the seriousness of the  
21 offense and its impact on police-community relations.

22                   This obviously isn't the totality of DOJ's  
23 findings, but it relates here, as you will see. To give you a  
24 quick overview of where we are going because we do have a lot  
25 to cover this afternoon, we undertook this with you to evaluate

02:10

1 the durability of PIB's reforms. Now, I know there has been a  
2 lot written about the subject of the PIB investigation,  
3 Officer Jeffrey Vappie, but at its heart this isn't a review of  
4 Jeffrey Vappie. This is a review of PIB's processes and  
5 procedures and how PIB undertook the investigation.

6 As I said in my earlier report, this is not all  
7 a bad news story. In fact, there were some good things that  
8 happened. The lead interviewer did a good job in his  
9 interviews, and we noted that in our report. We also noted  
10 some significant shortcomings, material weaknesses, and just  
11 blatant violations of the consent decree. We are going to talk  
12 about all of that. Some of them include: the failure to  
13 include and investigate all the allegations, which you'll note  
14 ties exactly back to DOJ's 2011 finding; failure to consider  
15 all the evidence; failure to make credibility determinations,  
16 which is a troubling one because this is something we dinged  
17 PIB on several times in the past, and actually they got much  
18 better at this, so it was really alarming to see it not happen  
19 correctly here.

20 Our review also suggested some perceptions or  
21 appearances of favoritism within PIB. Now, that's a very  
22 common thing we hear from officers. We have looked into it and  
23 we continue to look into it. We haven't found blatant  
24 favoritism within PIB, but it is definitely a common complaint.  
25 We did see things that happened here that could be perceived as

02:12

1 favoritism.

2 We are concerned that if PIB couldn't get it  
3 right on such a high-profile public investigation conducted by  
4 some of its most experienced investigators, then that might  
5 suggest that you are not getting it right on other  
6 investigations as well, which again is troubling because they  
7 had come such a long way in the past. Then obviously -- this  
8 was a point that I stressed in my prior report, but NOPD's  
9 refusal to address our concerns is what partially leads us here  
10 today and is very troubling.

11 These are the specific violations we are going  
12 to be covering. Some will go faster than others, but I just  
13 put this here so you least have a road map.

14 A little bit of background so everyone  
15 understands the chronological context, if you will, the  
16 complaint that launched this issue was a letter from Fox 8 News  
17 to the city explaining that they were about to run a story  
18 about Officer Jeffrey Vappie and his spending time in the  
19 Pontalba apartment while he was on and off the clock. PIB  
20 received that complaint and opened an investigation. Again,  
21 this is kind of a shortened history.

22 The city council then, you might remember,  
23 requested that the IPM and my office conduct our own  
24 independent investigation. We declined, we said we don't  
25 conduct independent investigations, but we did say that we

02:14

1 would be reviewing this in the normal course, as is our  
2 responsibility.

3 A lot went on, then, between November and March.  
4 By March 10, PIB completes its investigation, shares a copy  
5 with the deputy chief of PIB. We will talk about what happened  
6 between March and April because there's some controversy here  
7 about why we weren't given the report. PIB ultimately shared  
8 the report with us on April 3.

9 We are required to perform an analysis. We did  
10 perform an analysis. We got it right back to them on April 7.  
11 PIB then submitted a response. We will show why it's not a  
12 substantive response. Then from April 24 on, that's what led  
13 to all the court filings that we are dealing with today.

14 That is a little bit of the overview. Unless  
15 you have a big picture question, Your Honor, I'm going to jump  
16 into the specifics.

17 I have organized these by each violation at a  
18 time so it's easy to follow. We are going to start with a  
19 violation of paragraph 399. Here's a quick summary and then I  
20 will get into the specifics.

21 PIB received complaints from multiple sources  
22 alleging payroll fraud by Officer Jeffrey Vappie, and yet it  
23 did not include the payroll fraud allegation in its intake  
24 paperwork as it's required to do by the consent decree. This  
25 failure led to a whole domino effect of other problems, and so

02:15

1 let me walk through some of those details.

2 I want to start each one of these where you have  
3 to start the analysis, which is in the text of the consent  
4 decree. You will note this text flows directly from DOJ's  
5 findings that this wasn't happening prior to the consent  
6 decree.

7 390 says, "NOPD agrees to accept all misconduct  
8 complaints, including anonymous and third-party complaints, for  
9 review and investigation." Complaints may be made verbally,  
10 etc., etc. The key point is they have to accept all  
11 complaints.

12 Paragraph 399, their system for classifying and  
13 investigating complaints has to be allegation based rather than  
14 anticipated outcome based. What that means is it doesn't  
15 matter what they think they are going to find. It doesn't  
16 matter if they think it might be frivolous. It doesn't matter  
17 if they think it might not be fully supported. The allegation  
18 comes in and that's what you have to classify. Again, this was  
19 what they weren't doing prior to the consent decree, which  
20 allowed many, many horrible things to be swept under the  
21 carpet. The consent decree specifically prevents that.

22 **THE COURT:** Jonathan, my recollection is that when we  
23 first entered the consent decree and your monitors were doing  
24 audits of PIB that they were checking to be sure that each  
25 allegation raised in the complaint was included in the PIB

02:17 1 investigation.

2 **MR. ARONIE:** Absolutely. This was one of the first  
3 things we looked at because it was such a fundamental tenet of  
4 the misconduct section of the consent decree. If you are not  
5 accurately recording and including the allegations, everything  
6 else falls apart.

7 We started auditing this right from the  
8 beginning, and I will say that this is one of the faster things  
9 PIB fixed. Our audits found that the allegations were being  
10 accurately included, which again is so troubling to see it not  
11 happen here after so many years of doing a good job and  
12 improving.

13 **THE COURT:** Okay.

14 **MR. ARONIE:** Keeping those paragraphs in mind, let's  
15 look at what the complaint here actually was about. The city  
16 has continued to characterize this complaint as what they would  
17 call a 16-hour violation, which is a violation of working too  
18 many hours. The truth is if you read the letter from Fox 8 to  
19 PIB, it absolutely was not limited to that. It was a much  
20 broader complaint. I'm not going to go through every paragraph  
21 of the complaint here, but there's no way to read this and  
22 think it doesn't allege potential payroll fraud.

23 **THE COURT:** Jonathan, am I right that the city has to  
24 open an investigation when it receives a complaint, and the  
25 city construed this Fox 8 email as a complaint and that's what

02:19

1 started their investigation?

2 **MR. ARONIE:** Yes, you're exactly right. That was  
3 correct for them to do because they are supposed to interpret  
4 complaints broadly. When Fox 8 sent the email telling them,  
5 "I'm about to run a story," they accurately treated that as a  
6 complaint. It's just they didn't include all the elements of  
7 the allegations in their recording of the complaint. You can't  
8 read what Fox 8 says it's going to report on and not see  
9 potential payroll fraud as one of the allegations.

10 Even if you could, even if you claim that that's  
11 not clearly stated here, immediately thereafter Fox 8 ran its  
12 story, and its story clearly alleged payroll fraud. It alleged  
13 that Officer Vappie and the mayor were spending time not  
14 working while receiving taxpayer-funded paychecks. That's a  
15 payroll fraud allegation. It doesn't matter if you think it's  
16 true or not. It doesn't matter whatever you think the outcome  
17 might be. This is the allegation, and that's what you are  
18 required to document, include, and investigate.

19 We have the complaint itself, which alleges  
20 payroll fraud. We have the story, which even more clearly  
21 alleges payroll fraud. Then not long thereafter we have a  
22 citizen complaint, which reconfirms the payroll fraud  
23 allegation. This name is quite familiar by now because  
24 Dr. Gallagher has submitted a lot of information in this  
25 regard. As he points out, payroll fraud is alive and well and

02:21

1 extends into the ranks of the mayor's own security detail.

2           There really can't be a question that this was  
3 part of the complaint and should have been listed among the  
4 allegations. My office received a copy of that, and we then  
5 followed up with PIB to remind them that their investigation  
6 needed to include payroll fraud issues.

7           Here is how NOPD documented the allegation.  
8 Their focus is on the 16.58-hour violation, which is definitely  
9 one of the allegations, Your Honor, but not all the  
10 allegations, and one could argue not even the key allegation.  
11 The problem is how you record and what you include in the  
12 initial intake has a domino effect on everything else you do,  
13 and so the accuracy of this intake process is very important.

14           Now, the city has a lot of tangential arguments,  
15 but they don't make any real arguments here that that payroll  
16 fraud issue wasn't included in their intake forms. In short  
17 and simply, the consent decree requires that all complaints are  
18 to be broadly construed, all should be included in their forms,  
19 fully recorded and fully investigated.

20           PIB truncated the scope of this one for some  
21 reason -- it could have been an accident -- but that decision  
22 significantly prejudiced the investigation and the analysis and  
23 then the ultimate discipline. We will talk more about that in  
24 a minute.

25           It also feeds, as I said before, the narrative

02:22

1 of favoritism. If officers and members of the public see that  
2 someone is getting treated better and it looks like it's  
3 because of his relationships, that is no good for the  
4 credibility of an accountability system.

5 That's the first one, and that violation is  
6 going to impact all the other violations we talk about,  
7 Your Honor. It is so critical to accurately record allegations  
8 in this context. If you don't do that, you can sweep  
9 everything under the rug.

10 Moving to the second violation -- and you will  
11 see how these all relate. Perhaps because it didn't include  
12 the payroll fraud allegation on the intake form, PIB never  
13 actually analyzed and identified a disposition of the payroll  
14 fraud allegation. As you will hear in a minute, one of the  
15 requirements of the consent decree is that every allegation  
16 gets investigated and gets a specific disposition: founded,  
17 unfounded, etc. If you don't record the allegation, then you  
18 don't give it a disposition, in direct violation of the consent  
19 decree, and this prevented the allegation from being fully  
20 addressed.

21 Remember back to DOJ's language, "Policies and  
22 practices for complaint intake do not ensure that complaints  
23 are complete and accurate and systematically exclude  
24 investigations of certain types of misconduct," that's what the  
25 problem was here. Let's look at this one just like we did the

02:24

1 other one. Let's start here with the city's response:

2 "After ten years of monitoring PIB  
3 investigations, the monitor must be aware of how PIB writes its  
4 disciplinary investigation reports. PIB does not detail all  
5 the allegations it considered but ultimately determined were  
6 unsupported by the evidence."

7 Well, Your Honor, they are correct that we have  
8 been monitoring for ten years, but this is absolutely either a  
9 misstatement or just a direct concession that they violate the  
10 consent decree. It's absolutely wrong if PIB makes internal  
11 decisions about what they think are not worthy of transparency  
12 and don't write those up in the report. That's exactly how  
13 thing gets swept under the carpet.

14 The consent decree was designed to prevent  
15 exactly this. You record the allegation, you investigate the  
16 allegation, you give it a disposition, and that's the  
17 transparency. That's the sunshine that keeps the system  
18 working. The city's response here is a very strange  
19 concession.

20 Let's look at the operative paragraph here just  
21 like we did with the other one, paragraph 415: "The misconduct  
22 investigator shall explicitly identify and recommend one of the  
23 following dispositions for each allegation of misconduct:  
24 unfounded; sustained; not sustained; exonerated." This doesn't  
25 happen if you ignore the allegation. This is a pretty

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1 straightforward consent decree requirement.

2 Now, NOPD's policy mimics the consent decree.  
3 It actually goes a little farther and adds two other  
4 dispositions which aren't relevant here, but the policy is  
5 consistent with the consent decree. Every allegation gets a  
6 disposition.

7 The PIB report didn't do this. It didn't  
8 analyze the evidence relating to potential payroll fraud. It  
9 didn't analyze any of that evidence. There's actually quite a  
10 lot of circumstantial evidence, which I will talk about in a  
11 minute. Because it didn't do the analysis, it didn't identify  
12 any disposition of this allegation.

13 In short, Your Honor, either one of two things  
14 happened. Either PIB failed to analyze the facts relating to  
15 payroll fraud implications of the time Officer Vappie spent in  
16 the Pontalba apartment, which is what the PIB report suggests  
17 happened because it's not in there, or PIB simply chose to -- I  
18 will quote the city -- "detail all the allegations it  
19 considered but ultimately determined were unsupported by the  
20 evidence," which is what the city argues. In either case, it's  
21 a violation of paragraph 415.

22 I think you can probably hear in my tone I think  
23 it's a pretty material violation because only through accurate  
24 complaint intake process, analysis, and dispositions can the  
25 public or NOPD ever trust the PIB process.

02:27

1 Any questions about that? If not, I will move  
2 to the next one, Your Honor.

3 **THE COURT:** So I guess the way to think about it is  
4 the complaint has the factual allegation. That needs to be  
5 included in the intake form, and then it needs to be included  
6 in the investigation and report and get a disposition.

7 **MR. ARONIE:** That's exactly right. Intake,  
8 investigation, analysis, disposition, report, all that leads to  
9 the transparency and accountability system.

10 Let's go to violation 3, which is a violation of  
11 paragraph 414, a brief summary here. This gets into some legal  
12 phraseology here, but it's pretty important phraseology.

13 The consent decree and NOPD policy require PIB  
14 findings to be supported by what's called "a preponderance of  
15 the evidence." This is a pretty standard legal standard, and  
16 it means that facts have to show that the alleged actions were  
17 more likely to have occurred than not. To contrast that, we  
18 sometimes hear the phrase "beyond a reasonable doubt," which is  
19 a very high standard.

20 The standard for an administrative investigation  
21 to sustain a violation against the officer is a much lower  
22 standard. It's, based on all the evidence, you have to think  
23 that the infraction was more likely to have occurred than not.  
24 PIB recommended a "sustain," in other words, they found a  
25 violation against Officer Vappie on three counts, but they

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1 failed to apply the correct legal standard. I will talk about  
2 why that's important in a second.

3           Again, let's go back to the operative paragraph  
4 of the consent decree. It makes it very clear. The resolution  
5 of any misconduct complaint must be based on the preponderance  
6 of the evidence. The policy says the same thing and the policy  
7 defines it, but there's no question that this is the  
8 requirement.

9           If you look at the PIB investigation report,  
10 though, it's pretty clear that's not the standard they used.  
11 For the first violation, they sustained, which is a violation  
12 of working too many hours. PIB recommended a "sustain." They  
13 used the right standard, beyond a preponderance of the evidence  
14 that Officer Vappie violated the rule. This is how it should  
15 be written.

16           For the second "sustain," though -- this perhaps  
17 they thought was a more politically charged one. This was a  
18 professional conduct violation about the number of hours  
19 Officer Vappie spent alone in the apartment with his protectee,  
20 in other words, the mayor. This one they didn't document a  
21 preponderance of the evidence standard. This one instead they  
22 say he may have violated this rule.

23           Now, not only does it violate policy and violate  
24 the consent decree, but it also will make it very easy for the  
25 subject of the investigation to appeal the investigation if he

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1 wants to. He just goes to Civil Service and says, "Look, they  
2 didn't even apply the right standard. They said I may have  
3 violated. They can't sustain on that regard," and they win.  
4 There's a reason why the consent decree and policy require the  
5 proper standard. Using the proper standard is what's fair to  
6 officers as well. Officers deserve consistent standards.

7 **THE COURT:** You could say that about any allegation,  
8 that they "may have."

9 **MR. ARONIE:** Right. The fact that it's an allegation  
10 suggests they may have, but it's your job as PIB to suggest did  
11 they or didn't that based on the preponderance of the evidence.

12 The next one they also sustained, but they again  
13 didn't use the right language. This one is not weak language  
14 like the last one but still creates confusion as to what  
15 standard they used.

16 The city's response to this is quite off the  
17 mark because they really don't take issue with whether they  
18 used the right standard or not. The city just argues that  
19 there wasn't enough evidence, and that's not the question here.  
20 That's not for the city's lawyers to argue now. The question  
21 is what standard PIB applied when it did its investigation, and  
22 the city doesn't dispute that.

23 The city doesn't disagree that PIB applied the  
24 incorrect legal standard. They don't say that "may have  
25 violated" is the correct legal standard. Again, the lawyers'

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1 after-the-fact argument is that PIB could have reached the  
2 right conclusion or could have applied the legal standard, but  
3 they didn't reach these conclusions because they never analyzed  
4 all the evidence.

5           So, in short, the consent decree and NOPD policy  
6 are clear. You have to base your findings on a preponderance  
7 of the evidence standard. PIB failed to apply the proper legal  
8 standard. The actions violated the consent decree and policy.  
9 This sort of failure, it not only creates an appeal risk here,  
10 but more important is this creates a risk of decisions being  
11 overturned on appeal generally. Look, NOPD should want to get  
12 it right. They should not want their decisions to be  
13 overturned on appeal, and thus the way you investigate, the way  
14 you document is critical.

15           Consent decree violation 4, Your Honor, again a  
16 quick summary. This relates very closely to the preponderance  
17 of the evidence standard because when you think of  
18 preponderance of the evidence, you have to ask yourself what's  
19 the evidence. This consent decree paragraph describes what  
20 evidence you need to look at.

21           Here the problem was PIB investigators -- the  
22 policy and the consent decree require PIB investigators to  
23 consider all evidence: direct, physical, and circumstantial.  
24 Circumstantial is what we are going to be talking about here.  
25 The investigative report, however, demonstrates that PIB did

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1 not consider circumstantial evidence. That failure may have  
2 led PIB to fail to hold Officer Vappie fully accountable.

3 Let's talk about where this starts with the  
4 operative paragraphs of the consent decree. It's a clear  
5 statement in the consent decree. In each investigation, NOPD  
6 shall consider all relevant evidence, including circumstantial  
7 evidence. NOPD policy says exactly the same thing.

8 The city's response is interesting. I'm not  
9 sure I fully follow it. I think what the city is saying is  
10 there is speculation, not circumstantial evidence. To quote  
11 them, they say, "There is speculation of what Officer Vappie  
12 was doing, and the monitor" -- me -- "is unusually focused on  
13 the speculation it calls circumstantial evidence."

14 So I guess the city's argument is all the things  
15 that the monitoring team found to be circumstantial evidence  
16 and complained PIB didn't consider, the city says it doesn't  
17 have to consider because it was speculation. I think we should  
18 look a little bit about what circumstantial evidence is. The  
19 city seems not to understand.

20 Just to use one of many, many definitions out  
21 there, Your Honor, circumstantial evidence is indirect evidence  
22 that does not on its face prove a fact at issue, but it gives  
23 rise to a logical inference that the fact exists.  
24 Circumstantial evidence requires drawing additional reasonable  
25 inferences in order to support the claim.

02:36

1 This is not a novel term or concept, as you know  
2 because you use it in your court all the time. Circumstantial  
3 evidence is used by courts and juries regularly, and  
4 circumstantial evidence is not speculation. Circumstantial  
5 evidence is evidence. There is a big difference. Just calling  
6 it speculation to explain why it wasn't considered does not  
7 answer the question.

8 Now, there is a host of circumstantial evidence  
9 in this case that was not considered. As we said in our  
10 report, this circumstantial evidence doesn't prove beyond a  
11 reasonable doubt that there was payroll fraud; but it would  
12 seem to suggest, if considered, that there is by a  
13 preponderance of the evidence payroll fraud.

14 You know what, even if PIB didn't agree, they  
15 still have to consider and explain why this doesn't show  
16 payroll fraud. That's why the investigation report is so --  
17 the analysis is so important. The officers and the public have  
18 a right to understand why evidence was ignored, why evidence  
19 was not considered. So most of this is well known by everybody  
20 because --

21 **THE COURT:** Or why evidence was considered but not  
22 found to be sufficient.

23 **MR. ARONIE:** Absolutely. Absolutely. If they  
24 considered all this and then had a good explanation as to why  
25 it didn't suggest what someone might think, then that's fine.

02:38

1 They can do that. Let's look at the circumstantial evidence  
2 here that wasn't considered.

3           Officer Vappie spent many hours in the city's  
4 apartment. He was the only officer among the executive  
5 protection team who spent any time in the apartment. All other  
6 officers stayed outside the apartment. If there was some work  
7 reason, like a threat to the mayor, to be in that apartment,  
8 then other officers would have presumably taken their turns.  
9 Again, this isn't speculation. This is circumstantial evidence  
10 as to whether he was working or not while in the apartment.

11           Officer Vappie changed clothes in the apartment,  
12 used the shower in the apartment, undertook various nonsecurity  
13 tasks while in the apartment with and without the mayor.

14           He spent time in the apartment both on duty and  
15 off duty, again all circumstantial evidence as to whether he  
16 was working when he was there. That's the question, was he  
17 working or was he not working while billing taxpayers.

18           Even when Officer Vappie left the apartment late  
19 at night after spending several hours there, the mayor often  
20 walked to her car alone, Officer Vappie went the other  
21 direction, which further suggests there was no real threat to  
22 the mayor warranting all the time in the apartment.

23           Your Honor, I'm not going to go through all of  
24 these. They are in the PowerPoint and they are well publicized  
25 in the media. Each one of these is evidence. It is not

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1 speculation. Each one of these should be considered and  
2 weighed, and either it supports a finding by a preponderance of  
3 the evidence or it doesn't. You consider it and you explain  
4 it, and you explain why it does or does not support.

5 To wrap up on this one, the consent decree is  
6 very clear. You must consider circumstantial evidence. It was  
7 not considered here, it was not documented here, and because of  
8 that the payroll fraud allegations relating to the apartment  
9 time was not ever given a disposition. They never found it  
10 founded or unfounded. The city's argument is these aren't  
11 circumstantial evidence; these are speculation. That's not a  
12 thing. This is evidence. Circumstantial evidence are facts,  
13 not speculation.

14 Speaking more generally, the failure to consider  
15 all the evidence creates risks to all PIB investigations, not  
16 just this one. This isn't just about the Vappie investigation.  
17 This is about the integrity of the PIB process.

18 Any questions before I move on?

19 **THE COURT:** Well, I guess a concern for me is whether  
20 these people who are the leadership of the PIB understand the  
21 obligations of the consent decree because it clearly says that  
22 you consider circumstantial evidence.

23 **MR. ARONIE:** Yes. I would be interested to hear  
24 NOPD's view that just by calling a whole ten items speculation  
25 is a way you can get away from having to consider

02:41

1 circumstantial evidence -- NOPD should understand what  
2 "circumstantial evidence" means.

3 Moving on to consent decree violation 5, this  
4 one goes back a long way with PIB because we have been talking  
5 about credibility determinations for many years, Your Honor.  
6 The consent decree and NOPD policy clearly require PIB to  
7 assess the credibility of all witnesses.

8 PIB assessed and very clearly documented the  
9 credibility of all witnesses they interviewed with one  
10 exception: They did not make a credibility determination for  
11 Officer Vappie. A failure like that can tarnish an entire  
12 investigation, and it also feeds the narrative -- false it may  
13 be, but feeds the narrative of favoritism. People will ask  
14 why, why they made credibility determinations for everyone  
15 except the person who spent time in the Upper Pontalba  
16 apartment.

17 Let's start with the key paragraph again. In  
18 each investigation, NOPD shall consider all relevant evidence,  
19 including circumstantial, and make credibility determinations  
20 based on that evidence. The policy says the same thing.

21 Interestingly, as I said, every witness they  
22 interviewed there was a clear credibility determination, and in  
23 fact every witness was found to be credible. When it came to  
24 Officer Vappie, instead of making a credibility determination,  
25 PIB said, "After comparing Officer Vappie administrative

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1 statement with the evidence reviewed during this investigation,  
2 the investigators were unable to confidently assess his  
3 credibility."

4 Now, this is certainly a negative statement  
5 towards credibility, but it's also kind of a cop-out. PIB  
6 should find that the witness is credible or the witness is not  
7 credible and instead saying, "Oh, it was hard. We were unable  
8 to do it," that's a cop-out, and officers and the public  
9 deserve better than that. The city doesn't -- at least I  
10 haven't seen any disagreement from the city. I think the city  
11 concedes to this violation, but they will tell you when they  
12 get up.

13 You know, I get why credibility determinations  
14 are not easy. They have a lot of implications, saying an  
15 officer is not credible, and PIB might have a hard time getting  
16 its arms around that. The complexity of the task doesn't  
17 relieve NOPD from the responsibility to make the assessment.  
18 Saying that we are unable to assess credibility is just simply  
19 saying that you don't really want to do what you are required  
20 to do.

21 Now, those violations really kind of went to the  
22 heart of the investigation, analysis, and report. This next  
23 violation is kind of a broader process issue. This is the  
24 direct violation of paragraph 454 which, as we will see,  
25 relates to their unwillingness to share their draft report with

02:45

1 us. Let's start with the operative CD paragraph. It's an  
2 interesting and long paragraph, Your Honor. I have the text  
3 here, but I have a more simplified version I would rather spend  
4 time on.

5 What paragraph 454 says is this: NOPD is  
6 required to provide each serious misconduct complaint  
7 investigation to the monitor before closing the investigation.  
8 The purpose of this is so the monitor can review and can help  
9 fix shortcomings. Now, the consent decree very clearly defines  
10 what a serious misconduct investigation is, and it includes  
11 among other things --

12 **THE COURT:** Jonathan, the significance of doing it  
13 before you close the investigation, is that because closing the  
14 investigation means you send it to the subject of the  
15 investigation? You issue your report.

16 **MR. ARONIE:** Yes. That's a very good point, and  
17 perhaps I shouldn't have gone past this full definition so  
18 quickly.

19 The way this paragraph works is they share it  
20 with us early so we can review it. We can offer our advice and  
21 corrections and fixes before it's a runaway train, before it's  
22 concluded, before it's shared with the subject of the  
23 investigation and then they can't fix it any more. So the  
24 whole purpose of this is to let the monitoring team help PIB  
25 get it right. The timing matters a lot. If they share it with

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1 us after it's done, concluded, signed, and shared with the  
2 subject of the investigation, then our advice comes too late.

3 Now, this doesn't apply to every misconduct  
4 complaint. This applies to serious misconduct complaints, and  
5 then it lists what are serious misconduct complaints. The  
6 three that are relevant here are misconduct complaints alleging  
7 untruthfulness, misconduct complaints alleging false  
8 statements, and misconduct complaints alleging theft.

9 Then, as you just said, we then review and  
10 provide instructions on how to fix these shortcomings, and then  
11 the superintendent has to either accept our recommendations or  
12 reject them with a written explanation. It's a pretty formal  
13 process to make sure they are considering our advice.

14 **THE COURT:** Does the NOPD have to follow your advice?

15 **MR. ARONIE:** No. But if they don't, they have to  
16 give a written explanation as to why they are not following our  
17 advice.

18 Now, NOPD's response to this is -- I don't even  
19 know how to describe it. NOPD responds that they are not  
20 obligated to do anything under 454 because no allegation of  
21 misconduct by Officer Vappie was described, suggested, hinted  
22 at, or articulated as conduct that requires the release of the  
23 investigation pursuant to 454. In other words, no allegation  
24 suggested, hinted, or articulated serious misconduct.

25 Let's look at the facts. We already went over

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1 these in paragraph 399, so we will do this quickly. The  
2 allegation by Fox 8 clearly related to alleged payroll fraud,  
3 and payroll fraud is serious misconduct. The story that  
4 followed clearly raised payroll fraud, again serious  
5 misconduct. Dr. Gallagher's subsequent allegation clearly  
6 stated payroll fraud. The monitoring team clearly made sure  
7 NOPD understood there was a payroll fraud allegation.

8 So when we put this together and we weigh the  
9 facts against NOPD's response -- again, NOPD suggesting that  
10 nothing about this allegation even hinted at payroll fraud --  
11 well, you look through the facts and that's just not true. By  
12 the way, the city concedes in its filing that PIB investigated  
13 payroll fraud. So to understand why NOPD argues there was no  
14 payroll fraud in the allegation just makes no sense to me.

15 **THE COURT:** If I can be sure I understand -- and the  
16 city can tell me if they disagree -- there was no allegation  
17 included in the intake form or in the report about payroll  
18 fraud even though it was included in the complaint and it was  
19 to some extent investigated. Then the superintendent says, "We  
20 didn't have to follow paragraph 454 because there was no  
21 allegation of misconduct." It's circular reasoning.

22 **MR. ARONIE:** Right.

23 **THE COURT:** I just wanted to be sure I was  
24 understanding. I think I do.

25 **MR. ARONIE:** No, you are definitely understanding it.

02:50

1 Now, subsequently in the city's response they  
2 have a little more on this issue. The city's argument separate  
3 from the superintendent's argument -- it's a little different.  
4 The city argues that, sure, the charges against Officer Vappie  
5 are serious, as are all allegations, but they are not within  
6 the scope of a serious misconduct complaint as intended by 454.  
7 I guess I understand the argument, but it doesn't track the  
8 language of the consent decree.

9 To us the question is very simple here, is  
10 payroll fraud serious misconduct, because if it is -- and  
11 remember the consent decree defines it as untruthfulness, false  
12 statements, or theft. If it is within that definition, then it  
13 is clearly covered by 454.

14 I don't know how anyone with a straight face can  
15 say that an allegation of payroll fraud does not relate to  
16 truthfulness. Heck, an allegation of payroll fraud could be a  
17 crime, so it definitely relates to truthfulness. I don't know  
18 how you can say it doesn't implicate false statements. I don't  
19 know how you can say it's not theft. In Louisiana, as in  
20 almost every state, theft of public time is theft.

21 So, again, we will hear what the city says, but  
22 the allegation of payroll fraud does implicate 454, and the  
23 city's refusal to honor 454 created a significant problem and  
24 prevented the monitoring team from getting its detailed advice  
25 to PIB in a way that they could use it.

02:52

1 To summarize, clear allegations of payroll fraud  
2 by Fox 8 and then the news story made it even clearer, the  
3 whistleblower reiterated, the IPM reiterated, the monitoring  
4 team reiterated, and PIB consistently confirmed with us that,  
5 yes, it was investigating the issue. Even though it didn't  
6 find its way in the report, they confirmed every time that,  
7 "Yep, we got it. We are investigating," and the city agrees  
8 they investigated. Despite all this, the report does not  
9 include the analysis, there's no disposition, and then the  
10 city -- and this is your circular point. The city then uses  
11 the absence from the report to argue, "Well, it wasn't serious  
12 misconduct." That's backwards. You base it on the allegation.  
13 You don't base it on the outcome.

14 Violation 7, Your Honor, is very closely  
15 related. We can dispense with this one more quickly. The CD  
16 is clear the monitor shall have access to all the documents it  
17 needs to get its job done, full and direct access to NOPD  
18 documents that we reasonably deem necessary.

19 As the PIB investigation was coming to an end  
20 and it started to be the analysis and report-writing process,  
21 we started asking for drafts of the report so we could actually  
22 provide actionable advice that they could use or not, right, or  
23 reject and tell us why. The timeline here is frustrating for  
24 me, but this is what it is.

25 In early January, February, the monitoring team

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1 and the IPM, on phone calls with PIB, requested copies of the  
2 forthcoming report multiple times. We didn't receive it. PIB  
3 said no. On March 10, PIB concluded the investigation,  
4 concluded the report, submitted it to the deputy chief. We  
5 didn't know this at the time. On 3/27, we again reiterated our  
6 request for the report. This time we did it in writing. On  
7 3/27, the same day actually, I reiterated the request with  
8 citations to the consent decree just in case they didn't  
9 understand their obligation after ten years.

10 On 3/29, I reiterated the request again to make  
11 sure they had all the operative citations, reiterated on 3/31,  
12 still PIB just refused to give us the report through all this  
13 time even though it was done on March 10. April 3, we asked  
14 again. Finally, on April 3 I called the interim  
15 superintendent. I try not to bother her with things, but this  
16 had gone too far, and on the same day she authorized the  
17 release of the report. That's the timeline to try to get the  
18 report.

19 Now, NOPD concedes it didn't give us the report.  
20 Their argument, though, is again a little circular. Their  
21 argument is that they didn't have to give us the report because  
22 it didn't relate to serious misconduct. That's an issue  
23 related to the last violation we talked about, paragraph 454.  
24 Paragraphs 470 and 472 have nothing to do with serious  
25 misconduct. They simply say we get the documents, full and

02:56

1 direct access, we deem reasonably necessary. So the argument  
2 it had nothing to do with serious misconduct is irrelevant  
3 here.

4 In short, we get the documents we need. We made  
5 multiple requests. All were denied. Importantly, Your Honor,  
6 this is -- I kind of had to ask so many times I was almost in  
7 disbelief because we had never had this problem before. We  
8 always get the documents we want. Frankly, NOPD has been  
9 extremely cooperative until recently throughout this process.  
10 I don't remember them ever refusing a document request. Then  
11 by the time we got it, you know, the report was a runaway  
12 train. Even though we sent in our analysis, it was too late  
13 for it to impact the report.

14 Moving to the next violation, paragraphs 409 and  
15 419, the consent decree requires PIB to take significant  
16 measures to protect the confidentiality of investigations, and  
17 that makes sense. If people are worried about retaliation or  
18 citizens are worried about reprisals, they have to believe that  
19 the PIB process is going to protect confidences.

20 The monitoring team and the IPM at the outset  
21 were worried about a couple things. One, this was a very  
22 high-profile case. The mayor was a material witness in the  
23 case. Everyone investigating the case and all the witnesses  
24 worked, in a sense, for the mayor. We wanted to make sure that  
25 PIB understood the importance of their confidentiality

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1 obligations here, so we advised that they implement some  
2 special protections.

3 This is, frankly, what we would do in a  
4 corporate investigation as well, establish a small circle of  
5 people with a need to know and keep those people apprised,  
6 prevent people without a need to know from getting information.  
7 PIB agreed that made great sense and everyone went on their  
8 way. As it turns out, though, there were some missteps and  
9 that compromised the confidentiality of the investigation.

10 The operative paragraphs here are clear.  
11 Paragraph 409 requires that all misconduct investigation  
12 interview recordings be stored and maintained in a secure  
13 location within PIB. 419 requires that all investigation  
14 reports and related documentation and evidence shall be  
15 securely maintained in a central and accessible location. Here  
16 are the mistakes that were made here, or missteps I'll say.

17 One, they shared a copy of the witness interview  
18 audio recordings with the city attorney's office.

19 Two, they shared the recordings on a  
20 nonpassword-protected USB drive. Now, that's pretty important  
21 because the city attorney's office admits it made a mistake and  
22 shared all these recordings publicly. If PIB had simply shared  
23 them on a password-protected USB drive, that mistake wouldn't  
24 have caused the problems it caused.

25 And then the third misstep here was NOPD

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1 reassigned the two PIB investigators into the districts during  
2 the investigation. What that meant is they were no longer  
3 working in the protected confines of PIB, creating much more  
4 risk of missteps, inadvertent disclosure, people overhearing  
5 things in the offices.

6 My point here is not that these consequences  
7 happened, but that because PIB didn't fully protect this  
8 investigation these things could have happened, and in fact one  
9 of them did, as we know, the inadvertent disclosure. The city  
10 doesn't offer a substantive response to this. I assume the  
11 city agrees these things happened, but we will see. I didn't  
12 see anything in their filings that said they disagree.

13 You have to remember why these rules were in  
14 place. They ensure the integrity of investigations. They  
15 reduce pressures on the investigation team and the witnesses.  
16 If they knew that every word they said was going to be out to  
17 their bosses and their bosses' bosses and their bosses' bosses'  
18 bosses and the public, that could very well change how candid  
19 they are with PIB.

20 Also, if we are not careful, disclosure of  
21 information from an administrative investigation could actually  
22 contaminate a subsequent criminal investigation, so there's a  
23 lot of reasons why we care about this. Now, it's too early to  
24 know whether these consequences happened. From a process  
25 perspective, this was a weak process that should be fixed into

03:01

1 the future.

2 The next violation, Your Honor, violation 9,  
3 we've talked a lot over the years about the importance of  
4 holding supervisors accountable. In fact, Your Honor, you  
5 might remember we talked a lot about this in the context of the  
6 Unity-1 investigation, the horrible vehicle pursuit, where we  
7 pressed to make sure that all the supervisors in the chain of  
8 command were going to be investigated. That's what "close and  
9 effective supervision" means. It means if something happens at  
10 this level, the people at this level, this level, and this  
11 level all should be looked at to see if they need to be held  
12 accountable.

13 We had the same mindset here. We wanted to make  
14 sure PIB investigated the supervisors from the outset. As it  
15 turns out, though, notwithstanding our advice, PIB closed its  
16 investigation without looking into the actions of supervisors  
17 up Officer Vappie's chain of command. That failure will  
18 prevent the department from holding supervisors accountable for  
19 their failure to provide close and effective supervision. I'm  
20 not saying they didn't provide close and effective supervision,  
21 but we don't know because it wasn't looked into. That's a  
22 brief summary of what this is about.

23 The operative paragraphs, we've talked about  
24 these for years. Paragraph 306, NOPD supervisors shall be held  
25 accountable for providing close and effective supervision.

03:03

1 Paragraph 313, NOPD shall hold commanders and supervisors  
2 directly accountable for the quality and effectiveness of their  
3 supervision. Looking at supervisors should go hand in hand  
4 with every investigation.

5 This issue came up early in our weekly meetings  
6 with PIB, and it looked like PIB was not thinking about the  
7 supervisors. PIB shared with us their investigation plan, and  
8 we wrote back and we added to their list of potential  
9 witnesses, the one you see in red there, you know, make sure  
10 you are interviewing every supervisor up the chain of command.  
11 We didn't pull any punches here. We very clearly wanted to  
12 make sure that happened.

13 The city's response -- they don't offer a  
14 substantive response. In fact, bluntly, Your Honor, their  
15 response is just to attack me for too closely monitoring the  
16 PIB investigation and wanting to interfere with their interview  
17 plans and outlines, but this is exactly what 454 calls on me to  
18 do.

19 Paragraph 454 directs me to get myself in the  
20 position to provide actionable advice to them before they  
21 finish their investigation. That's exactly what we did here,  
22 and we did it by making sure we knew what they were doing to  
23 the extent they shared with us, and they did share most things  
24 with us until the very end. We were able to see their  
25 investigation plan and then we were able to provide some advice

03:05

1 to that. Again, they can attack me all they want, but my job  
2 is to monitor compliance with the consent decree, and 454 is  
3 part of that job.

4 In short, a thorough investigation includes  
5 investigating up the chain. Supervisors have to be held  
6 accountable for their failures of close and effective  
7 supervision; or if they did a good job, then they should be  
8 lauded for it. Either way, you need to look into it. PIB did  
9 not interview the supervisors as part of its investigation, and  
10 this will make it very hard to ensure supervisors are held  
11 accountable.

12 Now, Your Honor, I have a couple more items  
13 left, but they are not kind of designated as these consent  
14 decree violations. I want to talk a little bit about our  
15 policy and procedure recommendations, and then I have two final  
16 items that are very important.

17 On February 17, in the middle of the  
18 investigation, the monitoring team sent an immediate action  
19 recommendation notice to PIB setting out multiple  
20 recommendations relating to policies and procedures. These  
21 were not recommendations about the Vappie analysis or the  
22 Vappie findings or the Vappie evidence standard. We didn't  
23 want to say anything public about that until the situation has  
24 run its course, but there were policy issues that we found that  
25 needed to be addressed right away. We put those in the

03:06

1 immediate action recommendation and sent that to PIB.

2 PIB has not responded to that even to this day,  
3 although we do know they have taken some action. I want to  
4 give them credit for that. They did take some quick action to  
5 start writing a policy because there never was one, and I'll  
6 talk more about that in a minute. I'm not going to go through  
7 every recommendation we made in detail, but just to summarize:

8 We recommended that there needs to be  
9 supervision for the executive protection members because there  
10 wasn't any.

11 We recommended there needed to be a policy  
12 because there wasn't one.

13 We recommended there had to be meaningful  
14 performance evaluations because if no one is supervising them,  
15 then obviously no one is completing performance evaluations.

16 We talked about inefficiencies; for example,  
17 when the mayor is out of town and the executive protection  
18 members aren't doing anything, could they be deployed to  
19 actually help NOPD fight crime.

20 We talked about legal conflicts. This was  
21 something that the IPM talked about as well. One of the  
22 problems here was that the attorney for PIB, the city attorney,  
23 also is the attorney for the mayor's office, and the mayor is a  
24 material witness in this case. That created a conflict that we  
25 recommended PIB have a way to deal with.

03:08

1 We talked about reassignment of, in this case,  
2 Officer Vappie from one role to another during the  
3 investigation. I will talk more about that in a minute because  
4 that seems to be something NOPD cares a lot about.

5 We recommended a recommendation with respect to  
6 the investigators. Remember, I said the two main investigators  
7 were moved out of PIB in the middle of the investigation. We  
8 thought that could harm PIB.

9 We talked about the importance of the accuracy  
10 of the initial investigation letters and how they needed to be  
11 complete.

12 There were a lot of recommendations here. I  
13 don't, frankly, think any of them are controversial. We can't  
14 comment on NOPD's response because they haven't replied yet. I  
15 do want to comment on this, though. The city's response is  
16 just filled with personal attacks. I don't have time to go  
17 through all of them, but this one I found interesting.

18 The city complains that I changed the name of  
19 some report. When I sent Deputy Chief Sanchez on February 17  
20 the immediate action recommendations, which you see here on the  
21 slide in front of you, the city says, "The monitor now calls  
22 the letter an 'Immediate Action Notice,' but those words are  
23 not found anywhere in the document." Well, I don't know if it  
24 says it in the document, but it does say it clearly on the  
25 subject line of the email that transmitted the document. I'm

03:09

1 curious where the city is going with this one, but it certainly  
2 does not seem like an honest response to me.

3 In short here, Your Honor, these recommendations  
4 are good and they are important, and NOPD should want to  
5 consider these. Doing these things will not only increase the  
6 integrity of the PIB process but will help NOPD come into  
7 compliance with the consent decree. As I said, they have taken  
8 steps to implement at least the policy, and credit to them for  
9 that. That's going back and forth now. I can't opine on the  
10 other ones because I haven't heard back.

11 Let's talk a little bit about officer  
12 reassignments, Your Honor. This one seems to get a lot of  
13 press. It seems to animate the city quite a lot. They have  
14 had some strong words against me on this one.

15 On December 22 -- and we have talked about this  
16 before -- the monitoring team was notified by a member of  
17 NOPD's leadership team of an effort to reinstate Officer Vappie  
18 back to the mayor's security team in the middle of the PIB  
19 investigation. After getting that call, I personally spoke to  
20 other members of NOPD leadership questioning the decision. I  
21 and they thought it looked very bad for PIB. It created a bad  
22 perception of favoritism and it could tarnish the  
23 investigation. Many calls were made, and NOPD leadership  
24 informed me that they stopped the effort to reassign  
25 Officer Vappie to the mayor's security team.

03:11

1           You might remember on March 7 I was doing a  
2 public meeting where any member of the public is allowed to ask  
3 me a question, and there was a question from the media asking  
4 me about this. Now, the media had already got a tip of its  
5 own, so I think they were asking me just to confirm. I  
6 confirmed this story. I confirmed that I was notified on the  
7 22nd about an effort and I had made phone calls and NOPD -- not  
8 me quashed it, but NOPD quashed the effort.

9           In response to that media inquiry, the city  
10 issued a nonresponsive statement to the public, to the press:  
11 "At no time since she was sworn in has Chief Woodfork attempted  
12 to reassign Officer Vappie to executive protection." It just  
13 is an odd response since I never said that happened, but that's  
14 what the city's response was.

15           The city has at multiple times suggested that I  
16 am -- oh, this is my favorite. "Mr. Aronie fueled such  
17 speculation during the investigation of his erroneous  
18 conspiracy theory about reinstating Officer Vappie to the  
19 mayor's executive protection team."

20           First of all, I have no use with any conspiracy  
21 theory here. I'm a federal monitor. My job is to report back.  
22 I have no skin in this game. What I said happened on  
23 December 21 and 22 happened on December 21 and 22, period. For  
24 all the city's argument that it didn't happen, I find it  
25 tremendously troubling that in their own file they have the

03:13

1 document that showed that on December 21 Officer Vappie was  
2 reassigned back to the executive protection section.

3 I find the whole thing crazy that I was notified  
4 on December 22 by a member of the leadership team that this  
5 thing that you see in front of you happened -- and he was very  
6 concerned by it, he or she was very concerned by it -- and  
7 spent time on phone calls with other leaders. They ultimately  
8 confirmed they stopped this from happening. As far as I know,  
9 they were successful because I don't think this did happen even  
10 though this document said it was about to.

11 It would be an interesting question to the city  
12 as to whether he was reassigned to executive protection or not.  
13 I don't know how there can be any suggestion that I'm making  
14 this up when the document in their own file demonstrates  
15 exactly what I was told.

16 **THE COURT:** This document is found in the record, for  
17 anybody who wants to get that, at document 716-13. That is  
18 attached to the city's response to your report. I believe it's  
19 also attached to your report. I don't have that record  
20 citation at hand right now, but I know that's where it is in  
21 the record.

22 This was given to you by PIB as an attachment to  
23 its report, correct?

24 **MR. ARONIE:** Yes. To be clear, I didn't know this  
25 existed, certainly didn't know in December. I ultimately saw

03:15

1 this because it was an attachment to PIB's Vappie report. I  
2 saw it later in the process. There are a lot of exhibits that  
3 weren't relevant to my report, so I saw this for the first time  
4 actually not that long ago.

5 Our recommendation here -- which is all we are  
6 really focusing on, which is why the attacks are so interesting  
7 here -- we think there should be a policy that relates to when  
8 subjects can be assigned and reassigned during a pending  
9 investigation. The fact that there's no process that says  
10 when -- when the subject of an investigation can be put right  
11 back in the environment in which the misconduct was alleged to  
12 have occurred doesn't make any sense.

13 Imagine if it were an investigation into sexual  
14 misconduct and you put the person back in that setting or  
15 violence in the workplace and you put the person right back in  
16 that same location. It doesn't make sense that there's no  
17 policy that relates to how and when you can reassign officers.  
18 We recommended there to be one.

19 **THE COURT:** To your knowledge, is there anything that  
20 happened on December 21, 2022, that led to this form being  
21 filled out on that date?

22 **MR. ARONIE:** That's an interesting question because I  
23 have thought about that, right, was there something on or about  
24 the 21st that made sense to reassign Officer Vappie to the  
25 mayor's executive protection team. No, there was nothing that

03:17

1 I know of in the PIB investigation that would have suggested  
2 now is a good time to bring the person accused of payroll fraud  
3 back to the place where the alleged payroll fraud occurred.

4 Now, the only thing that happened on December 21  
5 is that was the day Superintendent Ferguson retired. That was  
6 his last day in the office, but I don't know of anything that  
7 happened kind of substantively to the case around that time.

8 **THE COURT:** The investigation wasn't closed at that  
9 time. The report was not issued.

10 **MR. ARONIE:** Oh, they were in the middle of  
11 interviews. They were right in the middle of interviews and  
12 evidence analysis, things like that.

13 **THE COURT:** Okay.

14 **MR. ARONIE:** Let's talk a little bit about witness  
15 interviews here. To summarize, when PIB shared their initial  
16 interview plan with us, the IPM and our office noticed that it  
17 didn't include three material witnesses:

18 It didn't include the mayor, who is in a sense  
19 the most material witness as to what happened in the apartment,  
20 whether Officer Vappie was working or not.

21 It didn't include an NOPD consultant, Fausto  
22 Pichardo, who is particularly relevant because one of the  
23 allegations against Vappie was that he billed more hours than  
24 he should have while serving as Mr. Pichardo's driver. So not  
25 while protecting the mayor but while assigned to be a

03:18

1 consultant's driver, he worked more hours than an officer is  
2 allowed to work.

3 Then it didn't include former Superintendent  
4 Shaun Ferguson, which is part of our view that on a case like  
5 this you really need to interview everywhere up the chain to  
6 find out who knew what when.

7 We recommended adding all three to the witness  
8 list, and PIB did send requests. All three refused. Let me  
9 talk a little bit more about that. The operative CD paragraphs  
10 here say this:

11 Paragraph 405, "All witnesses shall provide a  
12 written statement regarding the incident or be interviewed as  
13 described below." Obviously PIB can't compel every witness,  
14 but that's what this says.

15 Paragraph 410, NOPD requires officers to  
16 cooperate with administrative investigations, including  
17 appearing for an interview. NOPD officers don't really have  
18 the right to refuse. They have to give a statement.

19 Importantly, paragraph 14 defines "NOPD" to  
20 include NOPD and its agents and its officers and its  
21 supervisors and its employees. I think that's important  
22 because when we talk about Mr. Pichardo's refusal, I would say  
23 he is clearly an agent of NOPD, and he didn't have the right to  
24 refuse.

25 Then, finally, the consent decree says that NOPD

03:20

1 and the city agree to ensure that all allegations of officer  
2 misconduct are fully and fairly investigated. As I'll get to  
3 in a minute, it's hard to say that you are ensuring things are  
4 fully and fairly investigated if you don't participate in the  
5 PIB process. This is what happened when PIB made the request:

6 First, former Superintendent Ferguson declined  
7 to be interviewed, and that's his right as a private citizen.  
8 He gets to say no.

9 Consultant Pichardo declined to be interviewed,  
10 but he shouldn't have the right to say no. In fact, as a  
11 consultant to NOPD, I argue NOPD should have compelled him to  
12 be interviewed. Now, when he said no, PIB just dropped the  
13 issue, but I think PIB should have gone to the superintendent  
14 and said, "Hey, your consultant is refusing to be interviewed  
15 and we need his interview."

16 Third, the mayor declined to be interviewed, and  
17 I think it's fair to say that this contravenes at least the  
18 spirit of the consent decree, probably even the expressed term  
19 that says NOPD and the city agree to ensure that all  
20 allegations be fully and fairly investigated. It's hard to say  
21 that you are ensuring that the PIB process is working if you,  
22 the leader of everything, refuse to participate in that  
23 process.

24 In short, the quality of the investigations  
25 hinge on the cooperation of witnesses. Every officer in this

03:22

1 case, Your Honor, agreed to be interviewed. Now, the NOPD  
2 people had to, but former NOPD people agreed to be interviewed,  
3 non-NOPD people agreed to be interviewed, officers from other  
4 agencies agreed to be interviewed. They did exactly what is  
5 expected of people to have an accountability process with  
6 integrity.

7 In contrast, the three leaders, including the  
8 mayor, declined. Their refusal suggests either a lack of  
9 understanding or a lack of respect for the accountability  
10 process. I would also say that the failure to make  
11 Mr. Pichardo available was just a direct violation of the  
12 consent decree. NOPD should have taken more steps to figure  
13 out if it had other tools available to get these three  
14 important interviewees.

15 I'm going to wrap up, Your Honor, now with some  
16 brief concluding remarks. NOPD and the city violated multiple  
17 terms of the consent decree here, and that's so troubling  
18 because PIB was doing so well for so long. They failed to  
19 conduct a meaningful analysis of Officer Vappie's potential  
20 payroll fraud, and that's a big deal. They failed to evaluate  
21 supervisor accountability, fed a long-standing narrative that  
22 PIB plays favorites, and it reduced officers' trust and  
23 community trust in the integrity of the process.

24 These actions raise serious questions about  
25 PIB's ability to conduct a fair, thorough, impartial, and

03:23

1 effective misconduct investigation with integrity. As I said  
2 and I will say it again, this is very troubling because they  
3 were doing so well for so long, and this is very troubling  
4 because it goes right back to DOJ's 2011 finding.

5 Your Honor, that brings me to the end. I just  
6 post up here a reminder of where people can get our report and  
7 where people can get this PowerPoint. Also, we have a public  
8 meeting coming up, and this will be identified here as well.  
9 With your permission, I'm going to stop sharing, but I'm happy  
10 to keep answering questions.

11 **THE COURT:** Why don't we leave that on the screen for  
12 a while.

13 **MR. ARONIE:** Okay.

14 **THE COURT:** This gives you the consent decree monitor  
15 website. The PowerPoint presentation that you just saw will be  
16 posted after today's status conference. It gives you the  
17 address. You can send questions to me or to the monitors. If  
18 you look in there, you can also find lots of information about  
19 the consent decree on the website.

20 Jonathan, if there are comments you would like  
21 to make after the presentations by the other parties, I will  
22 allow you an opportunity to do that. Just let me know if you  
23 want to.

24 **MR. ARONIE:** Okay. Very good. Thank you.

25 **THE COURT:** Now let's hear from the representative of

03:25

1 the city and the NOPD.

2 **MR. ZIMMER:** Your Honor, may I suggest that it might  
3 be better to hear from the plaintiff first in order that the  
4 city respond to all the questions that the plaintiff proposes  
5 as well?

6 **THE COURT:** That's fine. Good idea.

7 **MR. ZIMMER:** Thank you, Your Honor.

8 **THE COURT:** We will have a presentation by Jonas  
9 Geissler on behalf of the Department of Justice.

10 **MR. GEISLER:** Thank you, Your Honor. We thank the  
11 Court for scheduling this status conference concerning the  
12 court monitor's reports on the investigations of  
13 Officer Vappie.

14 The issue here is much larger than a mere  
15 investigation of one officer; no doubt a good person, a nice  
16 person, but let's call it like we see it. This investigation  
17 of whether it shows an impartial application of the  
18 accountability system and the policies of NOPD showed the  
19 public whether or not the hardworking officers of NOPD and the  
20 public themselves that the officers serve can get a fair shake  
21 in the accountability system. This investigation shows this  
22 Court whether the accountability system that the consent decree  
23 requires is in place and whether this Court can trust the city  
24 to execute on that accountability system, as required by the  
25 decree, and for the durable remedy we want to see in order to

03:26

1 complete this decree.

2 As ordered, we submitted to the Court a written  
3 report or response to the court monitor's reports on the Vappie  
4 investigation. We raised many points, but there were four  
5 essential points we raised: our agreement with the court  
6 monitor's findings; the city's failure to appropriately  
7 categorize the allegations against Officer Vappie pursuant to  
8 paragraph 399 of the consent decree; the city's failure to  
9 provide the open investigation -- the open investigation -- to  
10 the court monitor pursuant to paragraph 454; and the city's  
11 failure to provide to its very own independent oversight  
12 agency, the Office of the Independent Police Monitor, the open  
13 investigation pursuant to consent decree paragraph 441.

14 Today, Your Honor, I would like just to take a  
15 moment to speak about the open issues that still remain to be  
16 addressed, hopefully, by the city to this Court to have a  
17 better understanding of compliance with the consent decree.

18 First, Your Honor, there is a policy issue that  
19 newly araised. The city's most recent response, filed  
20 initially Friday and then filed again today, raises a whole new  
21 consent decree compliance issue. The city flatly states that  
22 it modified its overtime policy limiting the number of hours  
23 that an officer may work in a 24-hour period by the issuance of  
24 merely an email.

25 The consent decree has policy requirements under

03:28

1 paragraphs 21 and 23 for approval of policies by DOJ and the  
2 court monitor. As the city now frames, the city was able to  
3 modify a policy by email. That's not permissible. That's its  
4 own violation of the consent decree that the city presents to  
5 the Court in its filings.

6 Confidentiality. As the monitor found, the city  
7 does not dispute in its responses to either the initial report  
8 or this most recent report the city shared copies of the audio  
9 files of certain investigation interviews with the city  
10 attorney's office, and then the city attorney's office released  
11 those interviews publically.

12 The city had an obligation under the consent  
13 decree, paragraphs 409 and 419, to keep those materials  
14 confidential, and we submit that the city failed to do so. The  
15 city didn't respond in its most recent filings. So the  
16 question we believe that the city should answer for the Court  
17 today is what corrective action has the city undertaken to, A,  
18 identify what happened for this consent decree violation and,  
19 B, implement a systemic fix to make sure that it does not  
20 happen again.

21 The paragraph 454 remedy, this is a large part  
22 of both of the court monitor's reports, Your Honor. It is  
23 undisputed that the court monitor requested access to the  
24 investigative file pursuant to 454, which grants the monitor  
25 access to ongoing misconduct investigations, not merely the

03:29

1 general axis under 470 and 472 but ongoing investigations, and  
2 the city's response is that it contends the investigation does  
3 not involve serious misconduct.

4 In the most recent filing -- I commend  
5 Your Honor's attention to docket entry 716-3 -- there is a  
6 heading from the city "Payroll Fraud was Investigated." There  
7 could not be a clearer admission from the city to this Court  
8 that the allegations include an alleged crime that falls within  
9 the consent decree's definition of "serious misconduct."

10 The issue for this Court is whether the  
11 allegations may have involved potential criminal conduct,  
12 potential untruthfulness, potential false statements. If the  
13 allegations do, then this is serious misconduct as defined by  
14 the consent decree even if PIB did not properly investigate the  
15 allegations.

16 The city's defense to this report from the  
17 monitor is a series of allegations claiming either court  
18 monitor interference or a subjective insinuation that the court  
19 monitor wanted a sustained finding.

20 Whether there was an allegation of serious  
21 misconduct or not does not depend upon what NOPD ultimately  
22 finds. The consent decree requires that NOPD accept all  
23 allegations, paragraph 390, and properly categorizes all the  
24 allegations, paragraph 399, and here the city's own filing  
25 admits the payroll fraud allegation.

03:31

1           The recommendations on the investigation that  
2 the court monitor made, that the court monitor offered to PIB,  
3 the city now contends that they were impermissible  
4 interference. Rather, under 454, just like the office of  
5 secondary employment investigation, just like the Unity-1  
6 investigation in which the court monitor was involved to help  
7 the city correct course and fully investigate those  
8 allegations, just like those, the intent of paragraph 454 is to  
9 help the city course correct during an open investigation, help  
10 the city comply with the consent decree. The city's failure to  
11 disclose the open investigation to the monitor on this occasion  
12 undercuts the remedy of 454.

13           The city points to billing entries as though  
14 these were evidence of interference with the investigation.  
15 They simply don't show that. Had the city followed 454, they  
16 would have had to have provided a written response to the  
17 monitor's instructions if they didn't follow the instructions  
18 of the monitor.

19           Regardless of the outcome of the investigation  
20 now, this noncompliance lies only with the city. PIB's refusal  
21 to share means it could not have corrected course. Given the  
22 failure to correct the open investigation, we contend that the  
23 question that the city should answer for the Court today is how  
24 does the city propose to remedy the deficient underlying  
25 investigation.

03:32

1 Evidence, Your Honor, paragraphs 404 through 409  
2 and paragraph 413 of the consent decree. The city's most  
3 recent response tells the Court how the city views the  
4 investigation. The city defends the investigation, asserting  
5 that there was no evidence for additional findings, but the  
6 city's framing is a self-fulfilling prophecy. I believe  
7 Your Honor characterized it as circular.

8 The city did not interview all the complainants  
9 and all the witnesses, the city did not ask all the witnesses  
10 they did interview of all the allegations because they were not  
11 all investigated, and the city did not secure all physical  
12 evidence. There is a consent decree compliance issue with the  
13 city's framing. Paragraph 413 of the consent decree requires  
14 that in each investigation --

15 **THE COURT:** Jonas, slow down a little bit.

16 **MR. GEISLER:** I beg your pardon. Paragraph 413 of  
17 the consent decree requires that in each investigation NOPD  
18 shall consider all relevant evidence, including circumstantial,  
19 direct, and physical evidence. The city says in its most  
20 recent filing that it, the city, does not issue search warrants  
21 for officers' private phones in administrative investigations.  
22 That's docket entry 716-3 at page 29.

23 There is no provision in this consent decree to  
24 simply allow the city to say, "We don't do it." "We don't do  
25 it" is not an excuse for compliance with the decree. They

03:34

1 cannot say, "We don't do it," and avoid obtaining a search  
2 warrant and securing and collecting the evidence that is  
3 required by the consent decree.

4           Similarly, paragraphs 404 through 409 require  
5 interviews of complainants and witnesses. As the court monitor  
6 has reported, not all were interviewed or appropriately  
7 interviewed here. Here the city's own submission,  
8 Captain Banks' May 30, 2023, memo, docket entry 716-12, tells  
9 the reader of a broad scope of allegations but only a limited  
10 investigation. The memo only addresses a finding of  
11 Officer Vappie's time serving with Fausto Pichardo, one of the  
12 very people the city did not interview, and does not even try  
13 to address the other allegations.

14           As we would in any administrative case brought  
15 to DOJ's attention in this consent decree, we compare the  
16 record with the requirements of the decree. Here the city did  
17 not meet the consent decree requirements, and the open issues  
18 that the city should answer for the evidence is how will the  
19 city address the still unfulfilled parts of the investigation.  
20 The other open issues, Your Honor, we submit we can address in  
21 a more summary fashion.

22           Paragraph 390, what is the status of the other  
23 allegations that NOPD was obliged to accept under paragraph 390  
24 but did not investigate?

25           Paragraph 411, the court monitor notes that

03:35

1 payroll fraud is a crime under Louisiana law. That's the PIB  
2 report, page 7, note 8. Recall that the city's heading in its  
3 pleading said "Payroll Fraud was Investigated." It was an  
4 allegation. Has NOPD referred that matter for criminal  
5 investigation as required by consent decree paragraph 411?

6 Interestingly, if Your Honor looks at the  
7 declaration from former Superintendent Ferguson, he says he  
8 looked and PIB didn't treat this as criminal, and therefore  
9 used that as a justification for transferring back Vappie. Had  
10 they followed paragraph 411, would he have had that  
11 justification?

12 Paragraph 306, what is the status of the  
13 investigation of the chain of command for Officer Vappie?

14 Executive protection, this is actually a high  
15 point, Your Honor. There's a dichotomy in the reporting from  
16 the city. The city's most recent filing, docket 716-3 at  
17 page 5, represents that the city does not have an executive  
18 protection policy.

19 The city's prior response to the PIB report says  
20 that the city was working on an executive protection policy.  
21 We know that through our work with the good people at PSAB,  
22 part of NOPD, that they are working on an executive protection  
23 policy. We appreciate their work on it. They have provided an  
24 initial draft. Both the court monitor and DOJ have provided  
25 extensive feedback on that draft. DOJ has since provided

03:37

1 feedback on a second draft. PSAB is working on standard  
2 operating procedures (SOPs) to accompany that policy. It would  
3 be helpful if the city could inform the Court by what date  
4 those SOPs will be done so that the protections will be in  
5 place --

6 **THE COURT:** The policy or --

7 **MR. GEISLER:** I beg your pardon, Your Honor. The  
8 SOPs to accompany the policy.

9 **THE COURT:** So they are drafting a policy and SOPs?

10 **MR. GEISLER:** Correct. The policy they have drafted  
11 in part includes a provision about the selection of officers,  
12 should they be in good standing as is used in the secondary  
13 employment policy. There were other aspects of executive  
14 protection that would more appropriately be addressed in SOPs.

15 PSAB has expressed they will propound the  
16 executive protection policy with the SOPs. We have no doubt  
17 that they are timely working on it. It would be really helpful  
18 to know when that will be done so that the remedy is in place  
19 so that this does not happen again.

20 The monitor had a series of recommendations that  
21 the city does not address in its response that are still also  
22 outstanding, and this would be helpful for the city to address  
23 to the Court. The monitor's initial report on PIB at pages 17  
24 through 20 addressed its recommendations. Supervision,  
25 performance evaluations, efficiency, legal conflicts,

03:38

1 reassignment of officers under investigation, PIB's initial  
2 investigation letters, all of those are still outstanding  
3 recommendations from the court monitor. The question for the  
4 Court now is how does the city respond, will it take on those  
5 recommendations.

6 I welcome questions, Your Honor. I will say in  
7 closing that we thank the city for conducting this status  
8 conference. Both of the court monitor's reports concern  
9 compliance with the consent decree in an administrative  
10 investigation that has gained public attention. That attention  
11 in part means that the way the city has responded to the  
12 allegations in the investigation, in its filings, in the  
13 presentation to this Court speaks to how fair the officers  
14 themselves feel they will be treated by PIB and the executives  
15 and how the public who the police serve will be treated by the  
16 police. Will they be as fair to them, the public, as they are  
17 to themselves?

18 This should all be aboveboard, should all be  
19 clear. Unfortunately, Your Honor, in this instance it looks  
20 like the city did not abide by the consent decree. We hope  
21 that the city will answer these questions to help the city  
22 reach substantial compliance and reach our mutual goal of  
23 effective constitutional policing. I welcome any questions,  
24 Your Honor.

25 **THE COURT:** Thank you. I don't have any questions

03:40

1 right now. Thank you very much for your response and for your  
2 comments. Thanks for being here today.

3 **MR. GEISLER:** Thank you, Your Honor.

4 **THE COURT:** Let's hear from the Office of the  
5 Independent Police Monitor if they would like to make any  
6 comments. Mr. Zimmer, then you can respond to all of it.

7 Do you have any comments you would like to make?

8 **MS. CZIMENT:** Thank you for this opportunity,  
9 Your Honor, but we decline to make any comments.

10 **THE COURT:** Thank you. I just wanted to offer the  
11 opportunity since you were here.

12 **MS. CZIMENT:** Of course. Thank you, Your Honor.

13 **THE COURT:** Mr. Zimmer, you are up.

14 **MR. ZIMMER:** Good afternoon, Your Honor. I'm again  
15 Charles Zimmer on behalf of the city and the NOPD.

16 As an initial matter, we would again request in  
17 the future that we receive copies of the monitor's reports  
18 before they are given to the public. It would help formulate  
19 our responses.

20 **THE COURT:** You were provided copies of the PIB  
21 report and the Vappie investigation report quite a while ago.

22 **MR. ZIMMER:** Yes. I was not provided a copy of what  
23 was presented to the Court today, which included replies to our  
24 response and additional information and additional documents  
25 and things. I understand the Court --

03:41

1           **THE COURT:** It was based on the two monitor reports  
2 and your response, so I assume you knew what was in your  
3 response.

4           **MR. ZIMMER:** Yes, Your Honor, I do know what's in my  
5 response. I'm asking when the monitor is presenting something  
6 to the Court, that pursuant to the consent decree's language we  
7 get it in advance, not that I get my own report in advance.

8           **THE COURT:** You got the two monitor's reports in  
9 advance, but move on.

10           **MR. ZIMMER:** Today's presentation was a report,  
11 Your Honor. We would like a copy of that. That's all I'm  
12 asking. I understand you are not going to grant it, but I'm  
13 just making my record, Your Honor.

14           **THE COURT:** It was not a report.

15           **MR. ZIMMER:** Okay. The consent decree in this case  
16 obviously is sweeping, as anyone who is in attendance would  
17 know. It covers every aspect of the department's operations.  
18 The intent of the consent decree was to address excessive force  
19 in violation of the Fourth Amendment, unlawful searches and  
20 seizures in violation of the Fourth Amendment, discrimination  
21 in policing in violation of the Fourteenth Amendment.

22                   Bodyguard duties with respect to Mr. Vappie,  
23 executive protection -- whether it's Secret Service or whatever  
24 the governor calls their service, bodyguard duties simply were  
25 never part of the consent decree. There's actually not even an

03:42

1 NOPD policy, although as expressed one is being drafted now.

2 The bodyguards, the executive protection members  
3 that work for the mayor, the city council members, dignitaries,  
4 and other people that come to town are not expected to be  
5 engaged in conduct that requires policies to deal with the  
6 Fourth and Fourteenth Amendment, which is why until this came  
7 out, this Vappie issue, they were never mentioned or made part  
8 of the consent decree or the policies.

9 Now, to be clear, as officers they certainly are  
10 still bound by all NOPD policies. If they decided to make an  
11 arrest or make some type of stop, those still apply, but  
12 there's nothing specific to their job. That's important in  
13 this case because, as hopefully everyone had a chance to review  
14 the reports that were prepared by the PIB investigative team,  
15 executive protection is extremely odd. They literally can be  
16 doing nothing as part of their job.

17 They wait most of the time for the protectee to  
18 move or travel. They spend tons of time with the person in  
19 social settings and private settings. They will run errands  
20 and, you know, for this place water plants literally fits under  
21 something executive protection members will do. That's not  
22 just for this mayor or prior mayors. That applies to  
23 governors. That applies to other dignitaries. It's just a  
24 unique job.

25 In this case two city council members -- not the

03:44

1 city council, as the monitor routinely states. Two city  
2 council members sent a letter that requested that this Court  
3 appoint the monitor to help in the investigation of the mayor.  
4 That's the language used in their letter. The monitor's  
5 response -- and this is important. The monitor's response  
6 says, "Yes, we will oversee this investigation of alleged  
7 timecard violations." That's how he summarized the initial  
8 reports.

9 **THE COURT:** I don't think they said they would  
10 oversee. I'm not sure of the exact language. Jonathan might  
11 remember. It's something like that they would -- maybe it says  
12 oversee. Anybody have it at hand?

13 **MR. ZIMMER:** We can replace that word, Your Honor.  
14 Closely monitor.

15 **THE COURT:** They would follow it, monitor it, yes.  
16 Oversee sounds like control, and I did not get that impression.

17 **MR. ZIMMER:** As the monitor's reports have noted on  
18 multiple occasions, the functioning of NOPD's Public Integrity  
19 Bureau is at the heart of NOPD's ability to prevent misconduct,  
20 build trust among its officers, and build community trust.

21 Now, the trust among its officers is obviously a  
22 critical component that some of my colleagues have mentioned  
23 today. NOPD has had an issue in exit surveys where the  
24 disciplinary process is part of the complaints. It is  
25 critically important that each officer receive the exact same

03:46

1 treatment no matter where the complaint arises, no matter what  
2 their role is, whether it's in a crossing guard's job, a  
3 homicide investigator's job, or an executive protection  
4 committee team member.

5 NOPD policy 26.2 makes clear that discipline  
6 shall be based on the nature of the violation with  
7 consideration of aggravating and mitigating circumstances  
8 rather than the identity of the accused or his status with the  
9 NOPD, and that is exactly what the PIB investigators in this  
10 case did. They applied the exact same tools, techniques, and  
11 procedures they always apply.

12 Now, there could be lots of discussions about  
13 what could be done better in that process. We could certainly  
14 have analysis of what policies should be in place, what changes  
15 can be made, and some of them the PIB has already responded  
16 that, "Yeah, this is something we have done forever. No one  
17 has ever complained about it, but it is confusing, so we will  
18 stop doing that."

19 For example, the report that is generated has a  
20 signature line for the superintendent. Superintendents don't  
21 look at the information until it's a complete package of  
22 information after the officer -- I guess they would always be  
23 officers here -- has the opportunity to present their evidence  
24 and arguments.

25 The document shouldn't say that, but that's what

03:47

1 it's always said, and so they have always had the head of PIB  
2 sign for the superintendent. That's just an example of some of  
3 the things that have been around forever, no one has complained  
4 about it up until this case, and they have responded and said,  
5 "Yeah, that's something we need to fix."

6 In this case you have unprecedented levels of  
7 monitor involvement. I'm surprised to see the DOJ want to  
8 defend this level of involvement because there's only one thing  
9 different about Officer Vappie, that he works for the mayor,  
10 and that there's a letter from two city council members asking  
11 this Court to appoint the monitor to investigate the mayor. In  
12 that context, the monitor did things that have never occurred  
13 according to the billing records going back to the beginning of  
14 their engagement ten years, even with shootings, constitutional  
15 challenges to conduct, things that are very serious.

16 Here they met weekly with the investigators.  
17 The PIB team is not aware of that happening even in the  
18 secondary employment cases that had payroll fraud allegations  
19 and things like that involved.

20 **THE COURT:** There was quite a bit of involvement in  
21 those. I recall that. There was very close collaboration. I  
22 do recall that. It was very intensive.

23 **MR. ZIMMER:** I agree, Your Honor. If you go back and  
24 look at how much time was spent, it's not as much as in this  
25 one about an executive protection team member. Here we have

03:49

1 got well over \$50,000 to \$60,000 of billing in a short period  
2 of time just about Officer Vappie.

3 **THE COURT:** No, it wasn't just about Officer Vappie,  
4 though. It was about PIB. I've read the reports.

5 **MR. ZIMMER:** No, ma'am. I picked out only the things  
6 specifically about Officer Vappie.

7 **THE COURT:** Well, it was in the context of the  
8 Officer Vappie investigation, but it was looking at PIB through  
9 the lens of the Officer Vappie investigation. I would not  
10 divide it that way and say it wasn't a PIB investigation  
11 because it had something to do with Officer Vappie, because  
12 that's what was being investigated. I understand your point.

13 **MR. ZIMMER:** Obviously, Your Honor, we have a consent  
14 decree agreement that lays out what the monitors are supposed  
15 to do, how they are supposed to audit and review information,  
16 and what their involvement is supposed to be. I would  
17 respectfully suggest that the city does not see this as the  
18 ordinary review of PIB, which there's a long history of how  
19 that happens. This is not it.

20 Weekly meetings with the investigators,  
21 coordination meetings to make sure they are going in the  
22 direction they want, real-time review of all the evidence  
23 that's coming in, so this whole argument by DOJ and the monitor  
24 that somehow they were precluded from the investigation is  
25 utterly unsupported. They were so thoroughly involved in the

03:50

1 investigation that it was unprecedented.

2 **THE COURT:** Well, do you agree, though, that the  
3 report was done on March 10 and was provided to Officer Vappie,  
4 and it was a couple of weeks later before it was provided to  
5 the monitors and the independent police monitor?

6 **MR. ZIMMER:** The 16th is the date that the PIB bureau  
7 chief signed it. The three investigators signed it on the  
8 10th, Your Honor. I'm not sure which one would technically be  
9 that trigger date.

10 **THE COURT:** It was 10 or 14 days, something like  
11 that --

12 **MR. ZIMMER:** Yes.

13 **THE COURT:** -- before it was provided to the  
14 monitors.

15 **MR. ZIMMER:** Yes.

16 **THE COURT:** I would have thought that that at least  
17 was something that we could all agree on, that it should have  
18 been provided to them before it went to the subject of the  
19 investigation.

20 **MR. ZIMMER:** It probably should be under the way  
21 those rules are written. What happened in that time period I'm  
22 not sure, but certainly that doesn't apply if it doesn't fall  
23 under a serious misconduct allegation complaint.

24 **THE COURT:** You would agree with me that if it is a  
25 serious misconduct complaint, it does have to be provided to

03:52

1 the monitor before it's provided to the subject of the  
2 investigation?

3 **MR. ZIMMER:** If it's a serious misconduct complaint,  
4 yes, I believe that's correct.

5 **THE COURT:** So your disagreement with the monitors  
6 and with DOJ is whether this was or should have been a serious  
7 misconduct investigation?

8 **MR. ZIMMER:** Whether it was by definition under the  
9 consent decree, yes. That's not my view. That's PIB's view  
10 during the investigation comparing it to how they treat  
11 hundreds of these. This is not a unique case.

12 **THE COURT:** Well, there are not hundreds of  
13 investigations like this one, are there? You just said it's  
14 unique and odd.

15 **MR. ZIMMER:** Billing issues and time? Oh, yeah,  
16 there was a stream of these. This is a routine issue.

17 **THE COURT:** Well, in the OPSE investigations, those  
18 involved payroll fraud. I don't know the answer to this -- I  
19 don't know if you do or not -- about whether those reports were  
20 provided to the monitors.

21 **MR. ZIMMER:** I don't know the answer to that. I know  
22 that I haven't seen a complaint about it raised here, so I'm  
23 going to assume they were. Otherwise, I think it would have  
24 been brought up as a recurring issue. I don't know for sure as  
25 I stand here, Your Honor.

03:53

1           **THE COURT:** Okay.

2           **MR. ZIMMER:** The monitor's involvement here, make no  
3 mistake about it, is extremely troubling to the city and the  
4 NOPD. Again, this isn't my statement. That's why we attached  
5 affidavits from the actual investigators, who I hope everyone  
6 has a chance to actually read the affidavits to understand that  
7 the investigators understood that the monitors wanted a  
8 specific outcome and specifically suggested that they make a  
9 finding of nepotism even without sufficient evidence and just  
10 let it get overturned at the Civil Service appeal process.

11           **THE COURT:** I read the statements that were made in  
12 the affidavits and in your argument. I did not see any written  
13 evidence of that, not meeting minutes or not an email. It's  
14 vague, general allegations. I was wondering, do you have any  
15 written evidence of that?

16           **MR. ZIMMER:** Besides the sworn testimony, Your Honor?

17           **THE COURT:** Yes, besides just these general  
18 statements that don't say "as you can see from this email," "as  
19 you can see from these meeting minutes," or "I remember we had  
20 a telephone conversation on this date and this person said  
21 exactly this." I would like some details, and I wondered if  
22 you had any evidence like that.

23           **MR. ZIMMER:** No, Your Honor. I just have the sworn  
24 testimony of the investigator who met weekly with the monitor's  
25 team, who makes an extremely strong statement and whose

03:55

1 integrity of this man I would not question. I don't need an  
2 email to see it. I think the monitoring team also has noted  
3 the integrity of this investigator.

4 **THE COURT:** I didn't see an affidavit from -- I'm not  
5 sure. Is it Lieutenant --

6 **MR. ZIMMER:** Jones?

7 **THE COURT:** Jones.

8 **MR. ZIMMER:** There's not one. Kendrick Allen was the  
9 lead investigator.

10 **THE COURT:** Let me see. I want to see exactly what  
11 he said.

12 **MR. ZIMMER:** Your Honor, actually I would like to  
13 read it. The pertinent paragraphs state:

14 "As a result of the many meetings I had with the  
15 monitoring team, I was very concerned that there was a specific  
16 outcome to the investigation that was wanted for political  
17 reasons by the monitoring team. The pressure applied by  
18 certain monitor team members made it clear that this case was  
19 about the mayor of New Orleans to them. PIB has no authority  
20 to investigate the mayor of New Orleans. PIB investigated  
21 Officer Vappie, who is a member of the NOPD."

22 I failed to let everyone know this is from the  
23 affidavit of Captain Kendrick Allen, who was the lead PIB  
24 investigator and is the captain of NOPD's 1st District. He  
25 goes on to state:

03:56

1 "The Vappie case was the first case I am aware  
2 of in which weekly meetings were held with the monitoring team  
3 as the case was being investigated. While the narrative was  
4 that they were just monitors, the team did have a lot of input  
5 and even produced questions that were later asked to Officer  
6 Vappie and other members of the executive protection team."

7 **THE COURT:** I've read it. I've got it right here in  
8 front of me.

9 **MR. ZIMMER:** Your Honor, we brought all these --

10 **THE COURT:** It's in the record at document 716-6.

11 **MR. ZIMMER:** Okay. Well, Your Honor, I think the  
12 public deserves to hear --

13 **THE COURT:** Okay. Go ahead, but you're reading  
14 paragraphs that really aren't about what we are discussing, I  
15 fear. Go ahead.

16 **MR. ZIMMER:** Your Honor, you are talking about the  
17 integrity of the investigation. The monitoring team that is  
18 hired and paid by the city millions of dollars to report to you  
19 on the integrity of the investigation, attacking the very  
20 process, and you're telling me it's not relevant.

21 **THE COURT:** What I asked about was is there some  
22 specific statement, an email, something more specific, and  
23 that's what led us to go to this affidavit. I was looking for  
24 paragraphs about that.

25 **MR. ZIMMER:** "During the investigation of Officer

03:57

1 Vappie, the monitoring team specifically suggested that I and  
2 Lieutenant Jones, the other investigator, sustain the findings  
3 against Officer Vappie regarding nepotism and just let the  
4 Civil Service Commission overturn the 'sustain' disposition on  
5 appeal."

6 "It was my understanding that the nepotism  
7 charge would open the door for payroll fraud as it would mean  
8 Officer Vappie was not working while on duty."

9 "These comments were, and still are, very  
10 concerning because it is my goal and the goal of PIB to conduct  
11 unbiased and accurate investigations at all times. It goes  
12 against everything I understood about NOPD policy to sustain  
13 findings despite a lack of evidence."

14 The city is highly troubled by this, Your Honor,  
15 and the PIB team was highly troubled by it. I would hope that  
16 the Court is highly troubled by it.

17 **THE COURT:** If I thought it was true, I would be, but  
18 the monitoring team has said they did not do that. Of course,  
19 we don't have the people who did these on the stand today to  
20 testify.

21 **MR. ZIMMER:** No. We have the sworn affidavit, which  
22 we don't have from the monitors or the monitoring team,  
23 Your Honor. It's the only sworn testimony that we have, the  
24 only person willing to go on record, and Your Honor prejudging  
25 the evidence as presented on this is not your job. You are not

03:59

1 taking this evidence as equal. You are deciding at the front  
2 end that the monitor is right. That's unfair.

3 **THE COURT:** I'm telling you that it would not fit  
4 with what I have seen of the monitors during this process, and  
5 I don't know why they would have any political motivation to do  
6 it. What is their political motivation? In the monitor's  
7 presentation, they said they did not do this. There is nobody  
8 on the stand for me to hear today. This is at this point  
9 argument by both sides.

10 **MR. ZIMMER:** Except I have a sworn witness,  
11 Your Honor, and normally in this courtroom that makes a  
12 difference.

13 **THE COURT:** And I had a person who was here talking  
14 to me live, and you never bring anybody from NOPD to talk to  
15 me. I would love for you to bring these people who wrote these  
16 affidavits and let them talk.

17 **MR. ZIMMER:** And let them be examined by the federal  
18 judge without prep knowing that you are coming from the  
19 position that they are not telling the truth?

20 **THE COURT:** Well, that would remain to be seen. If  
21 they would come and want to testify, I would be happy to hear  
22 them.

23 **MR. ZIMMER:** Well, Your Honor, I think there may be  
24 some proceedings coming up we will have the opportunity to do  
25 that.

04:00

1           **THE COURT:** Well, I'm not sure what you are talking  
2 about because you told me you didn't want witnesses at the oral  
3 argument next week.

4           **MR. ZIMMER:** Your Honor, I would love to have  
5 witnesses next week.

6           **THE COURT:** No, you wrote me a letter saying you  
7 didn't think it was necessary.

8           **MR. ZIMMER:** It's not necessary because there's  
9 nothing new to present.

10           **THE COURT:** Well, if you wanted to do it, though, you  
11 could have told me you wanted to. I would have let you. I  
12 don't understand your remarks.

13           **MR. ZIMMER:** It doesn't matter, Your Honor.

14           **THE COURT:** It does matter to me that you said, well,  
15 we will have an opportunity --

16           **MR. ZIMMER:** There may be proceedings in the future  
17 that you will have the opportunity to hear from them, that's  
18 correct, not next week, Your Honor.

19           **THE COURT:** Well, I don't know. We will see.

20           **MR. ZIMMER:** Okay. After the PIB investigation was  
21 done, after the monitors had been involved on a weekly basis,  
22 after they had reviewed all the evidence that came in on a  
23 real-time basis, after they helped write the questions for the  
24 examination, on April 7 they issued their confidential report  
25 that says:

04:01

1 "Overall, we are satisfied that PIB's  
2 investigation into the actions and inactions of Officer Vappie  
3 met the requirements of the consent decree. Captain Allen and  
4 Lieutenant Jones took their jobs seriously and pursued the  
5 investigation with diligence and integrity. The monitoring  
6 team reviewed all witness and subject interviews conducted by  
7 PIB and confirmed the seriousness of the questions asked by the  
8 investigators, their lack of bias, and the appropriate scope of  
9 the questions."

10 "We did not see any evidence of 'pulling  
11 punches' in the interviews. The questions were well thought  
12 out, relevant, and meaningful."

13 "Additionally, PIB performed well, particularly  
14 in the absence of policies governing the mayor's executive  
15 protection team."

16 It goes on to conclude:

17 "Notwithstanding these shortcomings noted and  
18 opportunities for improvement, however, we reiterate our  
19 finding that the PIB investigators did a good job in their  
20 investigation of Officer Vappie. Their decision to sustain  
21 multiple allegations against Officer Vappie was reasonable and  
22 supported by the facts. We commend Captain Allen and  
23 Lieutenant Jones for undertaking a quality investigation in a  
24 high-pressure situation. We also commend Deputy Chief Sanchez  
25 for taking this matter seriously."

04:03

1           May 19, we then get the first draft of the  
2 current report, and of course everything changes then.

3           **THE COURT:** Well, the original one was not their  
4 report about the Vappie investigation, so that's why I think it  
5 was a little different. It was a different title, a different  
6 topic.

7           **MR. ZIMMER:** It may have been -- Your Honor, I'll  
8 grab the title.

9           **THE COURT:** The first was the PIB report and the  
10 second was the Vappie investigation report, so they were a  
11 little different.

12           **MR. ZIMMER:** Yes, Your Honor. Document 716-4,  
13 "Confidential, Monitoring Team Analysis of PIB Investigation of  
14 Officer Jeffrey Vappie, April 7, 2023."

15           By May 19, nothing had changed. The report had  
16 been issued as it was prior to the April 7 letter. May 25,  
17 however, was the date that the three-captain disciplinary panel  
18 was to meet. In this new May 19 dated June 5 letter, the  
19 monitor now finds:

20           "As things stand, two professional  
21 investigators" -- the names you are familiar with now -- "have  
22 spent months conducting an important investigation only to see  
23 their hard work potentially overturned by the Civil Service  
24 Commission or an appeals court. Either the NOPD is hoping for  
25 that result, it has a remarkable blind spot regarding the

04:04

1 quality of its final investigation report, or it stubbornly is  
2 avoiding taking any recommendation of the monitoring team. In  
3 any case, the NOPD's position is unfortunate and flies in the  
4 face of the letter and spirit of the consent decree."

5 The investigators did a good job consistent with  
6 the consent decree at least as of April 7. It was done  
7 professionally at least as of April 7. Now NOPD,  
8 quote/unquote, is hoping that this gets overturned. Who is  
9 this NOPD, the three-captain panel that sustained the findings  
10 except for one allegation because of the email that was  
11 mentioned earlier that said executive protection members aren't  
12 restricted by overtime because of their unique job of waiting  
13 around a lot?

14 **THE COURT:** Well, let me ask you about that because  
15 that comes up in your response where you say -- maybe it was in  
16 the May 25 captains' disciplinary report. I think that's what  
17 it's called. They say something about, well, the email from  
18 Paul Noel made this okay because it authorized overtime and  
19 that that effectively overrode the policy and consent decree,  
20 but the part of the consent decree --

21 **MR. ZIMMER:** No, no, no, no.

22 **THE COURT:** How did you say it?

23 **MR. ZIMMER:** In the context of the officer being  
24 charged with taking overtime improperly, a supervisor's letter  
25 stating, "You may take overtime in executive protection," meant

04:06

1 that you could not apply those rules to that officer.

2 **THE COURT:** The consent decree and the policy provide  
3 how many hours, and the policy -- is it 52.1.1, maybe something  
4 like that -- says that that includes overtime. Clearly, it  
5 includes overtime. I don't see how an email from Paul Noel  
6 could override NOPD policy.

7 **MR. ZIMMER:** In a disciplinary proceeding?

8 **THE COURT:** Right. It might be something you would  
9 want to note. I guess what concerned me was here was the  
10 captains and the interim superintendent agreeing that Paul Noel  
11 could change NOPD policy, and that's just not the case. He  
12 could not override policy and he could not change policy by an  
13 email.

14 **MR. ZIMMER:** Again, Your Honor, I wasn't on that  
15 panel, so I don't know all of the flipping that had to go  
16 through that. My understanding from reading the report was  
17 that when evaluating whether or not this officer had violated  
18 the 16.58 policy, they could not sustain the charge because he  
19 was told by his superior, "This does not apply to you."

20 Now, I understand what you are saying, that he  
21 may not have the power to do that, that the person who sent the  
22 email may not have the power to do that.

23 **THE COURT:** His email didn't even say that. It said  
24 you can have overtime. Well, you still had to comply with the  
25 policy. His email was saying you can work your, I guess,

04:08

1 eight-hour shift and you can get overtime, but you still have  
2 to only get overtime up to the number of hours that's allowed,  
3 which is the 16.58, I believe.

4 I did not understand that. I didn't know if you  
5 had anything else. Is the city arguing that Paul Noel's email  
6 can override the consent decree and NOPD policy?

7 **MR. ZIMMER:** No. Your Honor, I'm arguing that the  
8 results of the PIB investigation were thorough and accurate and  
9 done the way they are always done. That doesn't go into that  
10 policy analysis that you are discussing.

11 I see your point. I'm not prepared to argue  
12 whether it's right or wrong. Our presentation of it here is  
13 that that's what the three-captain panel looked at and said,  
14 "In evaluating whether or not he violated a policy, we can't  
15 sustain it because he had permission."

16 **THE COURT:** But he could not have had permission from  
17 that email. What concerns me is here we have got this  
18 three-captain panel and the interim superintendent who  
19 apparently believe that Paul Noel could have changed policy and  
20 the consent decree by an email. It's not this particular case.  
21 It's my concern about whether they really understand the policy  
22 and the consent decree.

23 **MR. ZIMMER:** Where I was, Your Honor, was that  
24 somehow between April 7 and May 19, all of the sudden the  
25 investigation is rigged in favor of Mr. Vappie somehow whereas

04:10

1 before it was fair, that NOPD unnamed is somehow hoping to  
2 render it reversible while the officers involved did their job.  
3 Perhaps the Court's suggestion is the three-captain panel  
4 didn't do their job, but they still didn't build anything in  
5 that I would argue would make it reversible.

6 I am curious who the monitor is alleging did  
7 this because he is clearly saying an action happened, yet  
8 everyone who is involved he said did a great job. This to me  
9 falls in the same conspiracy theory that we had with Mr. Aronie  
10 discussing an ongoing investigation, telling the public there  
11 was interference in the investigation while it's ongoing, when  
12 the investigation hadn't even been completed at that point, and  
13 then arguing that NOPD is trying to create ways that make  
14 ultimate findings reversible.

15 I would think there would be an attack by  
16 someone saying, "Well, the monitor looks to have their thumb on  
17 the scale by going out in public and saying there is an effort  
18 to give him special treatment." Now, why the monitor feels  
19 compelled to speak publicly about an ongoing investigation I  
20 have no idea, because his immediate sentence before that says,  
21 "I don't ever speak about ongoing investigations but, yeah, in  
22 this one I will."

23 It's, again, troubling. The details of it are  
24 interesting. He specifically stated, "Outgoing Superintendent  
25 Ferguson, however, hours before his retirement, directed the

04:12

1 return of Officer Vappie to the mayor's security detail. While  
2 this order, fortunately, was reversed by a deputy chief and the  
3 city attorney, the order itself at the very least had the  
4 appearance of interference in a PIB investigation."

5 Of course, that's only true when you go tell the  
6 public that that's what happened because in reality that's not  
7 what happened. The form that you were shown earlier that we  
8 were able to find is the normal rote form. It's in every case,  
9 from what I've been told, where if it's an administrative  
10 investigation, you have to take the person off of disciplinary  
11 reassignment. That order goes back to their bureau, and then  
12 their bureau decides what to do with them or the  
13 superintendent.

14 In this case, Superintendent Ferguson -- again,  
15 to me it means something when you take an affidavit and you  
16 swear that these are accurate under oath -- said he never  
17 ordered him to go back, he was never going to, and quite the  
18 opposite. He specifically told his replacement, "By the way,  
19 Vappie has got to be reassigned. I do not suggest you send him  
20 back there while the investigation is ongoing."

21 **THE COURT:** Let me ask you about that, which I said  
22 was document 716-13. I think I asked the monitor this  
23 question. Did something happen on -- well, let me back up.

24 **MR. ZIMMER:** December 21 or whatever?

25 **THE COURT:** Is it in the policy or an SOP that says

04:13

1 when the person is taken off administrative assignment?

2 **MR. ZIMMER:** I'm not aware of an SOP or a policy  
3 other than it is NOPD's internal practice that that's what they  
4 do.

5 **THE COURT:** What is the practice about when you do  
6 that?

7 **MR. ZIMMER:** I don't know the answer to that.

8 **THE COURT:** Well, that would be a good thing for you  
9 to know the answer to before you said these things about the  
10 monitor.

11 **MR. ZIMMER:** Why, Your Honor?

12 **THE COURT:** Well, tell me this. What happened on  
13 December 21 that led to this form? Wouldn't you want to know  
14 that? That's one thing I want to know. What happened on  
15 December 21 that led to this form being filled out?

16 **MR. ZIMMER:** A routine form that happens in every  
17 administrative case?

18 **THE COURT:** When? When does it happen?

19 **MR. ZIMMER:** I don't know, Your Honor. I would think  
20 you would be more concerned about someone talking to the public  
21 about it and giving the wrong impression.

22 **THE COURT:** Well, what I want to know is when is it  
23 routine, when does it happen. I want the monitors and you to  
24 help us find that out. Everybody should know that. The only  
25 thing I know that happened on that day was that it was the last

04:15

1 day that Shaun Ferguson was the superintendent. It may be  
2 coincidental. That's the only thing I know.

3 I know the PIB investigation was not completed.  
4 It wasn't completed for several months after that. They hadn't  
5 interviewed most people. I would like to know what happened,  
6 why did it happen that day. Maybe there's a perfectly good  
7 explanation. That's one thing.

8 The other is if this form was filled out as a  
9 routine matter, then why did Officer Vappie not go back to the  
10 executive protection detail?

11 **MR. ZIMMER:** Because that's not what happens. He  
12 goes back to the bureau.

13 **THE COURT:** He was in the ISB, right?

14 **MR. ZIMMER:** I believe that's right.

15 **THE COURT:** That's because EP is under ISB.

16 **MR. ZIMMER:** I think, yes.

17 **THE COURT:** So your understanding is then he went  
18 back to the ISB, and then how did he get from that to assets  
19 and forfeiture?

20 **MR. ZIMMER:** It is up to the bureau chief. When you  
21 are told this person is under investigation, they are being  
22 returned to you, they then get to say where do I want to put  
23 this person, or the superintendent can step in and say where to  
24 put this person.

25 **THE COURT:** Well, who do you think decided in this

04:16

1 situation?

2 **MR. ZIMMER:** I actually don't know who decided. I  
3 know Superintendent Ferguson said that he was not going back to  
4 the mayor's team. The actual transfer I think would have  
5 happened under Superintendent Woodfork.

6 **THE COURT:** Do you think she made the decision of  
7 where he would actually go as opposed to -- I think the bureau  
8 chief was Chris Goodly.

9 **MR. ZIMMER:** That, I believe, is accurate.

10 **THE COURT:** Do you think that the superintendent  
11 actually made the decision in this case?

12 **MR. ZIMMER:** I don't know the answer.

13 **THE COURT:** That's another thing that I would like to  
14 know.

15 **MR. ZIMMER:** Why, Your Honor?

16 **THE COURT:** You have made some strong statements.  
17 You say the monitors have, but you also have that the monitors  
18 are -- I guess you are accusing them of not telling the truth,  
19 but yet I see this form. I would like to understand what  
20 happened around this form.

21 While I'm on that topic, that makes me think  
22 about this started on November 8 and 9, this investigation  
23 began.

24 **MR. ZIMMER:** The 10th, technically, I think.

25 **THE COURT:** Okay. Around that time as a result of

04:18

1 the Fox 8 email.

2 **MR. ZIMMER:** Right.

3 **THE COURT:** Then there have been reports also on  
4 Fox 8 that at that point that Officer Vappie went to work at  
5 the Orleans Parish Communication District, and I didn't see  
6 that anywhere in the PIB file. The monitors got the PIB  
7 investigation with attachments and it was not in there. Have  
8 you seen that to know how he got to the Orleans Parish  
9 Communication District?

10 **MR. ZIMMER:** I have not seen anything with that for  
11 him. All I know is that that is one place that they will often  
12 send officers that are on the off-assignment section until they  
13 figure out if they can go back to their bureau or not.

14 **THE COURT:** Who told you that?

15 **MR. ZIMMER:** I at this moment, Your Honor, can't  
16 remember which of the persons said that, so I'm not going to  
17 say a name and get it wrong.

18 **THE COURT:** Okay.

19 **MR. ZIMMER:** That's certainly, I think, not a  
20 controversial thing. It was that and greeters at districts. I  
21 think there was one other place they may normally go.

22 **THE COURT:** They often go to APR is what I heard.

23 **MR. ZIMMER:** Yes. Actually, that's correct,  
24 Your Honor. APR was the other one.

25 **THE COURT:** I have never heard anybody mention that

04:19

1 they get sent to the 911 center. Are you aware that PIB has  
2 opened an investigation into that, of how he went to OPCD  
3 immediately when this investigation began?

4 **MR. ZIMMER:** Am I aware of an investigation into  
5 that? I am not, but PIB doesn't flow through my desk.

6 **THE COURT:** I believe I have seen an indication of  
7 that, that they have now treated the inquiries about how that  
8 occurred as a complaint and they are investigating it.

9 **MR. ZIMMER:** Okay. I'm not aware of that,  
10 Your Honor. If I was, honestly, I wouldn't be talking about it  
11 in open court.

12 **THE COURT:** Well, I'm just saying the existence of  
13 it.

14 **MR. ZIMMER:** Again, I have nothing to relay on that.

15 **THE COURT:** Okay.

16 **MR. ZIMMER:** To wrap up the point I was on,  
17 Your Honor, Superintendent Ferguson has filed an affidavit that  
18 says he did not order Mr. Vappie to return to the mayor's team  
19 and nor was he going to and that the allegation is untrue.

20 Superintendent Woodfork signed an affidavit that  
21 aligns with the back half of former Superintendent Ferguson,  
22 that she received word that he needs to be reassigned and  
23 should not go back to that team while under investigation.

24 The city attorney, Donesia Turner, who  
25 Mr. Aronie alleges reversed the order, which we can't --

04:21

1 there's no order that he goes back to the mayor's team.

2 **THE COURT:** Well, we do have document 716-13.

3 **MR. ZIMMER:** He is going back to that bureau.

4 **THE COURT:** It says, "You are to contact Sergeant  
5 Tokishiba Lane, supervisor of the executive protection  
6 section."

7 **MR. ZIMMER:** Who will then figure out where you are  
8 going -- like he has to report to someone.

9 **THE COURT:** I understand we don't know yet what  
10 exactly happened here and who did what, but for you to act like  
11 there's no reason that anyone would have thought that when we  
12 have this document --

13 **MR. ZIMMER:** No, that's not the issue, Your Honor.  
14 It's not that no one would have thought it. It's that someone  
15 with inside information -- without figuring out is this part of  
16 a normal process, where is he going, has it been taken care  
17 of -- decides to tell the public something that looks like the  
18 investigation is being manipulated.

19 **THE COURT:** Nothing was told to the public then that  
20 I'm aware of, on that date. December 21?

21 **MR. ZIMMER:** No, Your Honor. In March is when it was  
22 told, before the investigation is completed. I understand that  
23 the Court may not think that it means much. The city and the  
24 NOPD thought that it was highly inappropriate, unusual, and was  
25 attacking the integrity of the investigation in the middle of

04:22

1 it.

2 THE COURT: Well, I guess the monitors would say they  
3 feel you are attacking their integrity.

4 MR. ZIMMER: I don't mind that, Your Honor. That's  
5 my job. I don't really care about --

6 THE COURT: Well, they might say the same thing.

7 MR. ZIMMER: I don't care. Your Honor, I  
8 represent --

9 THE COURT: It's not personal.

10 MR. ZIMMER: I don't care if you don't like me or if  
11 the monitor thinks that I don't like what they are doing. What  
12 he did and then going behind the superintendent's back and  
13 telling a subordinate to move someone when the superintendent  
14 already said no, they should be troubling allegations.

15 I understand that they are not, but for the  
16 record and for the public to understand, they should be. This  
17 is why the Department of Justice has a policy that says you  
18 shouldn't have a monitor for more than a few years because this  
19 is way too much comfort.

20 THE COURT: That is not accurate.

21 MR. ZIMMER: Your Honor, I believe that to be  
22 accurate. I will report back to the Court with a copy of the  
23 2017 DOJ policies and procedures for consent decrees.

24 THE COURT: I've seen that also. Most things you  
25 bring up I have already seen. You might imagine, I do keep up

04:23

1 with this.

2 MR. ZIMMER: I know you keep very, very close tabs on  
3 it, Your Honor.

4 In short, when you look at the involvement in  
5 the investigation on a weekly at least basis, their awareness  
6 of what was going on all the time in the investigation, and the  
7 April 7 letter saying it was done pursuant to the consent  
8 decree, it seems that the monitor only has a problem now that  
9 the outcome wasn't what it had pushed from the beginning.

10 Your Honor may not believe that that's what  
11 happened, but from NOPD's point of view and the witness  
12 testimony, the only sworn testimony available, it's highly  
13 troubling, and that's the cause of the complaint. We have  
14 complained about retaliatory tactics from the monitor for  
15 years. This is not something that falls out of line with that  
16 allegation. We believe it's a violation of the monitor's  
17 duties and his contract with the city.

18 The serious misconduct issue is, frankly, more  
19 of a sound bite issue to try and say the city is not taking it  
20 seriously. All misconduct is serious. This conduct of  
21 Officer Vappie was serious. They sustained multiple  
22 allegations that he violated rules of professionalism. If it  
23 wasn't for the email that came out, he may have been found for  
24 violating the 16.58-hour rule. They did find he had violated  
25 things. The issue comes when you start from day one saying you

04:25

1 have to find payroll fraud, you have to find payroll fraud, you  
2 have to find payroll fraud. Now the monitor is saying, well,  
3 they didn't do that investigation. Again, it's not true.

4 If you read Captain Allen's affidavit -- again  
5 sworn testimony -- they did look at it. They didn't find  
6 evidence of it and here's why. In order for you to say it's  
7 payroll fraud, you have to reach the nepotism finding because  
8 that's the only way to say what he is doing in there is wrong.

9 **THE COURT:** I don't really understand that. Will you  
10 explain that a little more to me.

11 **MR. ZIMMER:** Okay. Sure. Let's say the mayor is a  
12 man and Officer Vappie spends tons of his time in a residence  
13 as executive protection, well, there's no issue, no one is  
14 going to complain. Because the mayor is a female and there was  
15 time up there, now there's the allegation that there's a  
16 relationship. The only thing that triggers his conduct being a  
17 violation of executive protection -- in other words, he is not  
18 doing his job, which is what the payroll fraud allegation is.  
19 You are billing for work you are not doing. In order to do  
20 that, you have to show that he was there as part of some  
21 relationship with the mayor that exceeded friendship. That's  
22 the nepotism statute.

23 The investigators didn't find evidence of that.  
24 As they said, it looks bad to be up there. That's why it's a  
25 violation of your training, not policy because there is no

04:27

1 policy. It's a violation of your training. It looks bad. It  
2 makes the mayor look bad. It makes the NOPD look bad. You  
3 violated the professionalism rules, and you should get whatever  
4 the discipline is on the matrix.

5           If you don't have evidence -- again, the monitor  
6 talked about, oh, well, they just call it speculation and  
7 ignore it. It's not speculation that he is in there for hours  
8 at a time. It's speculation of what they are doing in there.  
9 There is no evidence except Mr. Vappie's testimony that he was  
10 doing the same thing he would do if he is at the mayor's  
11 office, which is sit close by and wait, and every other person,  
12 every other witness saying, "I didn't like the way he sat at  
13 the table with her. I didn't like the way this happened, but I  
14 never saw anything. I didn't see evidence of the relationship  
15 to meet the nepotism statute."

16           **THE COURT:** So do you acknowledge that the NOPD  
17 policy and consent decree says that PIB will consider direct  
18 and circumstantial evidence?

19           **MR. ZIMMER:** Yes.

20           **THE COURT:** You say there's no evidence. Do you  
21 believe that there's no direct evidence?

22           **MR. ZIMMER:** Correct.

23           **THE COURT:** Do you also say there's no circumstantial  
24 evidence?

25           **MR. ZIMMER:** There is circumstantial evidence that

04:28

1 the PIB investigators did not find had the weight necessary to  
2 be a preponderance. Again, to say he is in there, to say he is  
3 watering plants, to say all the things that are listed, none of  
4 that says is there a relationship which would give nepotism,  
5 because otherwise you fall in this vast, open area of what an  
6 executive protection member can do. Normally if he goes to a  
7 grocery store on duty, I think you would say, okay, well, you  
8 are not doing your job.

9 **THE COURT:** Did PIB do an analysis of the direct and  
10 circumstantial evidence about payroll fraud in their report?

11 **MR. ZIMMER:** Did they do an analysis -- no. No.

12 **THE COURT:** I think that's what the monitors have  
13 been pointing out.

14 **MR. ZIMMER:** Yes.

15 **THE COURT:** The result could be whatever it would be.  
16 That's not the point. The point is did they follow the consent  
17 decree and the policy and consider direct and circumstantial  
18 evidence, analyze it, and then reach a disposition, sustain,  
19 not sustain, whatever.

20 **MR. ZIMMER:** Yes. The affidavit of the lead  
21 investigator describes that.

22 **THE COURT:** No, no. The PIB report, does it include  
23 that analysis of direct and circumstantial evidence and reach a  
24 disposition?

25 **MR. ZIMMER:** I know you have read the report,

04:30

1 Your Honor. Obviously, you know that there's not that in  
2 there.

3 **THE COURT:** I just want to be sure we agree. If I'm  
4 wrong, I want you to tell me.

5 **MR. ZIMMER:** I think we could agree that, as the  
6 monitor said, this was a time card overbilling allegation to  
7 begin with. That's where the investigation started. The  
8 monitor from very early on said, no, it's payroll fraud.

9 They looked at that claim -- and that's this  
10 distinction between investigated or not. The affidavit lays it  
11 out in better terms than I can where he says, "There was never  
12 a formal investigation which triggered a payroll fraud. We  
13 looked at the claim of payroll fraud, could not get there.  
14 There was not evidence."

15 **THE COURT:** Isn't that the point that the DOJ made  
16 back in the day?

17 **MR. ZIMMER:** No.

18 **THE COURT:** This is before you were involved. One of  
19 the main things they were concerned about, there was secondary  
20 employment. That was a big deal. Another one was that  
21 complaints would come in and they would never be investigated  
22 because what NOPD would do is sort of reach the conclusion  
23 before they did the investigation. DOJ said, no, the right way  
24 to do it is you get all the facts and allegations, do the  
25 investigation, and then you reach conclusions, but you put in

04:31

1 your report all those things and for every -- every --  
2 allegation you have to have a disposition. That's the problem  
3 that DOJ was addressing in its report in 2011 and that people  
4 were trying to avoid in the consent decree as I understand it.

5 **MR. ZIMMER:** I have read the DOJ report. There are  
6 extremely important things in there. None of them look  
7 anything like this from what I read.

8 **THE COURT:** Well, no, no one could have predicted  
9 this, but they do talk about the importance of -- because I  
10 looked at it. When this came up, I got it out and looked at  
11 it. There's a whole section in the DOJ report about PIB  
12 investigations, and then that led to a whole section with many  
13 paragraphs in the consent decree.

14 **MR. ZIMMER:** Absolutely, Your Honor. That certainly  
15 is accurate that there are a lot of parts of PIB in there.  
16 They have been closely evaluated for -- I won't say ten, but at  
17 least eight, nine years. The whole point that I hope to leave  
18 the public with -- I understand Your Honor already knows our  
19 points. The investigators here were under direct pressure from  
20 the monitors even if that's not real.

21 Let's just say they are wrong and they  
22 misunderstood. They felt pressure from the monitor. Instead  
23 of bowing to it -- the monitor being, as you have said, the  
24 eyes and ears of a federal judge standing there, and they are  
25 taking it as saying you need to reach this outcome, instead

04:33

1 they did the process right.

2 Now, everyone here could have a different  
3 opinion, looking at the evidence, what should have been the  
4 outcome. They did the process as they understand it, the way  
5 they would do it against anyone, and at the end reached the  
6 same outcome. That's what the process is designed to do.

7 So what should have resulted was at least a  
8 finding the process is durable. Even under the most severe  
9 type of analysis or pressure, they still did the investigation  
10 right. That's all they wanted everyone to know. They didn't  
11 move. They didn't give into the pressure. The discipline that  
12 would be issued or that was recommended is pursuant to a matrix  
13 so that there is not discretion left for people to do it  
14 differently.

15 **THE COURT:** What was the discipline?

16 **MR. ZIMMER:** The discipline was a letter of reprimand  
17 for the two unprofessional conduct violations, and then there  
18 was an unsustained on the 16.35 [sic] deal.

19 Actually, there was a fourth. The captains  
20 panel added a fourth charge to it that was sustained, but the  
21 penalty was a duplication of the other one because it's a  
22 Civil Service rule. It didn't have its own separate penalty  
23 with it.

24 **THE COURT:** I had a couple of questions I wanted to  
25 ask you if you are ready.

04:34

1           **MR. ZIMMER:** Your Honor, I'm always here for the  
2 Court's convenience.

3           **THE COURT:** Okay. I think you-all have mentioned  
4 that you are investigating the failure of keeping the  
5 recordings confidential. What's the status of that? Have  
6 policies been put in place to avoid that?

7           **MR. ZIMMER:** In terms of the data leak?

8           **THE COURT:** The tapes being sent to the city  
9 attorney's office and then those being leaked.

10           **MR. ZIMMER:** I'm glad you mentioned that, Your Honor.  
11 The city attorney has to be closely involved pursuant to the  
12 consent decree. That's a requirement. So what happened as  
13 part of that process that the city attorney be there to help  
14 PIB build a defensible case -- that's what the consent decree  
15 requires they do. I think it uses the word a "close"  
16 relationship so that are there. The monitors requested that  
17 not happen in this case.

18           The monitors requested that PIB exclude the city  
19 attorney and the superintendent, which obviously is a problem.  
20 The superintendent is part of the disciplinary process, so that  
21 didn't make sense. But to exclude the city attorney would  
22 require a change to the consent decree, which wasn't requested;  
23 it was simply suggested to PIB by the monitor.

24           **THE COURT:** Has there been any discussion among NOPD  
25 about, well, maybe we do need to look at that because of the

04:36

1 conflict that can develop, as we saw it develop in this case  
2 because Officer Vappie worked for the mayor, the mayor was  
3 asked to do an interview and she refused, the unique  
4 circumstances of this case that could occur in a different but  
5 similar situation? Has there been any discussion about whether  
6 that would be a good idea?

7 **MR. ZIMMER:** Two things. I would disagree that there  
8 was a conflict, but we will leave that at just a disagreement.  
9 Whether or not there's internal discussions about a policy  
10 change I'm not aware of. I haven't asked that question,  
11 Your Honor.

12 **THE COURT:** You're not aware of any investigation or  
13 policies or SOPs that are being developed to make sure that PIB  
14 records are kept confidential no matter what the circumstance?

15 **MR. ZIMMER:** They are already supposed to be kept  
16 confidential. Here they were uploaded to the monitors and to  
17 the city attorney. Obviously, we know the city attorney's  
18 office had an error and they, you know, were out. In terms of  
19 a policy to make the protections better on them, I'm not aware  
20 of it, but obviously that seems like a logical safety  
21 mechanism.

22 **THE COURT:** Do you know if there is any investigation  
23 of the Officer Vappie chain of command?

24 **MR. ZIMMER:** Investigation, no. I think one of the  
25 things that came out of this is that executive protection lived

04:38

1 out here kind of on its own and had no immediate supervisor and  
2 that that is one of the things that has been changed or is in  
3 the process of being changed, that they have said we need to  
4 have a supervisory system set up just like the other parts.

5 **THE COURT:** Ms. Lane, she was on paper at least his  
6 supervisor, and then she had supervisors all the way up to, I  
7 guess, Deputy Chief Goodly.

8 **MR. ZIMMER:** I forget the name, Your Honor, and it's  
9 in the actual PIB report.

10 **THE COURT:** Tokishiba Lane, supervisor of the  
11 executive protection section. That's what she's called in the  
12 administrative reassignment notification. That sounds like his  
13 supervisor.

14 **MR. ZIMMER:** That does, yeah. I do not know of any  
15 investigation of her. I know that the supervisor of executive  
16 protection was a position that existed and then went away and  
17 it was not filled. After that they were submitting time to a  
18 person who would enter the time, but no one was actually --  
19 technically the direct supervisor, I wouldn't dispute -- yes,  
20 there is a chain of command above them. I'm not aware of any  
21 investigation, anything about that, no.

22 **THE COURT:** I think that PSAB has represented that  
23 they are working on a policy for the executive protection  
24 detail, and that's been acknowledged here today. They have  
25 also admitted that SOPs or standard operating procedures are

04:39

1 needed. Are there drafts of the SOPs; if not, when will those  
2 be provided?

3 **MR. ZIMMER:** I'm aware that they are being drafted  
4 from being on the same calls that Mr. Geissler is on. I don't  
5 have a date.

6 **THE COURT:** I think he mentioned, though, that he had  
7 heard about the policy, but not anything about the SOPs.

8 **MR. ZIMMER:** My recollection from the email traffic  
9 was that they are supposed to be in process, I believe. I  
10 don't have a date. Jonas asked for a date.

11 Unfortunately, using the Court to ask the  
12 question doesn't give me any more knowledge than it does  
13 through an email, Jonas.

14 No, I don't have a date for you, but I can  
15 direct you to the man who can get you that date and be happy to  
16 do it.

17 **THE COURT:** Anything else?

18 **MR. ZIMMER:** No, Your Honor. That's all I have  
19 unless you have any further questions.

20 **THE COURT:** Thank you. I have kept you up there a  
21 long time, so thank you.

22 **MR. ZIMMER:** Thank you, Your Honor.

23 **THE COURT:** Does DOJ wish to make any remarks?

24 **MR. GEISSLER:** Indeed, Your Honor, please.

25 Your Honor, with all due respect to

04:41

1 Mr. Zimmer -- and I have great respect for him -- the assertion  
2 they did the investigation right flies in conflict with the  
3 court monitor's findings. They didn't get the phone. They  
4 didn't interview all the witnesses. They didn't interview the  
5 witnesses to the extent of the allegations. They didn't frame  
6 all the allegations as required by the consent decree. That's  
7 not doing the investigation right. That undercuts public  
8 confidence in how the police treat their own. It undercuts  
9 other officers' confidence in getting a fair shake at PIB.

10 Your Honor, you asked about the reassignment  
11 memo from December 21, 2022. It appears to be signed by  
12 Captain Kendrick. It is cc'd to the superintendent's office.  
13 At one point the city presented an email -- it's docket  
14 716-11 -- from Superintendent Woodfork to court monitor Aronie  
15 in response to the court monitor's request to keep Lieutenant  
16 Jones and Captain Allen in PIB.

17 The superintendent says no one, not even -- I'm  
18 paraphrasing, of course, and the exhibit is there from the  
19 city's own filing. No one has authority, not even Hans  
20 Ganthier, the deputy chief, to transfer those two individuals.  
21 Transfers are within the superintendent's purview.

22 There's an unanswered issue here. If on the  
23 21st of December there's a written document that says transfer  
24 Officer Vappie back to Lieutenant Lane and only the  
25 superintendent, according to her email, has authority to

04:42

1 transfer somebody, who then transferred Officer Vappie? In  
2 answer to Your Honor's questions, I would point Your Honor to  
3 the city's own exhibit.

4 **THE COURT:** Which one?

5 **MR. GEISLER:** 716-11.

6 **THE COURT:** Oh, the superintendent --

7 **MR. GANTHIER:** The superintendent's email. I don't  
8 think it answers the question what happened with the  
9 reassignment, but I think the superintendent's email asserts  
10 there's only one person with authority to make that  
11 reassignment. I don't know when that happened and we don't  
12 know.

13 The United States objects to the contentions  
14 from counsel as though they were facts. With all due respect,  
15 I don't doubt the good intentions of Mr. Zimmer. The  
16 contentions by counsel that there's a two-step process, there's  
17 an order entered on the 21st of December saying report back at  
18 4:00 p.m. to executive protection, but there's this second  
19 step in the process, and none of the affidavits speak to it.  
20 It's only assertions of counsel in the city's filing.

21 Where is that process memorialized? If that's  
22 another hole in the system, Your Honor, let's just fix the  
23 hole. Let's not make it worse. If the accountability system  
24 has an error in it, let's make the accountability system a  
25 durable remedy as required by the consent decree.

04:44

1 I thank Your Honor. I'm ready for any questions  
2 if Your Honor has any for me.

3 **THE COURT:** Thank you very much. I appreciate it.

4 **MR. GEISLER:** Thank you, Your Honor.

5 **THE COURT:** Mr. Aronie, do you have any comments?

6 **MR. ARONIE:** Yes, Your Honor, I do have a few  
7 remarks. Some of them are pretty short, but I think they are  
8 important.

9 First, Your Honor, I note that Mr. Zimmer said  
10 it's his job to attack my integrity. All I will say about that  
11 is that's what people do when they don't have the facts on  
12 their side. I guess I should be used to attacks, and they can  
13 attack all they want, but I have been doing this for ten years.  
14 I report to a federal court. There should be no question about  
15 my integrity here.

16 Second, Mr. Zimmer kept asking what's the  
17 difference about this case from other PIB cases, what's the  
18 difference. He kept saying this is just a bodyguard case; it  
19 has nothing to do with the consent decree. This case isn't  
20 about bodyguards and it isn't about Officer Vappie. It's about  
21 accountability. It's about PIB. All the other stuff thrown in  
22 here is distracting from the fact that this is an evaluation of  
23 whether PIB has fixed its problems, whether it has implemented  
24 a durable remedy.

25 The fact that here, ten years in, PIB is

04:45

1 presented with a highly charged case that everyone in the city  
2 is watching, where the mayor is a material witness, it is a  
3 unique opportunity to see if PIB's reforms are actually  
4 durable. Again, it's not about Vappie. It's about PIB.

5 Another thing Mr. Zimmer talked about was how  
6 intimately involved in the investigation we were. The fact is  
7 PIB was open with us with respect to the investigation. The  
8 data was shared with us, but the analysis was not. It's the  
9 analysis in their report that wasn't shared. Up until that,  
10 yes, we knew the interview questions. We saw the interviews.  
11 We talked to the investigators. But until you see how PIB  
12 marries up the facts and the rules and what they include and  
13 what they don't, and critically what they leave out so the  
14 community will never know they investigated and make us make a  
15 prereport, double seek the disposition, we don't know what that  
16 says until we see it. So there's a big difference between  
17 being let into the investigation and being let into the  
18 analysis in the report.

19 Third, Your Honor, Mr. Zimmer has a lot to say  
20 about politics and this being political. That's, quite  
21 frankly, absurd. We have no desire for any specific outcome,  
22 and the city continually and I think intentionally confuses our  
23 desire for a process with our desire for an outcome.

24 It is true throughout this process we stressed  
25 to PIB over and over again the importance of investigating

04:47

1 every aspect of the allegation, including payroll fraud, and we  
2 stressed that meant considering the circumstantial evidence.  
3 If they considered it and they analyzed it and they found the  
4 circumstantial evidence does not rise above the preponderance  
5 of the evidence standard, so be it. What we and the IPM  
6 continually stressed is the process is what matters. You can't  
7 ignore steps. You can't ignore evidence. I don't care -- I  
8 guess I shouldn't say I don't care. They reach the outcome.  
9 If they follow the process and they reach an outcome, whether I  
10 agree with it or not doesn't matter.

11 Four, Mr. Zimmer acts like I've changed my view  
12 on the quality of the investigation. I have not. I said very  
13 clearly in my early reports that the investigators did a good  
14 job, and I stand by that. They conducted quality interviews.  
15 They pulled most of the correct data. They didn't pull punches  
16 in their interviews. I was especially impressed with the  
17 Lawrence Jones interviews. He is a very good interviewer.  
18 That does not mean that the subsequent analysis was great.

19 You can have a good investigation -- people seem  
20 to think that it's either a one or a zero, it's either all good  
21 or all bad, but that's not true. You can have aspects of an  
22 investigation that are good in quality and then still have  
23 aspects of an investigation that are poor and substandard and  
24 even violate a consent decree.

25 Here there were very good aspects of the

04:49

1 investigation, but then the analysis failed to consider  
2 circumstantial evidence, failed to make credibility  
3 determinations, failed to apply the correct legal standard. I  
4 can go on. Those things clearly are bad. They violate the  
5 consent decree and they question the integrity of the  
6 investigation. I can also agree with the sustains, that they  
7 properly sustained, but the way they got there was problematic  
8 and creates great [Zoom inaudible]. So you can have good  
9 aspects of an investigation, but you can have a bad report, a  
10 bad analysis.

11 Five, there was some brief mention in  
12 Mr. Zimmer's comments about the panel overturning the sustain  
13 on the 16.5-hour violation because of Paul Noel's memo. Just a  
14 brief comment because I understand from PIB something a little  
15 different here.

16 PIB initially recommended a "sustain" because  
17 Officer Vappie went over his allotted hours not while  
18 protecting the mayor, but while serving as a driver for  
19 consultant Fausto Pichardo. If what I understand is correct,  
20 if that's what he was sustained as going over the 16 hours,  
21 then Paul Noel's memo doesn't apply. Paul Noel's memo talks  
22 about when you are engaged in executive protection. It doesn't  
23 give some sort of broad, you know, get-out-of-jail-free card  
24 for anything you do once you are on executive protection.

25 Now, again, I don't have the documents that get

04:51

1 into the details here, but that's what I understood from PIB  
2 during our conversations, so I don't think the Paul Noel memo  
3 has any bearing on that issue. A few more, Your Honor.

4 Six, we talked a lot about this. The fact that  
5 there's an allegation there's somehow a conspiracy theory here,  
6 why would I have any interest in that? The facts are on the  
7 22nd I got a call from an NOPD leader that told me they were  
8 concerned about this reassignment. That's all I knew at that  
9 time. I knew that an NOPD leader was concerned about  
10 someone -- that's when I think this person told me it was -- in  
11 fact, I know this person told me it was Superintendent Ferguson  
12 who reassigned Vappie back to executive protection. I agreed  
13 with this NOPD leader that that would create a very bad  
14 perception.

15 I got on the phone with other PIB leaders, and I  
16 remember where I was. I remember where I was when I did it. I  
17 remember the conversation. Those other NOPD leaders took it  
18 very seriously. They started to make calls and promised they  
19 would call me back. They ultimately did call me back and  
20 confirmed that it was not going to happen, that it was  
21 squashed, that they stopped it. I said great, that it would  
22 prevent a lot of embarrassment. I didn't know the document  
23 existed that supports what this first person told me at the  
24 time. Only subsequently did I see the document which, again,  
25 supported what I was told.

04:52

1           There's no conspiracy here. That's exactly what  
2 happened on that day, and it turns out that they apparently did  
3 stop it because it doesn't look like he was reassigned to  
4 executive protection as the document on the 21st suggested.  
5 Calling it some sort of conspiracy to hurt the city is crazy.  
6 Again, it's just attacking the integrity because you don't have  
7 the facts.

8           Three more quick ones. Mr. Zimmer writes a lot  
9 in his paper and said in this court again that -- apparently  
10 going behind the superintendent's back to countermand her  
11 order. Mr. Zimmer has his timeline wrong. In the middle of  
12 the PIB investigation, I learned that they were reassigning the  
13 two investigators back into the districts. I expressed concern  
14 to PIB that that was a bad idea, that it would hurt the  
15 investigation, that these two PIB investigators were doing a  
16 good job, and that they already had too much on their plate. I  
17 was told there was nothing they could do about that.

18           I wrote some emails where I very clearly said,  
19 "I don't have authority to direct this, but I would like to  
20 recommend this because I think it's important to prevent a bad  
21 perception within PIB." I don't have the timeline right in  
22 front of me, but I was given a response by a deputy chief that  
23 said, "Don't worry. I have this handled." I didn't think that  
24 was enough. I wrote back and asked for more. During this time  
25 I also spoke to the superintendent. I never went behind the

04:54

1 superintendent's back. They all told me I was wrong and there  
2 was nothing to worry about, and that ended it.

3 Two more. I don't at all understand  
4 Mr. Zimmer's argument that somehow you have to find nepotism to  
5 find payroll fraud. The allegation was that Officer Vappie was  
6 not working while charging NOPD for his time. That's what you  
7 investigate. That's payroll fraud. You look at the evidence,  
8 circumstantial and direct, and you try to figure out whether he  
9 was working or not.

10 You don't need to find there was an affair. You  
11 don't need to find there was an illicit personal relationship.  
12 You just need to figure out if he was working or not and that's  
13 what we pressed, that they investigate whether he was working  
14 or whether he was committing payroll fraud. The fact of  
15 whether the mayor is a man or a woman, none of that matters.  
16 All that matters is does the evidence suggest he was working or  
17 not while billing NOPD.

18 Finally, Your Honor, as to Mr. Zimmer's last  
19 statement that NOPD will do this again the exact same way next  
20 time, that's probably the most troubling comment of all. I  
21 certainly hope that's not true. The consent decree makes it  
22 very clear you do not get to not record an allegation and then  
23 secretly investigate it or not, who knows, not analyze it in  
24 the report and not give it a disposition.

25 The consent decree is very specific. You record

04:56

1 all allegations, you investigate the allegations, and everyone  
2 gets a disposition: a "found," an "unfounded," a "sustained," a  
3 "not sustained," etc. It better not be NOPD's view that they  
4 will do this the same next time. That would be yet an ongoing  
5 violation of the consent decree.

6 Those are my specific points, Your Honor.  
7 Thanks for giving me a chance to respond.

8 **THE COURT:** Mr. Douglass, anything?

9 **MR. DOUGLASS:** No, Your Honor.

10 **THE COURT:** Well, thank you for those remarks.  
11 Obviously, this is a troubling and serious situation to all of  
12 us, the citizens of the city as well as the city and the NOPD,  
13 the monitors, the independent police monitor. It's a serious  
14 situation. I have to give some thought to how to proceed and  
15 for us to come to agreements about how things are going to  
16 occur and are there concerns that we should address. I will be  
17 talking to the parties about that in the near future.

18 I'll get with you all to talk about how we need  
19 to proceed from here about these and other serious issues, but  
20 I do appreciate all the work that all the parties and the  
21 monitors have put into looking at this issue because it is  
22 important. It's not just about Officer Vappie. It is about  
23 the Public Integrity Bureau, which is at the heart of consent  
24 decree reform. It has got to be right for the department to be  
25 reformed and for the officers and the citizens to have

04:58

1 confidence in the Public Integrity Bureau.

2 We have got to continue to look at this and  
3 figure out where we go from here, but I do want to thank you  
4 all for all of the work that you have done. I know it's been a  
5 tremendous amount of work and it's taken some time.

6 I have a few announcements I want to make.  
7 Remember that June 28, next week, at 9:00 a.m. we will have  
8 oral argument on the city's motion to terminate the consent  
9 decree. That's first.

10 Second, the monitor's slides from today are on  
11 the monitor's website, which is [www.consentdecreemonitor.com](http://www.consentdecreemonitor.com).

12 The consent decree monitors will hold a virtual  
13 public meeting tonight at 6:00. In an effort to make this  
14 available to more people, it will be held virtually via Zoom,  
15 and the link to join the virtual public meeting via Zoom is on  
16 the consent decree monitor's website. If there are others you  
17 know of who you think might be interested, please immediately  
18 let them know because it will be at 6:00.

19 As always, questions and comments are welcome  
20 from the community, including the media. You can send comments  
21 and questions for the Court or the monitoring team. I'm sure  
22 there's something on the consent decree monitor's website. You  
23 can send it to: [aburns@consentdecreemonitor.onmicrosoft.com](mailto:aburns@consentdecreemonitor.onmicrosoft.com).  
24 If we get questions, we will try to address them during these  
25 public meetings.

04:59

1 In addition to the virtual public meeting  
2 tonight, the monitor will hold two in-person public meetings  
3 tomorrow. Also please get that information out. One is at  
4 12:00 and one is at 4:30.

5 The first meeting is at the Robert E. Smith  
6 Library, 6301 Canal Boulevard. That will be at 12:00 noon in  
7 the library's meeting room.

8 The second meeting will be on the west bank at  
9 the Algiers Regional Library, 3014 Holiday Drive, New Orleans,  
10 Louisiana 70131. That will be in the library's large meeting  
11 room at 4:30.

12 I would remind you a simple place to go to get  
13 this information or to direct your friends is to go to  
14 consentdecreemonitor.com, and the information about the Zoom  
15 meeting tonight and the in-person meetings tomorrow is on that  
16 website. Please help us get the word out so that people can  
17 have an opportunity to attend and to ask questions of the  
18 monitors at that time and in that setting.

19 Anything else we need to discuss today?

20 **MR. GEISLER:** Not from the United States,  
21 Your Honor. Thank you.

22 **MR. ZIMMER:** Nothing, Your Honor.

23 **THE COURT:** Okay. Well, thank you all. It's nice to  
24 see you again. Thanks for coming today. We are adjourned.

25 **THE DEPUTY CLERK:** All rise.

05:01

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(Proceedings adjourned.)

\* \* \*

**CERTIFICATE**

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of proceedings in the above-entitled matter.

/s/ Toni Doyle Tusa  
Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter

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

**UNITED STATES OF AMERICA**

**CIVIL ACTION**

**VERSUS**

**NO. 12-1924**

**CITY OF NEW ORLEANS**

**SECTION: "E" (2)**

**RULE TO SHOW CAUSE**

On July 24, 2012, the United States filed the complaint in this matter against the City of New Orleans ("City"), seeking declaratory and injunctive relief after an extensive investigation of the New Orleans Police Department ("NOPD"),<sup>1</sup> pursuant to the Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 14141 ("Section 14141"); the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (the "Safe Streets Act"); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and its implementing regulations, 28 C.F.R. §§ 42.101-.112 ("Title VI"). The Consent Decree contains detailed provisions concerning changes in NOPD policies and practices related to: (1) the use of force; (2) investigatory stops and detentions, searches, and arrests; (3) custodial interrogations; (4) photographic lineups; (5) bias-free policing; (6) community engagement; (7) recruitment; (8) training; (9) officer assistance and support; (10) performance evaluations and promotions; (11) supervision; (12) the secondary employment system, also known as the paid detail system; (13) misconduct complaint intake, investigation, and adjudication; and (14) transparency and oversight. In addition,

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<sup>1</sup> R. Doc. 1 at ¶¶ 1, 14-16.

the Consent Decree includes detailed provisions regarding the implementation and enforcement of the Consent Decree.

On that same day, July 24, 2012, the City and the United States Department of Justice (“DOJ”) filed a Joint Motion and Memorandum for Entry of Consent Decree.<sup>2</sup> On September 14, 2012, the City and DOJ filed a Joint Supplemental Motion for Entry of Consent Decree incorporating certain agreed upon modifications to the Consent Decree.<sup>3</sup> The Consent Decree “is effectuated pursuant to the authority granted to DOJ under Section 14141, the Safe Streets Act, and Title VI to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law.”<sup>4</sup> The Court approved the Joint Motion for Entry of Consent Decree, as amended, on January 11, 2013.<sup>5</sup> The Court specifically retained jurisdiction over this matter, including but not limited to the right to interpret, amend, and enforce the Consent Decree until the final remedy contemplated by the Consent Decree has been achieved.<sup>6</sup>

The Supreme Court has “long recognized that a district court possesses inherent powers that are ‘governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’”<sup>7</sup> The Fifth Circuit notes that one inherent power flowing from Article III of the U.S. Constitution is a court’s “power ‘to control the disposition of the causes on its docket

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<sup>2</sup> R. Doc. 2.

<sup>3</sup> R. Doc. 114.

<sup>4</sup> R. Doc. 159-1 at 7.

<sup>5</sup> R. Doc. 159.

<sup>6</sup> R. Doc. 159 at 8.

<sup>7</sup> *Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630–631 (1962) and citing *United States v. Hudson*, 7 Cranch 32, 34 (1812)).

with economy of time and effort for itself, for counsel, and for litigants.”<sup>8</sup> “[T]his power fits most appropriately in the . . . second category of inherent powers[, which] encompasses those ‘necessary to the exercise of all others.’ For the most part, these powers are those deemed necessary to protect the efficient and orderly administration of justice and those necessary to command respect for the court’s orders, judgments, procedures, and authority.”<sup>9</sup>

“[A] consent decree, although founded on the agreement of the parties, is a judgment.”<sup>10</sup> “[A] consent decree is a ‘settlement agreement subject to continued judicial policing.’”<sup>11</sup> “It is well-settled that a federal court has the inherent authority to enforce its own orders, including consent decrees agreed to by parties and approved by the Court.”<sup>12</sup> “[T]he [C]ourt has an independent duty to ensure that the terms of the decree are effectuated.”<sup>13</sup> “Exactly how a court should enforce and protect its orders is an issue largely left to the discretion of the court entering the order, so long as that discretion is exercised reasonably.”<sup>14</sup> District courts have the power to hold parties to the terms of a consent decree and have wide discretion to implement remedies for decree violations, including holding the parties in civil contempt.<sup>15</sup>

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<sup>8</sup> *In re Stone*, 986 F.2d 898, 903 (5th Cir. 1993) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

<sup>9</sup> *Id.* at 902–03.

<sup>10</sup> *United States v. City of Miami*, 664 F.2d 435, 439 (5th Cir. 1981) (Rubin, J., concurring) (citing *United States v. Kellum*, 523 F.2d 1284, 1287 (5th Cir. 1975)).

<sup>11</sup> *Vanguards of Cleveland v. City of Cleveland*, 23 F.3d 1013, 1017 (6th Cir. 1994) (quoting *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983)).

<sup>12</sup> *Chisom v. Jindal*, 890 F.Supp.2d 696, 710 (E.D. La. Sept. 1, 2012) (Morgan, J.) (citing *United States v. Alcoa, Inc.*, 533 F.3d 278, 287 (5th Cir. 2008)).

<sup>13</sup> *Sweeton v. Brown*, 1991 WL 181751, at \*6 (6th Cir. Sept. 17, 1991) (quoting 10 CYCLOPEDIA OF FEDERAL PROCEDURE § 35.25 at 294 (3d ed. 1984) (citing *Stotts v. Memphis Fire Dep’t*, 679 F.2d 541 (6th Cir. 1982), *rev’d on other grounds sub. nom. Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561 (1984))); *see also* R. Doc. 565 at p. 122, ¶ 486 (imposing a duty on the Court to “ensure that the requirements of th[e] [Consent Decree] are properly and timely implemented”).

<sup>14</sup> *Chisom*, 890 F.Supp.2d at 711; *see also Alcoa*, 533 F.3d at 287 (“Discretion must be left to a court in the enforcement of its decrees.” (cleaned up)).

<sup>15</sup> *Alcoa*, 533 F.3d at 286.

Two concerns are addressed by this Rule to Show Cause. First, the Court addresses specific issues stemming from an email sent to the New Orleans Police Department's Public Integrity Bureau ("PIB") by a member of the news media, which PIB correctly treated as a complaint.<sup>16</sup> The author of the email questioned whether, among other things, a member of the Mayor's executive security detail (Officer Jeffrey Vappie) engaged in payroll fraud, violated NOPD's daily hours limitations, and acted unprofessionally by spending extensive hours alone with his protectee in the City's Upper Pontalba apartment while he was both on and off duty. Upon receipt of the email, PIB promptly opened an administrative investigation.

In accordance with the terms of the Consent Decree, the Monitor, in cooperation with the Office of the Independent Police Monitor, monitored the PIB investigation. Although the complaint initiating the investigation centered on Officer Vappie's conduct, the Monitor's review focused on PIB's compliance with the Consent Decree in the course of the Officer Vappie investigation.

On March 10, 2023, PIB issued its Investigation Report on Officer Vappie.<sup>17</sup> Upon review of the PIB Investigation Report, the Monitor acknowledged that the PIB investigators took their task seriously and conducted meaningful witness interviews, but the Monitor nevertheless identified multiple material flaws in PIB's investigation, particularly in the analysis included in PIB's report. Among other things, the Monitor found that PIB, in violation of the clear terms of the Consent Decree, did not include in the complaint intake form an allegation of payroll fraud and, as a result, did not fully investigate the payroll fraud allegation, did not give the payroll fraud allegation a

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<sup>16</sup> Consent Decree ¶ 390 ("NOPD agrees to accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation. . . .").

<sup>17</sup> R. Doc. 714-4.

disposition, did not document its analysis of the payroll fraud allegation, did not apply the correct legal standard to all of its findings, and did not make a credibility determination regarding Officer Vappie. The Monitor shared these and other findings with the parties and the Court in its May 3, 2023 Report (“Monitor’s PIB Report”).<sup>18</sup> The City filed a response to the Monitor’s PIB Report.<sup>19</sup>

After the PIB investigation of Officer Vappie was complete, the Monitor issued its June 15, 2023 Special Report on PIB’s handling of the Vappie investigation (the “Monitor’s Vappie Investigation Report”), noting that “the NOPD’s response to the Monitoring Team’s analysis raises serious concerns that we believe require the Court’s immediate attention.”<sup>20</sup> The City filed a response to the Monitor’s Vappie Investigation Report.<sup>21</sup> DOJ’s response to the Monitor’s Vappie Investigation Report followed shortly thereafter.<sup>22</sup> In its Response, DOJ expressed its agreement with the Monitor’s conclusions.<sup>23</sup>

On Thursday, June 21, 2023, this Court held a public status conference to hear from the Monitor regarding its review of PIB’s handling of the administrative investigation into allegations against Officer Vappie.<sup>24</sup> The Court heard from the Monitor, DOJ, and the City. The Court reviewed all pertinent documents in advance of the status conference.

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<sup>18</sup> R. Doc. 694.

<sup>19</sup> R. Doc. 697.

<sup>20</sup> R. Doc. 714.

<sup>21</sup> R. Doc. 718.

<sup>22</sup> R. Doc. 715.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> R. Doc. 726.

At the public status conference, the Monitor presented substantial evidence of numerous Consent Decree violations by the City in the course of the PIB investigation of Officer Vappie.<sup>25</sup> The Monitor presented evidence that:

1. The City and NOPD violated Consent Decree paragraph 399 – NOPD failed to include each factual allegation in the complaint intake form.
2. The City and NOPD violated Consent Decree paragraph 415 – NOPD failed to identify and recommend one of the required dispositions (unfounded, sustained, not sustained, exonerated) for each factual allegation.
3. The City and NOPD violated Consent Decree paragraph 414 – NOPD failed to reach a conclusion as to whether each allegation had or had not been proven by a preponderance of the evidence.
4. The City and NOPD violated Consent Decree paragraph 413 – PIB failed to consider all circumstantial evidence and failed to make credibility determinations for each witness. Specifically, PIB failed to make a credibility determination with respect to Officer Vappie.
5. The City and NOPD violated Consent Decree paragraph 454 – NOPD failed to provide its report to the Monitor prior to closing its investigation to allow the monitor time to review and make recommendations regarding the need for further investigation.<sup>26</sup>
6. The City and NOPD violated Consent Decree paragraphs 470 and 472 – NOPD failed to provide the Monitor reasonable access to all individuals, facilities, and documents relevant to the investigation.
7. The City and NOPD violated Consent Decree paragraphs 409 and 419 – NOPD failed to take appropriate steps to maintain the confidentiality of the investigation.
8. The City and NOPD violated Consent Decree paragraphs 306 and 313 – NOPD failed to investigate and hold supervisors accountable for any lack of supervision.

In its written response to the Monitor's Vappie Investigation Report, the City denied that violations of the Consent Decree had occurred and, as proof, asserted that the

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<sup>25</sup> *Id.*

<sup>26</sup> Toward the end of the PIB investigation, the Monitor requested certain documents from the NOPD, including a copy of the draft PIB investigation report. The NOPD refused to share a copy when requested.

Officer Vappie investigation proceeded in just the same manner as any other investigation. For example, with respect to Officer Vappie's return to the Mayor's security detail on December 21, 2022, the City provided several affidavits and asserted that "it is NOPD standard practice that during an administrative investigation by PIB that the officer is returned to active duty—i.e., the officer is taken off 'administrative reassignment.' This occurs via an NOPD form from PIB to the head of the Bureau the officer was reassigned from when the investigation began. The Bureau Chief, or Superintendent, then determines where the officer will be assigned."<sup>27</sup> The City also asserted Officer Vappie "cannot be subjected to a different process or receive different discipline than any other NOPD officer simply because he is on a mayor's EP team."<sup>28</sup> At the public status conference, counsel for the City reiterated that the Officer Vappie investigation was conducted just as any other investigation would be.<sup>29</sup> Counsel for the City stressed that the functioning of PIB is "at the heart of NOPD's ability to prevent misconduct, build trust among its officers, and build community trust. . . . It is critically important that each officer receive the exact same treatment no matter where the complaint arises, no matter what their role is . . . and that is exactly what the PIB investigators in this case did. They [PIB] applied the exact same tools, techniques, and procedures [to Officer Vappie] they always apply."<sup>30</sup> Because of the assertions made by the City, a determination of whether the City violated the Consent Decree in the course of the Officer Vappie investigation must include an examination of whether, as the City repeatedly asserts, he was treated exactly as any other NOPD officer.

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<sup>27</sup> R. Doc. 718 at 17.

<sup>28</sup> *Id.* at 27.

<sup>29</sup> R. Doc. 726.

<sup>30</sup> *Id.* at pp. 63-64.

To support its argument, counsel for the City referenced a variety of policies, standard operating procedures, and practices related to the eight violations listed by the Monitor. The Court summarizes the City's statements below, followed by the documents now ordered by the Court to be produced to allow the Court to evaluate whether the City has violated the Consent Decree:

1. In the context of its discussion of Consent Decree paragraph 399, the City stated that PIB routinely does not fully investigate or document all factual allegations of misconduct if the lead investigator makes an early determination that the allegation lacks merit. The City stated NOPD intends to continue this practice notwithstanding the clear requirement in the Consent Decree that all allegations be accepted, recorded and investigated.<sup>31</sup>

The Court directs the City to provide any policy, directive, or standard operating procedure that authorizes NOPD's practice and supports its stated intention to continue this practice.

2. In the context of its discussion of Consent Decree paragraph 415, the City stated NOPD did not give the payroll fraud allegation an analysis or disposition because the lead investigator did not think the initial evidence warranted it. The City went on to state that it is a routine practice of PIB not to fully analyze and give dispositions to all allegations.<sup>32</sup>

The Court directs the City to provide any policy, directive, or standard operating procedure that authorizes what the City describes as its routine practice.

3. The City represented to the Court that it is the routine practice of NOPD to assign officers to the Orleans Parish Communications District (OPCD) while they are on administrative leave pending a PIB administrative investigation.<sup>33</sup>

The Court directs the City to provide policies, standard operating procedures, or other documentation that authorizes what the City describes as its routine practice, including concrete examples of when this has occurred previous to the Officer Vappie investigation.

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<sup>31</sup> R. Doc. 718 at 25.

<sup>32</sup> *Id.*

<sup>33</sup> R. Doc. 726 at 85-86.

4. The City stated it is NOPD's standard practice to reassign officers back to their original duty locations at some point after the opening of an administrative investigation.<sup>34</sup>

The Court directs the City to provide the policy, directive, or standard operating procedure authorizing such reassignments and to provide information regarding any event that occurred on or around December 21, 2022 that led to Officer Vappie being reassigned on that date.

5. The City represented that it is standard practice for the bureau to which an officer under investigation has been reassigned to then immediately further reassign that officer to a different duty location.<sup>35</sup>

The Court directs the City to provide the policy, directive, or standard operating procedure that authorizes this practice, including concrete examples of when this has occurred previous to the Officer Vappie investigation.

6. The City represented that Officer Vappie's reassignments were handled according to policy.<sup>36</sup>

The Court directs the City to provide all paperwork regarding Officer Vappie's various reassignments over the course of his PIB investigation, including the paperwork reflecting his initial reassignment to OPCD (including paperwork showing who approved the reassignment), his reassignment (including paperwork showing who approved the reassignment) back to executive protection on December 21, 2022, his reassignment out of executive protection into Assets and Forfeitures on December 21 or 22, 2022 (including paperwork showing who approved the reassignment), and his reassignment to executive protection detail in June 2023 (including paperwork showing who approved the reassignment).

The Court also directs the City to provide all policies, directives, and standard operating procedures that authorize the manner in which Officer Vappie's reassignments were handled.

7. In its June 15<sup>th</sup> report, the Monitor took issue with the March 10, 2023 PIB Vappie Investigation Report because it was not reviewed or signed by the Superintendent, but instead was signed "for" the Superintendent by the Deputy Chief of PIB. Counsel for the NOPD represented in the Department's original response to the Monitoring Team's PIB report that this practice is "loosely described in old policies" and "subject to various

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<sup>34</sup> R. Doc. 718 at 17; R. Doc. 726 at 81.

<sup>35</sup> R. Doc. 718 at 17-18; R. Doc. 726 at 83.

<sup>36</sup> R. Doc. 718 at 18.

interpretations.” NOPD went on to say it is “reviewing to determine [the policy’s] utility at this stage.”<sup>37</sup>

The Court directs the City to provide the “old policies” that “loosely describe” the practice referenced in the NOPD’s response.

The second concern addressed by this Rule to Show Cause is the timeliness of PIB’s investigations and imposition of discipline, both of which were raised in the Monitor’s PIB Report, Vappie Investigation Report, 2022 Annual Report (published in 2023),<sup>38</sup> and 2023 First Quarter Report.<sup>39</sup> The timeliness of the City’s notification of the outcome of an investigation also is of concern. The Monitor reached several conclusions regarding these topics. Specifically, the Monitor concluded that:

1. The City and NOPD violated Consent Decree paragraph 403 by failing to ensure that all administrative investigations conducted by PIB shall be completed within the time limitations mandated by state law and within 90 days of the receipt of the complaint, including assignment, investigation, review, and final approval, unless granted an extension as provided for under state law or Civil Service exemption, in which case the investigation shall be completed within 120 days. Further, where an allegation is sustained, NOPD shall have 30 days to determine and impose the appropriate discipline, except in documented extenuating circumstances, in which case discipline shall be imposed within 60 days.<sup>40</sup>
2. The City and NOPD violated Consent Decree paragraph 420 by failing to ensure that each misconduct complainant be notified of the outcome of the investigation, in writing, within 10 business days of the completion of the investigation, including whether any disciplinary or non-disciplinary action was taken.<sup>41</sup>

The City and NOPD do not contest the Monitor’s findings with respect to the timeliness of investigations and imposition of discipline or the timeliness of notification to complainants of the outcome of investigations.<sup>42</sup> Instead, they state that these paragraphs “are being addressed and have been addressed and the non-compliant nature

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<sup>37</sup> R. Doc. 697 at 4.

<sup>38</sup> R. Doc. 674.

<sup>39</sup> R. Doc. 702.

<sup>40</sup> R. Doc. 694 at 30.

<sup>41</sup> *Id.* at 32.

<sup>42</sup> R. Doc. 697 at 5.

reflects the audited period only and not our current compliance.”<sup>43</sup> Despite the City’s repeated assurances that the timeliness of PIB investigations, its imposition of discipline, and the notification of complainants is being addressed, the Court has seen no evidence that these clear violations of the Consent Decree are being corrected. Instead, the violations remain with no resolution in sight.

The New Orleans Police Department Consent Decree is an Order of this Court. This Court has an independent duty to ensure that the terms of its Order are effectuated in an expeditious manner. To preserve the procedures necessary to command respect for the Court’s Order and its authority, the Court finds it necessary to issue this Rule to Show Cause.

The City is required to appear in Court on the **16th day of August 2023 at 2:00 p.m.** to show cause why it should not be found to have violated (1) the eight provisions of the Consent Decree with respect to the conduct of PIB investigations, as set forth above,<sup>44</sup> and (2) the provisions of the Consent Decree regarding timeliness of investigations, imposition of discipline, and notification of complainants.<sup>45</sup> The City and DOJ may, upon notice to the Court by August 11, 2023, present live testimony at the hearing. A finding that the City has not shown cause why it should not be found to be in violation of these provisions of the Consent Decree may, after notice and hearing, result in the City being held in contempt of Court and sanctioned.

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<sup>43</sup> R. Doc. 697 at 6.

<sup>44</sup> See the listing of violations on page 6. To the extent the City concedes it has violated any of these provisions of the Consent Decree, the City will not be subject to sanction so long as it has remedied the violations and produces the policies, training, and operational procedures put in place to ensure that future violations will not occur.

<sup>45</sup> See the listing of violations on page 10.

The City must file a pre-hearing memorandum, not to exceed twenty-five pages excluding attachments, on or before **August 4, 2023**, addressing the issues raised above and attaching the documents the City has been ordered to produce<sup>46</sup> and any additional documents the City wishes to rely on at the Show Cause hearing.

The DOJ must file a pre-hearing memorandum, not to exceed twenty-five pages excluding attachments, on or before **August 11, 2023**, addressing the issues raised above and attaching any documents it wishes to rely on at the Show Cause hearing.

**New Orleans, Louisiana, this 21st day of July, 2023.**<sup>47</sup>

  
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**SUSIE MORGAN**  
**UNITED STATES DISTRICT JUDGE**

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<sup>46</sup> See the /listing on pages 8-10.

<sup>47</sup> This rule is limited to violations concerning the operations of the Public Integrity Bureau.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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UNITED STATES OF AMERICA

Docket No. 12-CV-1924  
Section "E"  
New Orleans, Louisiana  
Wednesday, August 17, 2022

v.

NEW ORLEANS CITY  
\*\*\*\*\*

TRANSCRIPT OF PUBLIC HEARING PROCEEDINGS  
HEARD BEFORE THE HONORABLE SUSIE MORGAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE MONITORING TEAM:	JONATHAN ARONIE DAVID DOUGLASS ASHLEY BURNS MARY ANN VIVERETTE
FOR THE DEPARTMENT OF JUSTICE:	TIMOTHY MYGATT, ESQ. R. JONAS GEISSLER, ESQ. MEGAN R. MARKS, ESQ. THEODORE R. CARTER, III, ESQ.
FOR THE OFFICE OF THE INDEPENDENT POLICE MONITORING:	STELLA CZIMENT BONYCLE SOKUNBI
FOR THE NEW ORLEANS POLICE DEPARTMENT:	SUPERINTENDENT SHAUN FERGUSON ARLINDA WESTBROOK OTHA SANDIFER CHRISTOPHER GOODLY
FOR THE CITY OF NEW ORLEANS:	DONESIA TURNER, CITY ATTORNEY CHARLES ZIMMER, ESQ. DANIEL DAVILLIER, ESQ.
Official Court Reporter:	Karen A. Ibos, CCR, RPR, CRR, RMR 500 Poydras Street, B-275 New Orleans, Louisiana 70130 (504) 589-7776

Proceedings recorded by mechanical stenography, transcript  
produced by computer.

P R O C E E D I N G S

(WEDNESDAY, AUGUST 17, 2022)

(PUBLIC HEARING PROCEEDINGS)

13:19:37 4  
13:19:37 5 (OPEN COURT.)

13:19:37 6 THE COURT: Be seated.

13:19:39 7 THE DEPUTY CLERK: Calling Civil Action 12-1924, *United*  
13:19:43 8 *States of America v. The City of New Orleans.*

13:19:47 9 THE COURT: All right. Good afternoon, everyone. And  
13:19:49 10 welcome. And thank you all for being here today. I am really  
13:19:54 11 happy to see you. I would like for the parties to make their  
13:19:57 12 appearances for the record. If we could start with the NOPD and  
13:20:00 13 the City first. I guess, Chief.

13:20:04 14 SUPERINTENDENT FERGUSON: Superintendent -- I'm sorry,  
13:20:07 15 your Honor. Superintendent Shaun Ferguson, New Orleans Police  
13:20:11 16 Department.

13:20:11 17 THE COURT: Thank you.

13:20:13 18 MS. TURNER: Donesia Turner, City Attorney.

13:20:18 19 MR. ZIMMER: Charles Zimmer, outside counsel for the City  
13:20:22 20 of New Orleans.

13:20:23 21 MR. DAVILLIER: Good afternoon, your Honor. Daniel  
13:20:24 22 Davillier on behalf of the City of New Orleans and the NOPD.

13:20:28 23 MS. WESTBROOK: Arlinda Westbrook, NOPD.

13:20:32 24 MR. SANDIFER: Otha Sandifer, NOPD.

13:20:33 25 MR. GOODLY: Christopher Goodly, NOPD.

13:20:38 1 THE COURT: And the Department of Justice.

13:20:39 2 MR. MYGATT: Tim Mygatt, your Honor, on behalf of the  
13:20:43 3 United States.

13:20:44 4 MR. GEISSLER: Good afternoon, your Honor. Jonas  
13:20:44 5 Geissler on behalf of the United States.

13:20:46 6 MS. MARKS: Good afternoon, Megan Marks on behalf of the  
13:20:49 7 United States.

13:20:50 8 MR. CARTER: Good afternoon, your Honor. Theodore Carter  
13:20:52 9 also on behalf of the United States.

13:20:54 10 THE COURT: And the monitoring team.

13:20:56 11 MR. ARONIE: Your Honor, Jonathan Aronie with the  
13:20:59 12 monitoring team.

13:21:01 13 MR. DOUGLASS: David Douglass, your Honor, monitoring  
13:21:03 14 team.

13:21:07 15 THE COURT: Dr. Burns.

13:21:08 16 MS. BURNS: Ashley Burns, monitoring team.

13:21:13 17 MS. VIVERETTE: Mary Ann Viverette, monitoring team.

13:21:16 18 MR. ARONIE: And, your Honor, would you like the IPM to  
13:21:19 19 introduce themselves as well?

13:21:19 20 THE COURT: Yes. And then the Office of the Independent  
13:21:20 21 Police Monitoring.

13:21:21 22 MS. CZIMENT: Thank you, your Honor. Good afternoon.  
13:21:23 23 Stella Cziment on behalf of the Office of the Independent Police  
13:21:26 24 Monitor for the City of New Orleans.

13:21:29 25 THE COURT: Well, thank all of you -- did I miss anyone?

13:21:31 1 MR. ARONIE: One more.

13:21:35 2 MS. SOKUNBI: Good afternoon. Bonycle Sokunbi of behalf  
13:21:38 3 of IPM.

13:21:38 4 THE COURT: Is that everyone? All right. Well, thank  
13:21:41 5 you all for being here today - the parties, the NOPD officers who  
13:21:48 6 are here today, the public, and the media.

13:21:50 7 As always, we appreciate your interest in these  
13:21:53 8 proceedings because they're important to the citizens of New  
13:21:56 9 Orleans and to our many visitors to our city, and we all -- we know  
13:22:02 10 we all love this great city, and we're all here to support the  
13:22:06 11 NOPD.

13:22:07 12 When we last met in April, the monitoring team and I  
13:22:11 13 expressed optimism that NOPD was on track to move two significant  
13:22:16 14 areas, bias-free policing and stop, searches and arrests into what  
13:22:22 15 we call the green. I also expressed my hope that I would be able  
13:22:27 16 to hold public hearings on these topics in May and June. As you  
13:22:31 17 may have noticed, that did not happen. It did not happen because  
13:22:35 18 notwithstanding the ongoing effort and commitment of the monitoring  
13:22:40 19 team, the Department of Justice, the NOPD, and frankly this Court,  
13:22:46 20 completion of NOPD's audits of bias-free policing and stop,  
13:22:51 21 searches, and arrests have simply taken longer to accomplish than  
13:22:56 22 we expected.

13:22:57 23 Although these audits still are not complete, I scheduled  
13:23:01 24 this hearing, first, to report to the public on the status of those  
13:23:07 25 audits; second, to provide, to the extent possible, a plan for how

13:23:11 1 we proceed from here; and third, to address several troubling  
13:23:15 2 issues that recently have arisen.

13:23:18 3           Before we turn to these issues, however, there is a  
13:23:21 4 matter I must address. As you are aware, on Tuesday the City filed  
13:23:26 5 a motion to terminate the consent decree. The Department of  
13:23:31 6 Justice has not had an opportunity to respond to the motion and  
13:23:35 7 this Court has not had the opportunity to assess whether the  
13:23:39 8 procedure and standards for seeking termination of the consent  
13:23:43 9 decree, which are set forth in paragraph 492 if you would like to  
13:23:47 10 read them, have been met.

13:23:49 11           Despite some media reports to the contrary, today's  
13:23:54 12 hearing is not about the City's motion to terminate the consent  
13:23:59 13 decree. The only time a motion is filed on one day and a hearing  
13:24:03 14 is held the next day is on TV, and this is not TV. For those  
13:24:08 15 reasons, it would be premature for me to entertain any arguments  
13:24:12 16 related to the City's motion today. I will not expect the City or  
13:24:17 17 the DOJ to make any statements at today's hearing in support of or  
13:24:23 18 in opposition to that motion.

13:24:25 19           Nevertheless, it is my job to balance the parties' right  
13:24:28 20 to a fair opportunity to be heard on the motion in the future,  
13:24:34 21 against the public's right to know where things stand right now.  
13:24:39 22 The monitoring team and I have a responsibility to report to the  
13:24:42 23 public on the status of NOPD's compliance under the consent decree,  
13:24:47 24 and that is what we're here to do today. I will certainly give the  
13:24:51 25 NOPD and the DOJ the opportunity to speak today, if they would like

13:24:55 1 to.

13:24:57 2 As I mentioned in April, I expected that bias-free  
13:25:00 3 policing and stop, searches, and arrests would come into compliance  
13:25:05 4 this summer. The NOPD has made significant progress in both of  
13:25:10 5 those closely-related areas, and the monitoring team and DOJ  
13:25:14 6 currently are evaluating their progress, including the results of  
13:25:19 7 the audits in those areas.

13:25:21 8 I'm hopeful we'll be in a position to schedule those  
13:25:25 9 presentations soon. I've asked the monitors to report today on the  
13:25:29 10 progress made in those areas.

13:25:32 11 I've also asked the monitors to report today on several  
13:25:35 12 issues that have arisen since the public hearing in April. The  
13:25:40 13 first issue involves serious questions regarding potential abuse by  
13:25:45 14 NOPD officers performing off-duty details, also known as secondary  
13:25:52 15 employment. This raised concerns in my mind regarding the systems  
13:25:56 16 in place to prevent this kind of abuse, as well as the level of  
13:26:00 17 supervision over these implicated officers.

13:26:04 18 The second issue is NOPD's recruiting and retention  
13:26:08 19 problems. These issues are having an impact on the department's  
13:26:11 20 ability to maintain compliance with several of the requirements of  
13:26:18 21 the consent decree. We'll hear from the monitoring team in a  
13:26:21 22 moment regarding the steps NOPD and the City are taking to mitigate  
13:26:26 23 these negative impacts.

13:26:28 24 Finally, the Court is aware of recent inaccurate  
13:26:31 25 statements made by the City and other groups concerning the consent

13:26:36 1 decree's purported impact on NOPD personnel and their ability to  
13:26:41 2 safely and effectively discharge their duties. The Court is deeply  
13:26:46 3 concerned that these statements risk misleading the public and NOPD  
13:26:50 4 members with respect to whether the NOPD is fully committed to  
13:26:55 5 achieving full and sustained implementation of the consent decree's  
13:27:00 6 requirements.

13:27:04 7 The Court is also deeply concerned with the City's  
13:27:07 8 implication, without support, that the consent decree is impairing  
13:27:12 9 NOPD's ability to execute its law enforcement mission and placing  
13:27:16 10 its officers lives at risk. These inaccurate statements convey the  
13:27:22 11 false impression that NOPD officers want to revert back to the NOPD  
13:27:26 12 of old. They don't. Officers have told the monitoring team again  
13:27:31 13 and again that they are proud of the department's transformation  
13:27:36 14 since the outset of the consent decree. Officers have not told us  
13:27:40 15 that the consent decree is placing officers' lives at risk.

13:27:46 16 Instead, they are concerned that they have inadequate  
13:27:50 17 resources to do their jobs. They want and deserve working  
13:27:54 18 equipment, modern facilities, and fair pay. They say they need  
13:27:59 19 more personnel, commissioned officers and civilians, to enable them  
13:28:03 20 to protect and serve the public. Suggesting that officers want the  
13:28:08 21 consent decree to end so that they can return to policing the way  
13:28:12 22 they did before 2013 is wrong and dangerous and does a disservice  
13:28:19 23 to the men and women of the NOPD.

13:28:22 24 And let's all remember, many crucial reforms have been in  
13:28:26 25 place for years without any negative impact on recruitment or

13:28:31 1 retention. In fact, recruitment improved after implementation of  
13:28:37 2 the consent decree. Officer and public satisfaction improved after  
13:28:42 3 implementation of the consent decree. The current rising climb in  
13:28:48 4 crime and decline in officer recruitment and retention are national  
13:28:53 5 trends. This is happening in cities all over the country, most of  
13:28:58 6 which are not under consent decrees.

13:29:01 7 It is inaccurate and unfair to blame these problems on  
13:29:05 8 the consent decree. The Court expects the City's statements  
13:29:10 9 concerning the consent decree, whether to the Court or to the  
13:29:13 10 public, to be accurate, evidence-based, and consistent with the  
13:29:18 11 City's own agreement to fully implement the consent decree's  
13:29:23 12 reforms.

13:29:24 13 It is critical that the public, as well as the NOPD  
13:29:28 14 personnel, who have worked so tirelessly to implement the needed  
13:29:32 15 reforms remain confident that the City is not wavering from its  
13:29:38 16 commitment to achieve full and sustained compliance with its  
13:29:42 17 agreed-to obligations.

13:29:45 18 Since implementation of the consent decree, I have met  
13:29:48 19 regularly with the parties, including rank and file officers. The  
13:29:53 20 monitor also meets regularly with the parties, at least weekly, and  
13:29:58 21 sometimes daily, to discuss the status of NOPD's efforts and ensure  
13:30:05 22 everyone is on the same page regarding exactly what the City and  
13:30:10 23 NOPD need to do to achieve compliance.

13:30:13 24 Over the past seven or eight years, members of the  
13:30:16 25 monitoring team have spent time with NOPD officers on ride alongs,

13:30:22 1 in roll calls, in classes at the academy, and in countless  
13:30:27 2 meetings. The monitors and I know what officers think about the  
13:30:32 3 consent decree, the challenges they face, and how they feel about  
13:30:37 4 their jobs because they tell us. Believe me, NOPD officers are not  
13:30:42 5 shy about expressing their opinions about the consent decree, their  
13:30:47 6 jobs, the department, or most anything else for that matter.

13:30:52 7 We have learned that officers are frustrated by the lack  
13:30:55 8 of resources, including equipment, supplies, technology, and  
13:30:59 9 perhaps most significantly personnel. And that lack of resources  
13:31:07 10 undermines not just NOPD's ability to meet consent decree  
13:31:11 11 requirements, but its ability to serve the public. They tell us,  
13:31:16 12 and the monitoring team has confirmed, that numerous positions  
13:31:22 13 critical to compliance with the consent decree, as well as NOPD's  
13:31:25 14 ability to protect the citizens and visitors of New Orleans have  
13:31:28 15 remained unfilled, sometimes for months. This lack of personnel  
13:31:33 16 may have caused some areas previously found in compliance to be  
13:31:38 17 non-compliant at this time.

13:31:41 18 In short, I think I am correct in saying that everyone  
13:31:44 19 involved in this project is concerned that there simply are too few  
13:31:50 20 people responsible for doing too many things. These deficiencies  
13:31:55 21 are inconsistent with the City's obligation to support the NOPD.  
13:32:01 22 In particular, paragraph 12 of the consent decree makes clear, and  
13:32:05 23 I quote, "the City is responsible for providing necessary support  
13:32:11 24 and resources to NOPD to enable NOPD to fulfill its obligations  
13:32:17 25 under the consent decree."

13:32:18 1           Since May the monitors and I have met with the City to  
13:32:24 2 address many of these concerns. I am pleased to report that the  
13:32:27 3 City has a plan in place to better equip and supply the NOPD, to  
13:32:33 4 improve and replace facilities, and most importantly to hire more  
13:32:37 5 people.

13:32:38 6           In April I directed the monitoring team to compile the  
13:32:42 7 feedback they have received from officers over the previous  
13:32:46 8 12 months into a technical assistance report to help the department  
13:32:52 9 identify steps it could take to address these issues. As part of  
13:32:57 10 that process, I also asked the monitors to meet with the various  
13:33:02 11 police associations to obtain their perspectives and ensure their  
13:33:06 12 views were reflected in the report.

13:33:09 13           The monitoring team shared its comprehensive technical  
13:33:13 14 assistance report with NOPD in May. This report is filled with  
13:33:18 15 sensible recommendations coming straight from the officers to  
13:33:23 16 reduce unnecessary burdens and to improve officer recruitment and  
13:33:28 17 retention. These efforts also will help the NOPD achieve and  
13:33:33 18 maintain compliance with the consent decree and help NOPD better  
13:33:38 19 serve the New Orleans community.

13:33:40 20           I've asked the monitoring team to make the report public  
13:33:44 21 in the near future. I hope to be able to include NOPD's response  
13:33:48 22 to the officers' recommendations at that time.

13:33:51 23           Before we begin the hearing, I would be remiss if I did  
13:33:57 24 not recognize the ongoing work of many within the NOPD who continue  
13:34:01 25 to go above and beyond the call of duty to help the department meet

13:34:06 1 its consent decree obligations and protect the public. These  
13:34:10 2 professionals include, among many others, folks like innovation  
13:34:16 3 manager Matt Segraves, who due to staffing shortages shoulders an  
13:34:22 4 inordinate share of NOPD's workload; innovation managers Michael  
13:34:28 5 Pfeiffer and Faith Thornton play a critical role in keeping NOPD's  
13:34:33 6 compliance efforts moving forward; Deputy Chief Arlinda Westbrook,  
13:34:39 7 who built and continues to lead an excellent internal affairs unit;  
13:34:43 8 Captain Nick Gernon, who has been doing yeoman's work getting a  
13:34:47 9 brand new crime lab up and running; and Lieutenant Nicole Powell,  
13:34:51 10 who created a top-notch management tool to help the department's  
13:34:55 11 field operations bureau achieve many of its compliance goals.

13:35:01 12           There are, of course, many others, and the fact that I  
13:35:04 13 have not named you today does not mean I do not recognize and  
13:35:08 14 appreciate your contributions. In fact, many of you have been  
13:35:12 15 recognized in prior hearings.

13:35:14 16           I also would be remised if I failed to commend the DOJ  
13:35:19 17 team and the monitoring team, the members of which continue to do  
13:35:23 18 their jobs thoughtfully and enthusiastically, day in and day out,  
13:35:29 19 notwithstanding the new burdens imposed by the department's  
13:35:33 20 staffing shortages.

13:35:35 21           I want to assure the public that the monitoring team and  
13:35:38 22 the DOJ are continuing to work hard to help NOPD achieve compliance  
13:35:44 23 with the consent decree.

13:35:47 24           With these preliminary comments in mind, let's talk about  
13:35:51 25 how today's hearing will proceed. First I will hear from the

13:35:53 1 monitoring team. In addition to a brief presentation from them,  
13:36:01 2 I've asked them to address several issues during their remarks.

13:36:06 3 Second, I would like to hear from the Department of  
13:36:09 4 Justice regarding its views on the current state of NOPD's affairs.  
13:36:14 5 Finally, I will open the floor to the City and NOPD to make any  
13:36:18 6 remarks that they wish to make.

13:36:21 7 So without further adieu, let's get started. I'll ask  
13:36:26 8 our lead monitor Jonathan Aronie to begin.

13:36:33 9 MR. ZIMMER: Your Honor, just for the record, the City  
13:36:33 10 objects to the monitor issuing a public report without first  
13:36:36 11 complying with Articles 458 and 462 of the consent decree.

13:36:39 12 THE COURT: Well, this is not really the time to do that,  
13:36:42 13 but I will -- thank you and I will take note of that.

13:36:49 14 MR. ZIMMER: Thank you, your Honor.

13:36:50 15 MR. ARONIE: Thank you, your Honor. As you know, my team  
13:36:52 16 and I have been at this for quite awhile. Since we began the  
13:36:55 17 journey in August 2013, we have been single-mindedly focused on one  
13:36:59 18 thing: Ensuring the police services are delivered to the people of  
13:37:03 19 New Orleans in a manner consistent with the consent decree that the  
13:37:05 20 department and the City entered into.

13:37:08 21 To do this, as you know, we analyze data, we review  
13:37:11 22 policies and procedures, we assess practices, we monitoring  
13:37:15 23 training, and we meet with officers and the public. We do all of  
13:37:19 24 this to be able to share current, accurate, and complete  
13:37:22 25 information with the Court and the public regarding the state of

14:09:36 1 give up. We will keep pressing forward. Thank you.

14:09:39 2 THE COURT: Thank you so much. I know that is reassuring  
14:09:44 3 to the citizens of New Orleans that you and the entire department  
14:09:46 4 are committed to reform and to finishing up this project and then  
14:09:52 5 to ensuring that you are able to sustain these reforms.

14:09:56 6 SUPERINTENDENT FERGUSON: Absolutely.

14:09:57 7 THE COURT: So on behalf of the citizens of the city, I  
14:10:00 8 thank you for your efforts and your dedication.

14:10:03 9 SUPERINTENDENT FERGUSON: Thank you, your Honor.

14:10:06 10 THE COURT: All right. I want to thank everyone here for  
14:10:09 11 their comments today, and for being here. It really is nice for  
14:10:13 12 all of us to see the interests that the City Council and the  
14:10:17 13 citizens and the media have in this process. It can only help for  
14:10:21 14 us all to be interested and to pay attention to what's happening.

14:10:28 15 While I suspect my comments over the course of the  
14:10:32 16 hearing have foreshadowed my state of mind at the moment, I have to  
14:10:36 17 admit that I am concerned, but I can now add to that that I am also  
14:10:40 18 hopeful.

14:10:43 19 I recognize law enforcement agencies across the country  
14:10:46 20 have faced all manner of hurdles over the past two years. Crime is  
14:10:51 21 up and recruiting and retention are down everywhere. New Orleans  
14:10:56 22 has not been immune from these disturbing national trends. But  
14:11:02 23 difficult problems call for innovative solutions, and frankly, and  
14:11:06 24 unfortunately, I have seen very little innovation on the part of  
14:11:10 25 the City or the NOPD in response to what I view as a city crisis.

14:11:16 1           While it's not my job to tell the NOPD how to do its job,  
14:11:20 2           it is my responsibility to weigh in when an action is putting the  
14:11:24 3           reforms of the past eight years at risk. That's in a nutshell is  
14:11:29 4           why I scheduled today's hearing.

14:11:31 5           Since our last hearing in April, I've grown increasingly  
14:11:37 6           concerned about the impact of NOPD's staffing shortages and lack of  
14:11:41 7           resources are having on its ability to sustain the high level of  
14:11:46 8           compliance we have grown accustomed to finding at these public  
14:11:50 9           hearings. In April, those concerns prompted me to direct the  
14:11:53 10          monitoring team to put together a technical assistance report,  
14:11:57 11          which you've heard discussed today. It incorporates a series of  
14:12:02 12          recommendations to the NOPD based on countless meetings with  
14:12:06 13          officers, the police associations, and community members.

14:12:10 14          In May I began meeting with the City's Chief  
14:12:13 15          Administrative Officer and City Attorney to discuss staffing,  
14:12:18 16          civilianization, equipment, and facilities, and the impact those  
14:12:23 17          things are having on officer retention, officer recruitment, and  
14:12:28 18          consent decree compliance. These meetings have proved very  
14:12:31 19          valuable, and I know the CAO takes this matter quite seriously.  
14:12:36 20          The City has come up with a concrete plan to fill unfilled  
14:12:40 21          positions, hire new staff, improve equipment, fix dilapidated  
14:12:47 22          facilities, and generally improve officer working conditions.

14:12:50 23          So I want to publicly thank the CAO for his efforts to  
14:12:56 24          follow-up on the many concerns expressed by the NOPD and this  
14:13:00 25          Court.

14:13:02 1           Notwithstanding these efforts, though, I still do not see  
14:13:07 2 that the City or NOPD have a holistic plan to deal with the current  
14:13:14 3 emergency, nor have I seen, until very recently, a unified focus on  
14:13:16 4 officer retention. This is unfair to the men and women of the NOPD  
14:13:20 5 who have worked so hard for so long to turn the NOPD around, and  
14:13:25 6 it's unfair to the New Orleans community to depend on the NOPD to  
14:13:29 7 keep them safe. This lack of a holistic plan not only hurts  
14:13:34 8 officers and community members, it virtually assures the NOPD will  
14:13:38 9 not be able to sustain its achievements under the consent decree.

14:13:43 10           To remedy this, I am going to take the following actions:  
14:13:47 11 First, I am directing the monitor to assign members of his team to  
14:13:52 12 provide technical assistance to the NOPD in the areas of staffing,  
14:13:57 13 officer retention, recruiting, transparency, alternative police  
14:14:03 14 response, and burden reduction. I want a member of the monitoring  
14:14:08 15 team embedded with the NOPD on each of these work streams.

14:14:12 16           Second, the monitor and I plan to continue meeting  
14:14:16 17 monthly with the CAO for the foreseeable future to ensure the City  
14:14:21 18 follows through on its plans to direct additional resources to the  
14:14:25 19 NOPD and its officers, including, as I mentioned, proper equipment,  
14:14:31 20 professional facilities, functioning information technology, and  
14:14:36 21 reasonable pay.

14:14:38 22           Third, the monitor and I plan to continue meeting with  
14:14:42 23 the NOPD, the CAO, and the Civil Service Commission until all  
14:14:47 24 critical unfilled positions are filled and all necessary new  
14:14:51 25 positions are approved. These meetings will focus on the need for

14:14:56 1 expanded civilianization of NOPD personnel. And I want a report to  
14:15:02 2 you all that the Civil Service Commission has expressed the desire  
14:15:07 3 to work with NOPD to make -- to achieve these goals faster than  
14:15:14 4 we've been able to do in the past, so I am really hopeful that we  
14:15:18 5 will make progress.

14:15:19 6 Fourth, I am directing the monitor to re-audit several  
14:15:23 7 critical areas of the consent decree that I fear may have been  
14:15:28 8 impacted by the lack of NOPD personnel. These include the  
14:15:32 9 integrity of crime reporting data, the downgrading of calls for  
14:15:36 10 service, the impact of response times, the delays in sharing data  
14:15:41 11 and reports with the public, and the reduction of innovative and  
14:15:45 12 targeted crime fighting.

14:15:48 13 Fifth, I am encouraging the City to explore the use of  
14:15:53 14 its emergency contracting powers to expedite as many of the  
14:15:57 15 necessary remedial measures as possible. For example, this Court  
14:16:02 16 and the monitoring team have been pushing the City for many years  
14:16:05 17 to make better use of civilianization, alternative police  
14:16:11 18 reporting, and non-police handling of minor traffic accidents. The  
14:16:15 19 progress the City has made in these areas has been tragically slow.  
14:16:20 20 This can't continue. The City is facing an emergency. NOPD cannot  
14:16:25 21 continue to police the way it did when it had 1,300 officers.

14:16:31 22 Sixth, I am directing the monitoring team to publish its  
14:16:35 23 April technical assistance report in early September, along with an  
14:16:38 24 accounting of what steps the NOPD has taken to implement those  
14:16:43 25 recommendations.

14:16:44 1           Seventh, I understand one or more members of the City  
14:16:48 2 Council are working to bring together multiple stakeholders,  
14:16:52 3 including the administration, the civil service, and the NOPD in an  
14:16:58 4 effort to work together to help overcome the NOPD's current  
14:17:02 5 challenges. I've made it clear to those responsible for this  
14:17:06 6 effort that I welcome the monitors' involvement in this effort.

14:17:12 7           Eighth, I am directing the monitoring team to work with  
14:17:15 8 the NOPD to re-establish the burden reduction working groups that  
14:17:20 9 proved so valuable in the past. And I believe that some of the  
14:17:24 10 officers here have served on those committees. In an effort to  
14:17:28 11 reduce wasted time and promote internal efficiencies, the  
14:17:32 12 monitoring team in 2015, 2016, and 2017 held a series of burden  
14:17:40 13 reduction working groups, with officers of all ranks. These  
14:17:44 14 meetings led to a number of very successful innovations. I want to  
14:17:48 15 see these meetings re-energized, and I want them expanded to focus  
14:17:53 16 on alternative policing strategies as well.

14:17:57 17           As I said a moment ago, the NOPD cannot police with 950  
14:18:02 18 officers the way it did with 1,300 officers.

14:18:06 19           Ninth, I've asked the monitoring team to schedule two  
14:18:10 20 public meetings in September, one for the community and one more  
14:18:13 21 the media. It's critical that the people of New Orleans receive  
14:18:17 22 current, accurate, and complete information regarding the state of  
14:18:23 23 the consent decree and the state of NOPD's compliance with the  
14:18:26 24 consent decree. These two meetings will give the public directly,  
14:18:30 25 and through the press, the opportunity to have their questions

14:18:33 1 answered by the individuals who have served as my eyes and ears  
14:18:38 2 since the outset of the consent decree, the monitoring team.

14:18:41 3 Tenth, I plan to hold monthly public hearings until NOPD  
14:18:46 4 and the City demonstrate to this Court that they have a strong plan  
14:18:50 5 and are moving forward to implement that plan to resolve the  
14:18:55 6 problems facing the NOPD.

14:19:00 7 I am hoping these actions will help the NOPD and the City  
14:19:03 8 to get this process back on track.

14:19:06 9 Before I close today, I want to be clear about one thing  
14:19:09 10 that is very important to me. While I am frustrated by the recent  
14:19:16 11 concerns I have in some areas and the lack of progress I've seen in  
14:19:21 12 others, I do not say this to criticize the men and women who  
14:19:25 13 continue to toil in the NOPD trenches to serve and protect the  
14:19:30 14 people of New Orleans. You have been asked to take on a critical  
14:19:35 15 job with inadequate support, insufficient resources, poor  
14:19:40 16 equipment, and crumbling buildings. I want to thank you for not  
14:19:43 17 giving up on our city, and I assure you we're not giving up on you.  
14:19:49 18 You have been instrumental in transforming the department over the  
14:19:53 19 past eight years, and I will make sure you get what you need to  
14:19:57 20 continue this job.

14:20:00 21 Nor do I intend to criticize those NOPD supervisors and  
14:20:04 22 leaders, a few of whom I mentioned in my opening remarks, who have  
14:20:09 23 proven themselves to be true proponents of reform, true partners of  
14:20:13 24 progress. I can't thank you all enough for your commitment to  
14:20:17 25 public service. Please do not take any of my remarks as slights

14:20:22 1 against your hard work. You all are being asked to undertaken a  
14:20:27 2 very heavy lift without the resources you need to get the job done,  
14:20:30 3 and as I said, that's going to change.

14:20:35 4 I've said before that my being assigned to this case was  
14:20:39 5 the opportunity of a lifetime. As judges, ordinarily we work on  
14:20:45 6 one case and it's important to the parties to that case and it's  
14:20:49 7 important to me and I enjoy that work, but this has given me an  
14:20:54 8 opportunity to do something that's important to all of the citizens  
14:20:57 9 of New Orleans. And it's been a true opportunity. I have met so  
14:21:02 10 many hard working, dedicated, and smart people who work for the  
14:21:07 11 NOPD, I've been so impressed, Chief Ferguson, with the talent that  
14:21:14 12 you have, and I congratulate you on that.

14:21:18 13 And so it's been a real pleasure for me and an honor, and  
14:21:26 14 I want you all to know that we're going to continue to do this and  
14:21:31 15 together we're going to get it right.

14:21:33 16 Finally, thanks to the media and the City Council members  
14:21:38 17 and the public for being here today, and to those members of our  
14:21:43 18 community who will be reading about this hearing in the newspaper  
14:21:47 19 or on other public media. I want to thank you all for your  
14:21:53 20 continued interest in this critical issue. I look forward to  
14:21:57 21 seeing you all again. I want the courtroom to be full at our next  
14:22:02 22 hearing. Everybody raise your hand who is going to be here. Not  
14:22:07 23 all the hands went up.

14:22:13 24 But we will get you the dates of our next hearing, and  
14:22:16 25 we'll try to keep you informed about progress as we continue. And



# United States Court of Appeals for the Fifth Circuit

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No. 23-30193

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IN RE CITY OF NEW ORLEANS,

*Petitioner.*

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Petition for a Writ of Mandamus  
to the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:12-CV-1924

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## UNPUBLISHED ORDER

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:

The United States sued the City of New Orleans in 2012 regarding various policies and practices of the New Orleans Police Department (“NOPD”). The district court approved a Consent Decree in 2013. Pending in the district court is the city’s motion to terminate the Consent Decree.<sup>1</sup>

On April 6, 2023, the city filed a petition for writ of mandamus. In an initial section entitled “RELIEF SOUGHT,” the city objected to a “public hearing” (in the court’s words) that the court, on April 3, had scheduled for April 12, which order the city described as an “injunction mandating that various city officials appear in its courtroom for what amounts to a press

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<sup>1</sup> See generally *United States v. City of New Orleans*, 731 F.3d 434 (5th Cir. 2013).

conference.” The petition “asks [this] Court to issue a writ of mandamus directing the district court to cancel or modify the hearing so that city officials are not required to prepare, attend, or make statements to the press.”

In its two-page order, the court describes the subject of the “public hearing” generally as follows regarding the Consent Decree:

[T]he NOPD has expanded its Alternative Police Response [“APR”] Section and increased its resources through more reliance on co-responders. The success of the [APR] Section and collaboration with co-responders is dependent on the public’s awareness of these initiatives.

The district court justifies the hearing in one sentence, as follows:

The Consent Decree requires in paragraph 12 that the [city] is responsible for providing necessary support and resources to [NOPD] to enable [NOPD] to fulfill its obligations under the Consent Decree.

Paragraph 12, similarly, reads, in its entirety, as follows:

The City is responsible for providing necessary support and resources to NOPD to enable NOPD to fulfill its obligations under [the Consent] Agreement.

The hearing is to take place in the courtroom of the district judge *a quo*.<sup>2</sup>

At this court’s request, the United States filed a comprehensive response on short notice. That response is both resourceful and helpful.<sup>3</sup> In short, the United States—without explicitly saying so—can be read to suggest that the order and consequent hearing may need to be modified to fit

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<sup>2</sup> The order does not specify whether the judge will be present or whether she will preside. The United States, however, represents that “the hearing . . . is also set to take place inside a federal courtroom with a federal judge presiding.”

<sup>3</sup> We granted the State of Louisiana leave to file a brief as *amicus curiae* in support of mandamus.

within what is authorized by the Consent Agreement.

First, the United States notes that the district judge had no opportunity to respond to the city’s concerns or to the United States’s response. This panel invited the district judge to respond but did not require it. None has been received.

The United States posits that “[r]emand is therefore appropriate to give the district court an opportunity to modify its hearing order in the first instance after hearing from both parties [, which could] propos[e] any agreed-upon modifications to the order for the district court to consider.” The United States continues, “[T]he district court may consider modifying the hearing order in ways that would render mandamus unnecessary and the parties may be able to develop a joint proposal for the hearing . . . .”

\* \* \* \* \*

The posture of the United States, in its response to the mandamus petition, is well taken. Although this administrative panel has the option either to grant or to deny the petition with finality, we can also choose to do neither at this time.

Nothing in the short and plain one-sentence text of paragraph 12 of the Consent Decree, on which the district court wholly relies, authorizes the subject order setting the public hearing. That satisfies the first prong of the mandamus test. We need not address the remaining prongs, however, as there is ample precedent for refraining, given the options recommended by the United States.

In *In re JPMorgan Chase & Co.*, 916 F.3d 494, 504–05 (5th Cir. 2019), we entered an administrative stay, opined on the propriety of the questioned order, and stated that “the district court should revisit its decision in light of this opinion . . . .” “To facilitate that review,” we extended the stay “for

thirty days from the date of this opinion.” *Id.* at 505.<sup>4</sup>

We follow that template now. The petition for writ of mandamus is DENIED without prejudice. The administrative stay is EXTENDED for thirty days from the date hereof, to give the conscientious district judge an opportunity to reconsider her order after adequate opportunity to confer with

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<sup>4</sup> In *JPMorgan*, 916 F.3d at 504 n.24, we explained this option at greater length:

This follows the procedure we utilized in [*In re Depuy Orthopaedics, Inc.*, 870 F.3d 345, 348 (5th Cir. 2017)]. There, although denying the petition for writ of mandamus, we nonetheless “request[ed] the district court to vacate its ruling.” *Id.* We explained this approach as follows:

In anticipation of any suggestion that a court of appeals exceeds its proper role in ruling on pending issues but nonetheless denying mandamus, we note that this court has routinely held, sometimes in published opinions, that a district court erred, despite stopping short of issuing a writ of mandamus. *E.g.*, *In re Dean*, 527 F.3d 391 (5th Cir. 2008) (per curiam) (holding that district court had “violated” a federal statute); *In re United States*, No. 07-40629, 2007 WL 27781, 2007 U.S. App. LEXIS 30793 (5th Cir. July 19, 2007) (per curiam) (holding that district court “abused its discretion”); *In re U.S. Dep’t of Homeland Sec.*, 459 F.3d 565 (5th Cir. 2006) (holding that district court “erred in declaring that no law enforcement privilege exists”); *In re Kleberg Cty.*, 86 F. App’x 29 (5th Cir. 2004) (holding that district court “impermissibly violated the County’s privilege not to reveal its confidential informants” and ran “afoul of controlling law”); *In re Avantel, S.A.*, 343 F.3d 311 (5th Cir. 2003) (holding that district court erred in compelling production of allegedly privileged documents); *In re Stone*, 986 F.2d 898 (5th Cir. 1993) (per curiam) (holding that district court abused its discretion in ordering who must be present at settlement conference); *In re Office of Thrift Supervision*, 948 F.2d 910 (5th Cir. 1991) (holding that district court erred as a matter of law in attempting to transfer the proceeding, but noting that petitioner “has not made an adequate showing TTT of harm that cannot be undone if the order is reversed on appeal”).

*Id.* at 347 n.4.

the parties as recommended by the United States.

We express no hint on what sort of order or public proceeding might be appropriate. Nor do we opine on the underlying legal and factual questions regarding the Consent Decree.

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

**UNITED STATES OF AMERICA,  
Plaintiff,**

**V.**

**CITY OF NEW ORLEANS,  
Defendant.**

**CIVIL ACTION NO.  
2:12-CV-01924-SM-DPC**

**JUDGE SUSIE MORGAN**

**MAG. DONNA PHILLIPS  
CURRAULT**

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**RESPONSE OF THE CITY AND NOPD  
TO THE MONITOR'S REPORT REGARDING THE  
INVESTIGATION OF OFFICER VAPPIE**

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## Cases

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42 U.S.C. §§ 2000d .....	- 4 -

Now Into Court, comes Defendant, the City of New Orleans (the “City”) and its New Orleans Police Department (“NOPD”), who, in compliance with the Court’s Order of June 6, 2023 (R. Doc. 712) respond to the letter report to the Court by Jonathan S. Aronie, the court-appointed Consent Decree Monitor (“Monitor”), dated June 5, 2023, and attached as Exhibit 1 hereto, as follows:

**I. NOTICE OF OBJECTION TO MODIFICATION OF THE CONSENT DECREE**

As an initial matter, the City objects to the Court’s modification of paragraph 458 of the Consent Decree<sup>1</sup> by requiring NOPD to file a formal response into the record regarding the Monitor’s report on the PIB Vappie Investigation. Paragraph 458 requires that notice must be given to the City 10 business days in advance of a public report *by the Monitor*. It also allows for informal comment by the City prior to publication of the Monitor’s report.

There is no provision for mandatory formal public responses by the City, or NOPD, beyond their routine reports. Similarly, there is no prohibition on the City or NOPD issuing reports or statements at any time in any forum that may conflict with, or directly challenge, the Monitor’s public comments and reports. Modification of the Consent Decree requires joint stipulation of the parties and Court approval.<sup>2</sup> The City has not stipulated to these changes as required under Paragraph 487, and the City seeks to defend the provisions of the Consent Decree as written. Subject to this objection, the City and NOPD comply with the Court’s order and respond as follows:

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<sup>1</sup> Rec. Doc. 565.

<sup>2</sup> Rec. Doc. 565 at para. 487.

## II. SUMMARY OF THE RESPONSE

The Consent Decree is a limited expansion of the finite jurisdiction<sup>3</sup> of the federal judiciary intended to address systemic institutional policies and practices impinging on the Fourth and Fourteenth Amendment rights of the residents of New Orleans.<sup>4</sup> The sweeping reforms of the NOPD since the 2011 report of the Department of Justice (“DOJ”) have targeted every material policy and practice of NOPD regarding its interaction with the public and have reshaped the NOPD in every fundamental aspect from policy to personality.

Policies for Executive Protection (“EP”) details for the Mayor, City Council members, and other local government officials and visiting dignitaries, however, are not part of the sweeping Consent Decree. EP detail members have unique assignments that often have nothing to do with traditional “police work.” For example, it is routine for EP members to run errands for a Protectee, pick up their family members, attend church or workout with them as part of their official duties.<sup>5</sup> And, according to experts in the field relied on by the PIB investigators, that is not unique to New Orleans, the State of Louisiana, or the federal government.

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<sup>3</sup> *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 1675, 128 L.Ed.2d 391, 395 (1994) (“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.”), citing *Willy v. Coastal Corp.*, 503 U.S. 131, 136-137, 117 L. Ed. 2d 280, 112 S. Ct. 1076 (1992); *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541, 89 L. Ed. 2d 501, 106 S. Ct. 1326 (1986), and *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 95 L. Ed. 702, 71 S. Ct. 534 (1951).

<sup>4</sup> CD goals

<sup>5</sup> Attachment D to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

After a thorough investigation, PIB investigators found Officer Jeffrey Vappie had violated NOPD policy.<sup>6</sup> On June 8, 2023, a three-Captain disciplinary panel forwarded its Disciplinary Hearing Disposition which recommended that the Superintendent sustain three of the four charges.<sup>7</sup> Discipline according to the mandated NOPD disciplinary matrix has been recommended for each sustained violation. On June 14, 2023, the Superintendent sustained the recommendation of the disciplinary panel.<sup>8</sup>

The attacks on NOPD's Public Integrity Bureau by the Monitor appear to be based on motivations outside the Consent Decree. In short, the Monitor demands that PIB treat Officer Vappie differently than other officers accused of the same policy violations. Local politics and personality conflicts, however, cannot be allowed to influence NOPD disciplinary matters. The PIB investigators and staff were single-minded in their focus and showed absolute fidelity to NOPD policy and procedure despite outside pressures to treat Officer Vappie differently. The Monitor's opinions to the contrary are unfounded and unfortunate.

### **III. CONSENT DECREE SCOPE AND CONTENT**

A Consent Decree is an extreme remedy intended to reach and reform systemic flaws in institutional systems that threaten the constitutional rights of citizens within that system. Consent Decrees raise serious federalism and separation of powers issues that must be closely monitored to assure the special and

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<sup>6</sup> Interoffice Correspondence at Attachment D to the Monitor's June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>7</sup> See Ex. 7, Disciplinary Hearing Disposition.

<sup>8</sup> See Ex. 7, Disciplinary Hearing Disposition.

limited powers afforded to the federal court are not broadened to expand federal power beyond constitutional limits. As the U.S. Supreme Court has made explicit:

We have often explained that federal courts are courts of limited jurisdiction. Article III, §2, of the Constitution delineates the character of the controversies over which federal judicial authority may extend. And lower federal-court jurisdiction is further limited to those subjects encompassed within a statutory grant of jurisdiction. Accordingly, the district courts may not exercise jurisdiction absent a statutory basis.<sup>9</sup>

As the Court has noted, the DOJ investigation reported “an alleged pattern or practice of unconstitutional conduct with respect to the use of force; stops, searches, and arrests; and discriminatory policing based on race, ethnicity, gender, and sexual orientation, all in violation of the U.S. Constitution and federal law.” R. Doc. 256, pp. 4-5. The Consent Decree was put in place to reform the policies and practices of the NOPD to prevent systemic violations of these critical rights.

The DOJ then filed a complaint in this court alleging violations of 42 U.S.C. §14141; 42 U.S.C. § 3789d; and 42 U.S.C. §§2000d to 2000d-7, as implemented by 28 C.F.R. §§42.101 to 42.11. As summarized by this Court, the DOJ suit sought “to remedy an alleged pattern or practice of conduct by the NOPD that subjects individuals to **excessive force** in violation of the Fourth Amendment, **unlawful searches and seizures** in violation of the Fourth Amendment, and **discriminatory policing** in violation of the Fourteenth Amendment, the Safe

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<sup>9</sup> *Home Depot U.S.A., Inc. v. Jackson*, 139 S.Ct. 1743, 1746, 204 L.Ed.2d 34, 40 (2019) (cleaned up), quoting *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U. S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994); *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U. S. 694, 701, 102 S. Ct. 2099, 72 L. Ed. 2d 492 (1982); *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U. S. 546, 552, 125 S. Ct. 2611, 162 L. Ed. 2d 502 (2005).

Streets Act, and Title VI.”<sup>10</sup> These claims establish the District Court’s jurisdiction under Article III, §2, of the U.S. Constitution. As with any case, the parties to litigation cannot confer additional jurisdiction to the federal court by agreement.

Again, the sweeping Consent Decree does not mention Executive Protection details. After ten years of DOJ and Monitor oversight, NOPD does not even have a specific policy for EP details. The reason is simple: the unique function of the EP detail is not one the DOJ or the City viewed as relevant to the Consent Decree when drafting that agreement, unlike excessive force, unlawful searches and seizures, and discriminatory policing. But for this NOPD disciplinary proceeding being an “investigation of the Mayor,” according to two city councilmembers, the case of Officer Vappie would have gone unnoticed like the vast majority of disciplinary proceedings. The change in notoriety, however, did not change the PIB investigation or the discipline recommended. The Monitoring team’s conduct, however, raises serious concerns.

#### **IV. TIMELINE REGARDING THE OFFICER VAPPIE INVESTIGATION**

On the evening of November 8, 2022, NOPD’s Public Integrity Bureau (“PIB”) received information regarding Senior Police Officer Jeffrey Vappie allegedly working more than 16 hours and 35 minutes in a 24-hour period, stemming from local news reports.<sup>11</sup> The following day the lead investigator, Captain Kendrick Allen, initiated a PIB investigation (No. 2022-0513-R). The following day, November 10<sup>th</sup>, New Orleans City councilmembers JP Morrell and Joseph I. Giarrusso, III,

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<sup>10</sup> Order and Reasons, R. Doc. 159 at p. 2. (*emphasis added*)

<sup>11</sup> Attachment D to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

sent a letter to this Honorable Court and Jonathan Aronie, the court-appointed monitor.<sup>12</sup>

The letter expressed significant concerns in allowing NOPD (*via* PIB) to investigate “serious allegations involving Mayor Cantrell” and asked this Court to appoint the Monitor in partnership with the Office of the Independent Police Monitor to lead “**the investigation of the Mayor.**”<sup>13</sup> The Morrell-Giarrusso letter does not mention Officer Vappie, the Mayor’s security team, or time card misconduct allegations, just the Mayor.

The Monitor responded to the Morrell-Giarrusso letter the next day confirming receipt of the request to “jointly investigate matters relating to alleged time card misconduct involving the Mayor’s NOPD security detail.”<sup>14</sup> The Monitor acknowledged that it lacked the power to “investigate specific matters” but acknowledged the two councilmembers’ fear of real or perceived pressure on the PIB investigators. The Monitor further advised that this Court had *already* authorized the Monitor to oversee<sup>15</sup> the investigation and “work closely with the New Orleans Police Department Public Integrity Bureau to ensure their investigation of NOPD’s role in this matter is effective, efficient, and without bias.”<sup>16</sup> The Monitor frequently repeats that its supervision was conducted at the request of the City Council.<sup>17</sup> It is unclear where this engagement was consummated, as the evidence submitted by

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<sup>12</sup> Attachment A to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>13</sup> Attachment A to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>14</sup> Attachment B to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>15</sup> *See, e.g.*, Ex. 2, at 01/05/23 (“attend to Vappie investigation oversight (0.3); prepare questions for PIB regarding Vappie investigation (0.4)...Jonathan S. Aronie”)

<sup>16</sup> Attachment B to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>17</sup> *See* Attachment C to Ex. 1.

the Monitor consists only of a single letter from just two councilmembers, not the City Council of New Orleans.<sup>18</sup>

It is important to recall that as of February 2021, the Monitor had declared that “we are pleased to move NOPD into Full and Effective Compliance in the area of Misconduct Investigations.”<sup>19</sup> PIB’s policies and procedures, therefore, had been validated by the Monitor and the DOJ over many years of direct supervision. This does not guarantee all future investigations would be done properly, but it provides important context for the public in light of the above comments by the Monitor to New Orleans City councilmembers JP Morrell and Joseph I. Giarrusso, III.

#### **A. The Monitor’s Unique Involvement**

Immediately upon the start of the PIB investigation the Monitor became fully engaged and was kept informed on an *at least* weekly basis.<sup>20</sup> On November 10<sup>th</sup>, the same day councilmembers JP Morrell and Joseph I. Giarrusso, III asked the federal court to investigate the head of the local executive branch, the Monitor met with the Office of the Inspector General regarding the “NOPD/Mayor investigation.”<sup>21</sup> The Monitor’s team kept the Court informed of the “Vappie investigation issues” on a real-time basis, according to their invoices to the City. *See, e.g.*, Ex. 2, 11/14/22 entry by David L. Douglass (“Call with Judge Morgan and Mr. Aronie regarding Vappie investigation issues.”), and 11/14/22 entry by

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<sup>18</sup> *See* Attachment A to Ex. 1.

<sup>19</sup> Annual Report of the Office of the Consent Decree Monitor for 2020 February 16, 2021, Rec. Doc. 613-1, at 15.

<sup>20</sup> Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1, at Attachment C, p. 1, and at Attachment E, p. 3; *see also*, Allen Affidavit, at Ex. 3.

<sup>21</sup> *See, e.g.*, time entry summary regarding Vappie at Ex. 2, for November 10, 2023 entry for Jonathan S. Aronie.

Jonathan S. Aronie (“Prepare for and meet with Judge Morgan regarding Vappie investigation (1.4); meet with NOPD personnel regarding same (0.4); review policies and rules regarding potential violations.”)<sup>22</sup> The Monitor also corresponded with the Department of Justice about the ongoing disciplinary investigation of Officer Vappie.<sup>23</sup>

The Monitor also participated in the coordination of the PIB investigation from the very start.<sup>24</sup> This included reviewing the investigation documents and commenting on the PIB investigation plan.<sup>25</sup> PIB staff is unaware of any prior investigation since the start of the Consent Decree in which the Monitor was involved in shaping the investigation, drafting questions, and pushing specific findings at this intricate level. The Monitor’s time records do not reveal any precedent for this level of involvement.

It is troubling that while overseeing the investigation, the Monitor’s team stressed that specific allegations should be pursued, what questions to ask, and what evidence should be considered.<sup>26</sup> This should not be the Monitor’s role. The Monitor is paid by the City, in part, to independently evaluate the integrity and

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<sup>22</sup> See Monitor time entry summary regarding Vappie at Ex. 2, at 12/30/22 Jonathan S. Aronie; 01/09/23 Jonathan S. Aronie; *see also*, 01/12/23 Scott Huntsberry, and 03/14/23 Jonathan S. Aronie.

<sup>23</sup> See Monitor time entry summary regarding Vappie at Ex. 2, at 01/12/23 Jonathan S. Aronie; and 01/19/23 Jonathan S. Aronie.

<sup>24</sup> See Monitor time entry summary regarding Vappie at Ex. 2, at 12/05/22 Scott Huntsberry

<sup>25</sup> See Monitor time entry summary regarding Vappie at Ex. 2, at 12/05/22 Jonathan S. Aronie.

<sup>26</sup> See Monitor time entry summary regarding Vappie at Ex. 2, at 01/05/23 Jonathan S. Aronie; 12/28/22 Jonathan S. Aronie; 01/08/23 Scott Huntsberry; 01/23/23 Anne B. Perry; 01/23/23 Nikole R. Snyder; 01/24/23 Scott; 01/24/23 Anne B. Perry; 01/24/23 Jonathan S. Aronie.

quality of PIB's investigation, but took an active role in this investigation. This involvement threatened the integrity of the PIB investigation as the Monitoring team demonstrated evident bias against the Mayor, and therefore against Officer Vappie.<sup>27</sup> As the lead investigator of PIB acknowledged under oath, the Monitor's team suggested the PIB investigators sustain findings against Officer Vappie despite a lack of evidence:

12. During the investigation of Officer Vappie, the monitoring team specifically suggested that I and Lt. Jones, the other investigator, sustain the findings against Officer Vappie regarding nepotism and just let the Civil Service commission overturn the sustain disposition on appeal.

13. It was my understanding that the nepotism charge would open the door for payroll fraud as it would mean Officer Vappie was not working while on duty.

14. These comments were, and still are, very concerning because it is my goal, and the goal of PIB to conduct unbiased and accurate investigations at all times. It goes against everything I understood about NOPD policy to sustain findings despite a lack of evidence.<sup>28</sup>

This conduct is antithetical to the root constitutional goal of the Consent Decree and violates the City's contract with the Monitor.

At the beginning of the investigation into Officer Vappie, the Monitor's team advised that the Superintendent, City Attorney, and Mayor's office should be blocked from the investigation.<sup>29</sup> This request ignored that the Superintendent is part of the disciplinary process, and that the City Attorney's office is legal counsel

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<sup>27</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

for PIB. Moreover, the Consent Decree, at paragraph 424, **requires** that the City and NOPD establish methods for the City Attorney to provide “close guidance to NOPD” during PIB investigations to “ensure that NOPD’s disciplinary decisions are as fair and legally defensible as possible.” The Monitor did not seek to amend the Consent Decree. Despite this requirement, the Monitor suggested that PIB block the City Attorney from any information regarding the investigation of Officer Vappie.<sup>30</sup> PIB’s investigators declined to deviate from the Consent Decree and standing NOPD policy based on the Monitor’s unique interest in the investigation of Officer Vappie. The City Attorney was utilized by the PIB investigators to protect the integrity and merit of the investigation, as is the ordinary course of their work.

The Monitor was provided with all the confidential evidence and investigation files, including witness interviews, in near real-time, throughout the investigation. Terabytes of data including video, license plate reader data, and cell phone data were uploaded from PIB’s secure computers to the Monitoring team’s hard drives and removed from PIB.<sup>31</sup> The idea that the Monitor’s access to the investigation was in any way limited is refuted by the clear record.

**B. Violations of Consent Decree Paragraph 445.**

In early January of 2023, the Monitor called Superintendent Woodfork and demanded that certain personnel changes be made to satisfy the Monitor’s desires regarding the ongoing investigation. The Superintendent listened to the Monitor’s demands and declined to move the personnel. She was confident her personnel plan

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<sup>30</sup> See p. 3 of Attachment C to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1, and Affidavit of Captain Kendrick Allen, at Ex. 3, at para. 6.

<sup>31</sup> Affidavit of Captain Kendrick Allen, at Ex. 3, para. 3.

would accomplish NOPD's goals and complete the Vappie investigation properly and on time. On January 12, 2023, undeterred by the Superintendent of NOPD's personnel decision, the Monitor sent an email directly to a subordinate of the Superintendent, tacitly instructing that specific people be reassigned:

Despite your email, I continue to believe they will not, as a practical matter, have the time they need....**While I can't and don't make personnel decisions for the Department, I recommend you detail** Lawrence back to PIB until the conclusion of the...investigation. Frankly, I would love to see you detail both Lawrence and Kendrick back to PIB until the conclusion of the investigation...To be clear, I am NOT requesting a permanent **reassignment**.<sup>32</sup>

The Monitor did not copy the Superintendent. The Monitor did not tell the Deputy Superintendent that his superior, the Superintendent, had already rejected this request. Supervision is a pillar of the Consent Decree and the Monitor is not empowered to usurp that purpose at the behest of two (or even all) city councilmembers, or because it believed this was an investigation of the Mayor of New Orleans.

The Superintendent is the head of the police department, and the Monitor is prohibited from interfering in that managerial function. *See* Consent Decree at para. 445. The Superintendent appropriately responded to the overt violation of her command structure explaining:

Mr. Aronie, going forward, please direct any request or suggestions concerning personnel changes or the detail of my command staff or essential personnel, directly to me.

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<sup>32</sup> Ex. 8 email string from Jonathan S. Aronie. (emphasis added)

Chief Deputy Ganthier, nor any of the deputy chiefs, have the authority to make those decisions.<sup>33</sup>

On February 17, 2023, the Monitor issued a letter to the Chief of PIB titled “Interim Recommendations Based on Vappie Investigation.”<sup>34</sup> The Monitor now calls the letter an “Immediate Action Notice,” but those words are not found anywhere in the document. The letter claims that the Monitor’s team is not involved in the day-to-day affairs of the investigation but has met weekly with the investigators to obtain the strategy and status of the PIB investigation. The Monitor stated that the recommendations in the letter were “policy/process issues that are *unrelated* to the forthcoming substantive findings” regarding Officer Vappie.<sup>35</sup> Despite this express statement, the Monitor now reverses course in large part, and attacks PIB for not complying with its “*recommendations*” during the Vappie investigation.

In this February 17<sup>th</sup> letter regarding the Vappie investigation directed to the head of PIB, Mr. Aronie made a troubling allegation that:

Outgoing Superintendent Ferguson, however, hours before his retirement, **directed** the return of Officer Vappie to the Mayor’s security detail. While this **order**, fortunately, was **reversed** by a deputy chief and the City Attorney, the **order** itself created at the very least the appearance of interference in a PIB investigation.<sup>36</sup>

Soon thereafter, on March 7<sup>th</sup>, the Monitor conducted a zoom conference open to the public and media. During that conference Mr. Aronie was asked the following

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<sup>33</sup> Ex. 8 email string from Jonathan S. Aronie.

<sup>34</sup> Attachment C to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>35</sup> Attachment C to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>36</sup> Attachment C to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1

very specific question by a news outlet that paralleled the unpublished letter of February 17<sup>th</sup> as follows: “In December 2022, was there an effort made to put Officer Jeffrey Vappie back on the mayor's executive protection detail? If so, what role did the consent decree monitor play in stopping this?”<sup>37</sup> Mr. Aronie stated he *never* speaks about ongoing investigations, and then proceeded to discuss details of the alleged interference in an ongoing investigation:

I just want to caveat this by saying, there is, as the media has reported, an investigation into Officer Jeffrey Vappie, and **we never talk about ongoing investigations, so my answer has nothing to do with that investigation**, but to the specific question, the answer is yes, there was an effort to put Officer Vappie back on the mayor’s executive protection team, prior to the completion of the PIB investigation. When the monitoring team found out about it, we reached out to multiple members of the NOPD leadership team, who quickly and effectively quashed that effort.<sup>38</sup>

Mr. Aronie does not state the basis for his belief in this allegation. All evidence, however, demonstrates that this damaging public statement by the declared eyes and ears of a federal district court was untrue. Former Superintendent Ferguson, who Mr. Aronie alleges ordered Officer Vappie’s return to the Mayor’s security team, rejects this accusation as utterly untrue, under oath.<sup>39</sup>

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<sup>37</sup> The video of this question and answer is available at <https://www.sheppardmullin.com/multimedia-464> beginning at time mark 1:12:51 – 1:13:48. *See also*, <https://www.fox8live.com/2023/03/08/zurik-vappies-return-mayor-cantrells-protection-detail-scuttled-nopd-federal-monitor-says/> (“The federal monitor ... said ... he blocked an attempt in December to have Officer Jeffrey Vappie reinstated to Mayor LaToya Cantrell’s executive protection detail while still under internal police investigation.”)

<sup>38</sup> <https://www.fox8live.com/2023/03/08/zurik-vappies-return-mayor-cantrells-protection-detail-scuttled-nopd-federal-monitor-says/>. The Video of this exchange is available at <https://www.sheppardmullin.com/multimedia-464> beginning at time mark 1:12:52.

<sup>39</sup> *See* Ferguson Affidavit at Ex. 5.

Interim Superintendent Woodfork also rejects this story, under oath.<sup>40</sup> And City Attorney Donesia Turner – who Mr. Aronie alleges reversed Ferguson’s order – testified that this story is untrue, again, under oath.<sup>41</sup>

The truth is that it is NOPD standard practice that during an administrative investigation by PIB that the officer is returned to active duty – *i.e.*, the officer is taken “off administrative reassignment.”<sup>42</sup> This occurs *via* an NOPD form from PIB to the head of the Bureau the officer was reassigned from when the investigation began. The Bureau Chief, or Superintendent, then determines where the officer will be assigned.<sup>43</sup> Here, former Superintendent Ferguson was aware of the normal return of Officer Vappie to his original bureau. Former Superintendent Ferguson specifically confirmed that there was no federal or PIB criminal investigation that would prevent the assignment.<sup>44</sup> He was not, however, ever going to put Officer Vappie back on the Mayor’s EP team during the investigation.<sup>45</sup> Again, he did **not** assign Officer Vappie to the Mayor’s EP team as alleged by Mr. Aronie.

Former Superintendent Ferguson even advised incoming superintendent Woodfork that Officer Vappie should not be assigned back to EP during the investigation.<sup>46</sup> There was never any such order, nor did the City Attorney reverse

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<sup>40</sup> See Woodfork Affidavit at Ex. 4

<sup>41</sup> See Turner Affidavit at Ex. 6.

<sup>42</sup> See Administrative Reassignment Notice form at Ex. 10.

<sup>43</sup> Affidavit of Captain Kendrick Allen, at Ex. 3, at para. 21.

<sup>44</sup> See Ferguson Affidavit at Ex. 5.

<sup>45</sup> See Ferguson Affidavit at Ex. 5.

<sup>46</sup> See Ferguson Affidavit at Ex. 5 and Woodfork Affidavit at Ex. 4.

such an order.<sup>47</sup> The ordinary PIB process that applies to every officer was applied to Officer Vappie, including reassignment during an administrative investigation.

Mr. Aronie's erroneous public statements alleging interference in the PIB investigation unfortunately fit the pattern of the monitoring team seeking to drive the outcome of the PIB investigation of Officer Vappie to a specific, public result.

### **C. Completing the Investigation**

On March 10, 2023, the PIB investigators completed their investigation and issued their written report and disciplinary recommendations. The Deputy Superintendent of PIB signed the investigation report on March 16<sup>th</sup>. As is noted by the Monitor, NOPD internal procedure has always had a line for the Superintendent to sign the report. However, NOPD Superintendents do not review the report until it is part of the entire disciplinary hearing package, which includes any evidence and arguments from the officer from the pre-disposition conference, which occurs after this PIB investigation report is completed. For this reason, it is NOPD practice to have the head of PIB sign "for" the Superintendent.<sup>48</sup> The publicity of this case has highlighted that this old internal practice needs to be changed to reflect the reality of the flow of information to avoid confusing outsiders.

This is, however, the process that has been used for every investigation at PIB during the Consent Decree. It has not been noted as deficient by the Monitor or DOJ during that time. It is not, as the Monitor now advocates, a deficiency in the Vappie investigation as it is standard NOPD procedure.

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<sup>47</sup> See Turner Affidavit at Ex. 6.

<sup>48</sup> See NOPD PIB response to PIB Report R. Doc. 695-4.

The PIB investigators recommended sustaining claims of: (1) violation of the limit of 16.58 hours of work per 24-hour period; (2) violation of NOPD policies regarding professionalism for spending “numerous hours alone with the Protectee outside of his regular tour of duty;” and (3) violation of NOPD policies requiring that Officer Vappie devote all of his time on duty to his NOPD detail based on his attendance at two HANO meetings while on NOPD duty.<sup>49</sup> The PIB Disciplinary Recommendation report also notes that Officer Vappie “may also have violated” a Civil Service rule regarding standards of service.<sup>50</sup>

#### **D. The Disciplinary Phase**

The Pre-Disposition Conference and Pre-Disciplinary Hearing for Officer Vappie were conducted on May 25, 2023. At this time Officer Vappie introduced evidence and exculpatory arguments for consideration by the panel of three NOPD Captains that would evaluate the PIB investigation and make recommended findings and suggest appropriate discipline to the Superintendent. At this conference Officer Vappie produced an email that authorized EP details to work overtime as necessary, effectively voiding the 16.58-hour rule for that EP detail. The email states as follows, according to the record:

[A]s a member of the NOPD Executive Protection overtime was expressly authorized in an email authored by former NOPD Deputy Chief Paul Noel on February 23, 2021. The email advised that “*per the Superintendent the Mayor's Security Detail can work overtime as necessary*” and it was disseminated to Capt. Joseph Waguespack Sr., Sgt.

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<sup>49</sup> Page 37 of Attachment D to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1

<sup>50</sup> Page 37 of Attachment D to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1

Shumeca Chadwick, Lt. Christopher Johnson, and Sgt. Tokishiba Lane. The referenced email will be attached to this correspondence.<sup>51</sup>

NOPD policy was changed by this email authorization, as conveyed by the NOPD Chief of Detectives, Paul Noel. The PIB investigators did not have access to this email during their investigation.<sup>52</sup>

After considering all the evidence, including this email, the Three-Captain Panel recommended: **(1) Sustaining** a policy violation for failure to devote the entire time to his duty regarding the two times Officer Vappie was at HANO meetings while on duty; **(2) Sustaining** a policy violation for professionalism regarding the time Officer Vappie spent alone with the Mayor; **(3) Sustaining** violations of the Civil Service rules for maintaining standards, and **(4) Exonerated** on the alleged violation of the “16.58 hour” limit based on the specific permission to work overtime granted to the EP detail.<sup>53</sup> The Superintendent sustained those recommendations on June 14, 2023.

**E. The Monitor’s Access was not Impeded.**

As noted above and in the affidavit of lead investigator Capt. Kendrick Allen,<sup>54</sup> the Monitor’s team was given unprecedented and complete access to the investigation. As of March 31, 2023, it appears the Monitoring team had already invoiced the City over \$50,000<sup>55</sup> for time allocated specifically to the ongoing Vappie

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<sup>51</sup> See Interoffice Correspondence of May 30, 2023, at Ex. 9.

<sup>52</sup> Affidavit of Captain Allen at Ex. 3.

<sup>53</sup> Disciplinary Hearing Disposition at Ex. 7.

<sup>54</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>55</sup> This amount is difficult to quantify exactly due to the manner of record keeping for time by the Monitor’s team.

investigation.<sup>56</sup> Based on available invoices, there is no other individual PIB investigation in the 10-year history of the Consent Decree that reaches a fraction of that value. Even PIB investigations of alleged officer violations of detainee constitutional rights do not receive the level of attention from the Monitor as occurred here regarding, what the Monitor described as, “alleged time card misconduct involving the Mayor’s NOPD security detail.”<sup>57</sup>

On April 7<sup>th</sup> the Monitor created a report on the Vappie investigation. This report was shared with the City and NOPD on April 17, 2023.<sup>58</sup> This report states, in part, that the Monitor finds the conclusions of the PIB Vappie investigation to be “reasonable based upon the facts available to PIB.”<sup>59</sup> Specifically, the Monitor noted:

**Overall, we are satisfied that PIB’s investigation into the actions and inactions of Officer Vappie met the requirements of the Consent Decree. Captain Allen and Lieutenant Jones took their jobs seriously and pursued the investigation with diligence and integrity. The Monitoring Team reviewed all witness and subject interviews conducted by PIB and can confirm the seriousness of the questions asked by the investigators, their lack of bias, and the appropriate scope of the questions.**<sup>60</sup>

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<sup>56</sup> See Monitor time entry summary regarding Vappie at Ex. 2.

<sup>57</sup> Letter of the Monitor to New Orleans City council-members JP Morrell and Joseph I. Giarrusso, III, as Attachment B to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>58</sup> Attachment E to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>59</sup> Attachment E to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1, at p. 6.

<sup>60</sup> Attachment E to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1, at p. 6.

In addition to the approval of the overall investigation, the report also includes concerns regarding the process. PIB responded to the Monitor's concerns on April 24<sup>th</sup>.<sup>61</sup> The Monitor then issued a public report on PIB's Consent Decree compliance status on May 3, 2023, which included extensive details regarding the Vappie investigation.<sup>62</sup> PIB responded on that same day without addressing specifics of evidence regarding the on-going Vappie disciplinary proceeding.<sup>63</sup>

## **V. NOPD'S RESPONSE TO FAILURES ALLEGED BY THE MONITOR**

On, or about, May 1, 2023, the Monitor tendered another report on the Vappie investigation alleging failures by PIB. The draft was updated on May 19, 2023, to be filed on June 5<sup>th</sup>. By this time the report and recommendations of the PIB investigators were complete. The Monitor's report dramatically ramped up the attacks on PIB. The Monitor declared that PIB was cavalier,<sup>64</sup> disingenuous,<sup>65</sup> and generally unprofessional in its handling of the Vappie investigation despite the Monitor's previous findings. The primary complaint centered around the PIB investigators' failure to find a criminal violation for payroll fraud as pushed by the Monitor.<sup>66</sup>

PIB investigators recommended sustaining violations against Officer Vappie of the 16.58 billed hours per day limit, along with unprofessional conduct and failure to dedicate his entire time to his duty. After pushing the PIB investigators to

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<sup>61</sup> Attachment F to the Monitor's June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>62</sup> R. Doc. 694 at 14.

<sup>63</sup> R. Doc. 697.

<sup>64</sup> Monitor's June 5, 2023, letter to the Court, attached here as Ex. 1, at p. 4.

<sup>65</sup> Monitor's June 5, 2023, letter to the Court, attached here as Ex. 1, a p. 7.

<sup>66</sup> Affidavit of Captain Allen at Ex. 3.

make a specific finding of nepotism to allow for payroll fraud, **even if it lacked sufficient evidence to survive an appeal to the Civil Service Commission**,<sup>67</sup> the Monitor now chastises PIB for having a “cavalier attitude towards [its] obligations and the importance of officer accountability.”<sup>68</sup> It is the Monitor, however, that has demonstrated a cavalier attitude towards PIB’s critical duties and integrity.

In the face of unique pressure from the Monitoring team to reach specific findings, the investigators stuck to their principles and treated this investigation exactly the same as every other PIB investigation.<sup>69</sup> Only two changes to the routine PIB process were made regarding Officer Vappie based on the media and Monitor attention. First, the intimate involvement of the Monitor’s team on this investigation on an almost daily basis was unlike any prior PIB investigation known to the PIB staff and investigators.

Second, the investigating team was “upgraded” as compared to normal investigations. Ordinarily, the investigation of claims against an officer for time violations would be conducted by a Sergeant. In the case of Officer Vappie, the investigating team consisted of a Lieutenant and a Captain. This was done to ensure there was no viable attack on the integrity of the investigation. This is a practice used by NOPD for higher profile investigations.

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<sup>67</sup> Affidavit of Captain Allen at Ex. 3.

<sup>68</sup> Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1, at p. 4.

<sup>69</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

## A. Payroll Fraud was Investigated

The Monitor's team made clear they wanted Officer Vappie criminally charged with payroll fraud from the outset of the PIB investigation.<sup>70</sup> The Monitor's attack on the investigators for allegedly *failing to investigate* that claim lacks merit and ignores the Monitor's role in the investigation. The Monitor spends pages detailing how it pressed the PIB investigators during the investigation to pursue payroll fraud rather than letting the investigation proceed as normal. The Monitor coordinated the investigation,<sup>71</sup> drafted interview questions,<sup>72</sup> reviewed the interviews immediately,<sup>73</sup> met weekly with the PIB investigators,<sup>74</sup> and updated the Court,<sup>75</sup> and DOJ<sup>76</sup> with the status of the investigation. A failure to investigate would have been known long before the Monitor's April 7, 2023, report.

It was not until the PIB investigators made their recommendations<sup>77</sup> that the Monitor declared the PIB investigators somehow misled them about the scope of the investigation – an allegation the City, NOPD and the PIB investigators denounce as

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<sup>70</sup> Affidavit of Captain Allen at Ex. 3.

<sup>71</sup> See, e.g., Monitor time entry summary regarding Vappie at Ex. 2, at 12/05/22, 12/19/22, and 01/31/23.

<sup>72</sup> See, e.g., Monitor time entry summary regarding Vappie at Ex. 2, at 12/28/22, 01/05/23, 01/08/23, 01/23/23, 01/24/23, and 01/25/23.

<sup>73</sup> See, e.g., Monitor time entry summary regarding Vappie at Ex. 2, at 12/28/22, 12/29/22, 12/31/22, 01/03/23, 01/04/23, 01/09/23, 01/15/23, and 02/01/23.

<sup>74</sup> See, e.g., Monitor time entry summary regarding Vappie at Ex. 2, and pages 1, 3, 4, 5, 8 and Attachments B and E to the Monitor's June 5, 2023, letter to the Court, attached here as Ex. 1.

<sup>75</sup> See, e.g., Ex. 2, 11/14/22 entry by David L. Douglass ("Call with Judge Morgan and Mr. Aronie regarding Vappie investigation issues."), 11/14/22 entry by Jonathan S. Aronie ("Prepare for and meet with Judge Morgan regarding Vappie investigation (1.4); meet with NOPD personnel regarding same (0.4)"), 12/30/22 Jonathan S. Aronie; 01/09/23 Jonathan S. Aronie; 01/12/23 Scott Huntsberry, and 03/14/23 Jonathan S. Aronie.

<sup>76</sup> See, e.g., Monitor time entry summary regarding Vappie at Ex. 2, at 01/12/23, 01/19/23, and 03/15/23.

<sup>77</sup> Attachment C to the Monitor's June 5, 2023, letter to the Court, attached here as Ex. 1.

flatly untrue.<sup>78</sup> The lead investigator noted the highly questionable conduct of the Monitor's team in pushing for a specific political outcome, and their refusal to comply seems to be the source of the Monitor's attack.

Further troubling is that the Monitor cites the PIB investigation memorandum to support the charge that the PIB investigators did not *actually* conduct this investigation because their report does not address that claim. This is misleading, as the lead investigator's sworn statement makes clear.<sup>79</sup> After ten years of monitoring PIB investigations, the Monitor must be aware of how PIB writes its disciplinary investigation reports. PIB does **not** detail all the allegations it considered but ultimately determined were unsupported by the evidence.<sup>80</sup> In other words, PIB does not write its investigation reports to appease the unique interest of the Monitor, the City Council, or the media.

PIB investigates and prepares its reports according to NOPD policy – policy approved by the DOJ and the Monitor.<sup>81</sup> This method has never been challenged by the Monitor or DOJ until now. The Monitor effectively criticizes the investigators for not treating the investigation of Officer Vappie differently than every other “time card misconduct” case – *i.e.*, as an “investigation of the Mayor.”<sup>82</sup> As the lead

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<sup>78</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>79</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>80</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>81</sup> New Orleans Police Department Operations Manual Chapter: 52.1.1 and 52.1.2 at <https://nola.gov/nopd/policies>.

<sup>82</sup> Attachment A to the Monitor's June 5, 2023, letter to the Court, attached here as Ex. 1.

PIB investigator testified, PIB does not investigate mayors.<sup>83</sup> And neither does the court-appointed Monitor.

As to the merits of the claim, the investigators found that the conduct alleged did not merit a criminal investigation based on a lack of evidence.<sup>84</sup> Similar allegations have *always* been investigated as violations of duty and/or violations of the 16.58 hour rule. In the professional opinion of the PIB investigators, Officer Vappie could not be charged with payroll fraud for allegedly not devoting his time to his duty in the unique context of executive protection.<sup>85</sup> This is presumably why the Monitoring team suggested finding a violation of the nepotism rules even if it would not withstand appeal.<sup>86</sup>

#### **B. Executive Protection is a Unique Detail**

Important in this discussion, and critical to the PIB investigators, was understanding what EP members do while their “Protectee” works. If the Mayor were at City Hall, an EP team member would wait nearby until the Mayor needed to travel. If the Mayor was in a restaurant, the EP member would be at a nearby table waiting. It is expected, according to the expert witnesses and past EP team members, for EP details officers to spend significant periods of time waiting.<sup>87</sup> *Just waiting*. The expert witnesses and other EP team members made absolutely clear that the duties of an EP team member include work that would otherwise not

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<sup>83</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>84</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>85</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>86</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>87</sup> Attachment D to the Monitor’s June 5, 2023, letter to the Court, attached here as Ex. 1.

qualify as police work. “If [*sic*] Mayor goes to the movies, you go to the movies.”<sup>88</sup> “[T]he Mayor may ask an executive protection team member to water plants which was not against the law.”<sup>89</sup> Or, as a retired EP team member explained, “you do what the Mmayor tells you to do Period.”<sup>90</sup>

Therefore, the PIB investigators were faced with the fact that Officer Vappie could still be doing the same job function while in the Mayor’s residence – as he testified he was and as no witness contradicted.<sup>91</sup> Again, **it was deemed unprofessional for Officer Vappie to do the job this way**, but this alone is not nepotism or payroll fraud as the Monitor wanted PIB to find.<sup>92</sup>

It is critical for the public to understand that Office Vappie was found to have violated his professional obligations as a result of the PIB investigation and is subject to the discipline mandated by NOPD policy. The PIB investigators, the Three-Captain Disciplinary Panel and the Superintendent all found that he did not do his job in compliance with NOPD standards. But Officer Vappie cannot be subjected to a different process or receive different discipline than any other NOPD officer simply because he is on a mayor’s EP team. PIB did its job with integrity.

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<sup>88</sup> Attachment D to the Monitor’s June 5, 2023, letter to the Court, at CDM035 attached here as Ex. 1.

<sup>89</sup> Attachment D to the Monitor’s June 5, 2023, letter to the Court, at CDM034 attached here as Ex. 1.

<sup>90</sup> Attachment D to the Monitor’s June 5, 2023, letter to the Court, at CDM034 attached here as Ex. 1.

<sup>91</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>92</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

### C. Potential for Payroll Fraud

The Monitor wanted a payroll fraud finding and bemoans a lack of investigative effort to find it. The lack of a nepotism trigger is addressed above. A different trigger for a payroll fraud claim could have come from the time Officer Vappie spent at HANO meetings. Officer Vappie attended HANO Board meetings on multiple occasions. On two occasions he was off the NOPD clock. On two other occasions he was paid as “on-duty” while at the HANO meetings.<sup>93</sup> This created the potential for payroll fraud as HANO Board members receive a \$75 payment for their time. If Officer Vappie was paid twice for his time – by NOPD and HANO – the investigators would have considered the payroll fraud charge in that light.<sup>94</sup>

But Officer Vappie did **not** get paid the \$75 fee paid to the other Board members. Therefore, he did not engage in double billing or payroll fraud as NOPD has historically applied that charge.<sup>95</sup> Again, this is not a novel allegation against an NOPD officer, and NOPD has a long history of classifying this allegation as a violation of the 16.58-hour rule and/or dedication of time to duty. The Monitor has never objected to this classification in any prior case known to PIB staff. The allegation of failing to devote his entire time to his duty was sustained based on these two meetings because he was not providing executive protection, although still “on call” according to his testimony.<sup>96</sup>

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<sup>93</sup> Attachment D to the Monitor’s June 5, 2023, letter to the Court, at CDM034 attached here as Ex. 1.

<sup>94</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>95</sup> *Id.*

<sup>96</sup> Attachment D to the Monitor’s June 5, 2023, letter to the Court, at CDM052-53 attached here as Ex. 1.

This is a distinction of importance to past high-profile double-billing cases where payroll fraud claims were recommended by the PIB investigators. In the Secondary Employment Detail pay cases, for example, some officers were alleged to have been billing two sources at the same time – NOPD and a detail employer – and some had evidence of an intent to overbill. Here, Officer Vappie overbilled on two occasions but did not double bill or show a pattern or intent to fraudulently bill.<sup>97</sup>

**His violation was treated the same as every case of overbilling for work hours by an NOPD officer. This is a disciplinary action PIB deals with very routinely and Officer Vappie was treated the same as every officer before him.** The Monitor cries for a payroll fraud charge in this particular case, but why?

#### **D. Serious Misconduct Complaint Investigations**

This leads to the next meritless attack by the Monitor. The Monitor charges PIB with neglecting its duties because it did not designate the allegations against Officer Vappie as allegations of serious misconduct pursuant to Consent Decree paragraph 454, thus giving the Monitor even greater power. This hyperbolic statement is inaccurate.

The Consent Decree was put in place to deal with serious misconduct, including the unwarranted use of force, discriminatory policing, and alleged systemic abuses of suspects' constitutional rights.<sup>98</sup> The charges against Officer Vappie are serious, as are all charges investigated by PIB. They are not, however, of the nature NOPD has **ever** treated as a “serious misconduct complaint” as used by

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<sup>97</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>98</sup> See Section III Consent Decree Scope and Content above.

Paragraph 454. Neither the Monitor nor DOJ has ever challenged PIB's treatment of "time card misconduct" as failing to meet this definition.

Again, perspective is critical on this point. The Executive Protection detail is a unique detail inside of NOPD. EP team members do not ordinarily make arrests, conduct investigations, or do traditional police work regarding the constitutional rights of detainees. EP is not mentioned in the Consent Decree as it is not a role that ordinarily involves the protection of the constitutional rights of citizens. As explained above, the allegations against Officer Vappie would never be treated as a "serious misconduct complaint" if it were not for the Monitor's extraordinary interest in pursuing "an investigation of serious allegations involving Mayor Cantrell."<sup>99</sup> That is not a basis to subject Officer Vappie to a criminal investigation for payroll fraud pursuant to the policies and practices of PIB.

**E. Preponderance of the Evidence Requires Evidence, Not Speculation or Innuendo.**

Despite repeated efforts from the Monitoring team to pressure the PIB investigators into reaching a unique conclusion for Officer Vappie, there was not sufficient *evidence* that Officer Vappie was not performing his duties while in the Mayor's apartment to support – by a preponderance of evidence – that he was engaged in payroll fraud. It may look bad. It may be unprofessional. And it was a violation of his training in EP to be in the Mayor's apartment for extended periods.

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<sup>99</sup> Attachment E to the Monitor's June 5, 2023, letter to the Court, at CDM076 attached here as Ex. 1.

But there was no *evidence* that he was not performing his unique EP duty at any time other than while at two HANO meetings (as detailed above).

A preponderance of evidence means the **evidence** in favor outweighs the evidence against.<sup>100</sup> Here there was no evidence of Officer Vappie not serving as EP while in the apartment because EP can mean doing nothing, or nearly anything, while in close proximity to the Protectee. There is **no NOPD policy** that prohibits EP detail members from being in the residence of the Protectee.<sup>101</sup> There is speculation of what Officer Vappie was doing, and the Monitor is unusually focused on the speculation it calls circumstantial *evidence*. Mr. Aronie fueled such speculation during the investigation with his erroneous conspiracy theory about reinstating Officer Vappie to the Mayors EP team.

But there was no evidence of policy violations. The NOPD nepotism policy was not violated by the evidence presented.<sup>102</sup> A filing by Officer Vappie's wife alleging infidelity in a divorce pleading is not sufficient evidence. The Mayor going out at night after Officer Vappie left is not evidence that he was not on duty while he was there. Watering plants fits into the broad traditional roles of EP duties, even if not traditional police work. In short, being in the apartment is not evidence of what Officer Vappie was doing there, and without more evidence, the findings

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<sup>100</sup> See *Slidell v. Temple*, 246 La. 137, 144, 164 So.2d 276, 278 (1964) (“By a preponderance of evidence is meant, simply, evidence which is of greater weight, or more convincing, than that which is offered in opposition to it.”)

<sup>101</sup> Attachment D to the Monitor's June 5, 2023, letter to the Court, at CDM036 attached here as Ex. 1.

<sup>102</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

sought by the Monitor could not be supported.<sup>103</sup> The PIB investigators faithfully refused the *suggestion* that they make such a finding without support and let the issue be corrected on appeal.<sup>104</sup> And as explained previously, PIB does not issue search warrants for an officer's private phones in administrative investigations.<sup>105</sup> The rules cannot be changed for Officer Vappie.

Officer Vappie's conduct looked unprofessional to the disciplinary judges, and thus looked bad for NOPD and the Mayor. The PIB investigators and the Three-Captain Panel recommended the Superintendent sustain the professionalism charges and she did. But that does not equate to payroll fraud as historically applied by NOPD, even if the case involves a member of the Mayor's security detail.

## VI. CONCLUSION

Officer Vappie was entitled to, and received, the exact same investigation of claims against him as every other officer under the modern Consent Decree-PIB. He is now subject to the same discipline. (*Officer Vappie's appeal rights have not been exhausted as of this filing.*) Contrary to the Monitor's attack, payroll fraud was investigated. The PIB investigators did not mischaracterize the scope of the investigation. What the Monitor refuses to accept is that there was insufficient evidence – not suspicion or speculation – that Officer Vappie engaged in nepotism or payroll fraud. This fact cannot be changed simply because the Monitor sought a specific political result from the outset.

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<sup>103</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>104</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>105</sup> See NOPD PIB response to PIB Report R. Doc. 695-4.

The Monitor's team directly pressured the PIB investigators to reach a sustained finding despite a lack of evidence to support that finding.<sup>106</sup> It is beyond alarming that the Monitoring team paid to evaluate the integrity of PIB investigations sought to undermine that very quality. The PIB investigators refused to bow to this pressure, which is a testament to PIB.<sup>107</sup> But this revelation will cast a dark shadow over all future Monitor involvement with the NOPD.

***Respectfully submitted,*** this 15<sup>th</sup> day of June 2023.

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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the above and foregoing pleading via Notice of Electronic filing using this Court's CM/ECF system to counsel of record participating in the CM/ECF system on this 15<sup>th</sup> day of June 2023.

/s/ Charles F. Zimmer II

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<sup>106</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

<sup>107</sup> Affidavit of Captain Kendrick Allen, at Ex. 3.

### **Exhibit 1**

OCMD June 5, 2023, letter to the district court, with attachments, is made Exhibit 1 to the instant Petition for Mandamus and has been removed from this location to avoid necessary repetition.

**INVOICES RE: VAPPIE / PIB**

**FOR PROFESSIONAL SERVICES THROUGH NOVEMBER 30, 2022**

11/10/22 Prepare for and meet with NOPD regarding City Ordinances (1.0); prepare for and participate in public meeting at East New Orleans Regional Library (2.5); meet with Mr. Douglass and Dr. Burns regarding same (0.4); meet with IPM regarding same (0.3); meet with OIG regarding NOPD/Mayor investigation (0.3); review notes and other materials en route to DC (0.8); meet with IPM regarding City Ordinance (0.4); attend to Morrell ordinance regarding IPM (0.4); review data from Ms. Trepagnier (0.2).  
Jonathan S. Aronie 6.30 hrs. \$ 516.59/hr.

11/11/22 Meet with community stakeholder (0.4); attend to Vappie investigation (0.4); respond to City Council request to investigate Vappie matter (0.4); correspond with Mr. Helou regarding Use of Force data (0.2); correspond with Judge Morgan regarding City Council investigation request (0.3).  
Jonathan S. Aronie 1.70 hrs. \$ 516.59/hr.

11/13/22 Review follow-up news report regarding Officer Vappie.  
David L. Douglass .30 hrs. \$ 516.60/hr.

11/13/22 Draft cover letter to preliminary PIB findings (0.5); correspond with Judge Morgan regarding Vappie (0.2).  
Jonathan S. Aronie .70 hrs. \$ 516.59/hr.

11/14/22 Call with Judge Morgan and Mr. Aronie regarding Vappie investigation issues.  
David L. Douglass 1.40 hrs. \$ 516.59/hr.

11/14/22 Prepare for and meet with Judge Morgan regarding Vappie investigation (1.4); meet with NOPD personnel regarding same (0.4); review policies and rules regarding potential violations (0.7); prepare for meeting with City Council regarding IPM (0.3); coordinate meeting with PIB and IPM (0.3).  
Jonathan S. Aronie 3.10 hrs. \$ 516.59/hr.

11/15/22 Prepare for and participate in video conference with Councilmember Morrell (0.5); prepare for and meet with PIB and IPM regarding Vappie investigation (1.2); attend to use of force event (0.2).  
Jonathan S. Aronie 1.90 hrs. \$ 516.59/hr.

11/16/22 Work on IPM ordinance (0.5); review NOPD news coverage (0.4); attend to Vappie Investigation (0.4).  
Jonathan S. Aronie 1.30 hrs. \$ 516.59/hr.

11/17/22 Prepare for and meet with DOJ and Monitoring Team (1.0); prepare technical assistance memo to PIB regarding Vappie investigation (0.8); correspond with Deputy Chief regarding new PIB investigations (0.2); meet with City official regarding ongoing news stories regarding NOPD executive protection detail (0.4); review local news regarding NOPD matters (0.3); review and revise draft IPM ordinance (0.5); confer

with Mr. Douglass regarding same (0.2)  
Jonathan S. Aronie 3.40 hrs. \$ 516.59/hr.

**FOR PROFESSIONAL SERVICES THROUGH DECEMBER 31, 2022**

12/01/22 Telephone conferences with key individuals relating to Vappie investigation.  
Jonathan S. Aronie .40 hrs. \$ 516.60/hr.

12/02/22 Confer with IPM and team members regarding Vappie investigation monitoring plan.  
David L. Douglass .60 hrs. \$ 516.58/hr.

12/02/22 Review information regarding IG investigation concerning Vappie issue and  
communicate with Judge Morgan regarding same.  
David L. Douglass .60 hrs. \$ 516.58/hr.

12/02/22 Participate in call with Mr. Douglass, Ms. Perry, and Independent Monitor Team  
regarding overseeing the ongoing Vappie investigation (0.7); continue drafting Annual  
Report (1.4).  
Nikole R. Snyder 2.10 hrs. \$ 425.43/hr.

12/05/22 Attend Investigation Coordination Zoom meeting concerning PIB's Vappie  
investigation; review investigation documents; develop investigation tracking  
document.  
Scott Huntsberry 1.40 hrs. \$ 200.00/hr.

12/05/22 Prepare for and participate in PIB briefing regarding Vappie investigation (1.0);  
prepare for and meet with Mr. Douglass and Judge Morgan regarding various compliance  
matters (0.8); review and comment on Vappie investigations plan (0.6); review PIB  
draft interview outline (0.3); meet with Agent Huntsberry and Ms. Perry regarding PIB  
investigation (0.4).  
Jonathan S. Aronie 3.10 hrs. \$ 516.59/hr.

12/07/22 Meet with Captain Allen of NOPD PIB at his office to discuss Vappie investigation  
status and next steps.  
Scott Huntsberry 1.10 hrs. \$ 200.00/hr.

12/09/22 Follow-up regarding Vappie investigation.  
David L. Douglass .30 hrs. \$ 516.60/hr.

12/09/22 Review materials regarding PIB and prepare task and timeline list for Vappie  
investigation; send same to Agent Huntsberry for review.  
Anne B. Perry 3.30 hrs. \$ 516.59/hr.

12/12/22 Attend investigation status update meeting with Mr. Aronie and Ms. Perry concerning  
NOPD PIB Vappie investigation.  
Scott Huntsberry 1.00 hrs. \$ 200.00/hr.

12/12/22 Participate in weekly status call regarding Vappie investigation; update draft work plan/timeline; telephone conference with Ms. Viverette regarding PIB.  
Anne B. Perry 1.70 hrs. \$ 516.59/hr.

12/12/22 Prepare for and participate in weekly call with PIB regarding Vappie (1.0); meet with Ms. Perry regarding same (0.3); meet with Mr. Douglass and Judge Morgan regarding court hearing and related compliance matters (0.7); meet with IG regarding NOPD investigation matters (0.3); attend to Claus matter (0.2); correspond with Dr. Burns regarding “in the green” carveouts and promises (0.2); correspond with Mr. Douglass regarding co-responder opportunities (0.2).  
Jonathan S. Aronie 2.90 hrs. \$ 516.59/hr.

12/12/22 Attend meeting with NOPD on Vappie investigation update.  
Nikole R. Snyder 1.00 hrs. \$ 425.43/hr.

12/13/22 Attend Vappie Investigation Status meeting with Captain Allen.  
Scott Huntsberry .40 hrs. \$ 200.00/hr.

12/15/22 Correspond with NOPD PIB regarding Vappie investigation.  
Jonathan S. Aronie .30 hrs. \$ 516.60/hr.

12/16/22 Prepare for and attend monitoring team retreat with Judge Morgan (2.0); meet with various stakeholders regarding police leadership (0.4); review letter from OIG regarding NOPD (0.2); correspond with PIB regarding Vappie investigation (0.2).  
Jonathan S. Aronie 2.80 hrs. \$ 516.59/hr.

12/19/22 Attend Vappie Investigation strategy and coordination meeting with NOPD PIB personnel, representative of IPM, Mr. Aronie, and Ms. Perry.  
Scott Huntsberry 1.00 hrs. \$ 200.00/hr.

12/19/22 Prepare for and meet with Judge Morgan regarding personnel, leadership, consultants, and related monitoring tasks (0.5); prepare for and meet with PIB regarding Vappie investigation (0.8); meet with IG regarding same (0.4); draft letter to Deputy Chief Sanchez regarding same (0.5); conduct research regarding obstruction of internal affairs investigation (0.4).  
Jonathan S. Aronie 2.60 hrs. \$ 516.59/hr.

12/20/22 Attend NOPD Vappie investigation update meeting with Sgt. Jones.  
Scott Huntsberry .40 hrs. \$ 200.00/hr.

12/21/22 Receive update from Ms. Perry regarding Vappie investigation.  
David L. Douglass .20 hrs. \$ 516.60/hr.

12/21/22 Review NOPD updates; confer with Mr. Douglas regarding status of Mr. Vappie investigation.  
Anne B. Perry .80 hrs. \$ 516.59/hr.

12/22/22 Review NOPD updates; confer with Agent Huntsberry regarding status of Mr. Vappie investigation.  
Anne B. Perry .20 hrs. \$ 516.60/hr.

12/22/22 Attend to outgoing Chief Ferguson's decision to reinstate Officer Vappie to the Mayor's executive security detail in the middle of multiple investigations into Vappie's behavior (3.0); prepare for and meet with Judge Morgan et al. regarding APR and related efforts to reduce officer burden to ensure NOPD compliance with Paragraph 12 (1.0); prepare for and attend Monitor Retreat with Judge Morgan (1.5); meet with community stakeholder regarding NOPD leadership change (0.5).

Jonathan S. Aronie 6.00 hrs. \$ 516.59/hr.

12/23/22 Conduct telephone call with Captain Allen concerning status of PIB's Vappie investigation.

Scott Huntsberry .40 hrs. \$ 200.00/hr.

12/23/22 Review NOPD updates; confer with Agent Huntsberry regarding status of Mr. Vappie investigation.

Anne B. Perry .70 hrs. \$ 516.59/hr.

12/27/22 Receive telephone call from Captain Allen concerning PIB's Vappie Investigation progress.

Scott Huntsberry .30 hrs. \$ 200.00/hr.

12/28/22 Attend update/status meeting with PIB personnel, IPM personnel, Mr. Aronie, and Ms. Perry concerning Vappie investigation.

Scott Huntsberry .80 hrs. \$ 200.00/hr.

12/28/22 Review interview questions and email; correspondence regarding same; prepare for and participate in weekly update call regarding Vappie investigation.

Anne B. Perry 1.60 hrs. \$ 516.59/hr.

12/28/22 Prepare for and meet with PIB regarding Vappie (1.0); meet with Agent Huntsberry regarding same (0.3); review PIB interview of executive protection officer (1.4); correspond with PIB regarding ongoing investigation (0.2); meet with community stakeholder regarding NOPD leadership (0.4); meet with NOPD deputy chief regarding ongoing compliance matters (0.4); meet with NOPD captain regarding ongoing compliance matters (0.4); review materials regarding recent officer accidental discharge (0.2); prepare additional interview questions for PIB investigators (0.4); correspond with Officer Allen regarding same (0.2); meet with Deputy Chief Sanchez regarding ongoing Vappie investigation (0.3).

Jonathan S. Aronie 5.30 hrs. \$ 516.59/hr.

12/29/22 Attend Zoom update and planning meeting with Captain Allen regarding PIB's Vappie investigation.

Scott Huntsberry .70 hrs. \$ 200.00/hr.

12/29/22 Prepare for and meet with Monitoring Team regarding 2023 monitoring plans (0.7); draft email to Chief Sanchez regarding additional recommendations for Vappie investigation (0.4); meet with key City leaders regarding national search for new Superintendent (0.4); meet with NOPD leaders regarding changes in NOPD leadership structure (0.5); review Vappie witness interviews (0.4).

Jonathan S. Aronie 2.40 hrs. \$ 516.59/hr.

12/30/22 Meet with City Council members regarding questions about national superintendent search (0.3); correspond with Chief Sanchez regarding Vappie investigation (0.3); prepare for and meet with Judge Morgan regarding new NOPD [leadership](#), Fausto's role at NOPD, and Vappie investigation (0.4); review and suggest revisions to correspondence with Chief Gernon (0.3).

Jonathan S. Aronie 1.30 hrs. \$ 516.59/hr.

12/31/22 Review PIB interviews regarding Vappie.

Jonathan S. Aronie 1.00 hrs. \$ 516.59/hr.

### **FOR PROFESSIONAL SERVICES THROUGH JANUARY 31, 2023**

01/03/23 Vappie investigation - Email correspondence and review materials.

Anne B. Perry .20 hrs. \$ 516.60/hr.

01/03/23 Review witness interview recordings regarding Vappie investigation (1.0); review materials regarding recruitment and retention (0.4); correspond with Judge Morgan regarding same (0.1); meet with Chief Sanchez regarding cancellation of weekly meeting (0.2); meet with member of Ethics Board regarding various NOPD compliance matters (0.7).

Jonathan S. Aronie 2.40 hrs. \$ 516.59/hr.

01/04/23 Prepare for and meet with Chief Woodfork and new leadership team (1.0); meet with City Council member regarding CD status (0.4); prepare for and meet with Chief Sanchez regarding reassignment of Vappie investigators (0.3); meet with IPM regarding same (0.4); meet with IG regarding same (0.4); meet with Mr. Douglass regarding meeting with Chief Woodfork (0.4); correspond with Chief Sanchez regarding Vappie (0.2); correspond with Chief Woodfork regarding Vappie (0.1); review Monlyn and Johnson witness interviews (2.0).

Jonathan S. Aronie 5.20 hrs. \$ 516.59/hr.

01/05/23 Conduct telephone call with Commander Allen concerning Vappie investigation status. Scott Huntsberry .30 hrs. \$ 215.00/hr.

01/05/23 Compose email to Mr. Aronie concerning upcoming subject interview of Officer Vappie by PIB.

Scott Huntsberry .20 hrs. \$ 215.00/hr.

01/05/23 Prepare for and meet with NAACP president regarding [NOPD leadership](#) (0.5); attend to Vappie investigation oversight (0.3); prepare questions for PIB regarding Vappie investigation (0.4).

Jonathan S. Aronie 1.20 hrs. \$ 516.59/hr.

01/06/23 Participate in conference call with investigative team regarding status and next steps in Vappie investigation.

Anne B. Perry 1.10 hrs. \$ 516.59/hr.

01/06/23 Prepare for and participate in video call with PIB regarding status of Vappie investigation (0.9); prepare for and meet with DOJ (0.5).

Jonathan S. Aronie 1.40 hrs. \$ 516.59/hr.

01/08/23 Develop list of interview questions for Jeffrey Vappie.

Scott Huntsberry .90 hrs. \$ 215.00/hr.

01/09/23 Attend meeting with Capt Allen and Lt. Jones at PIB Office concerning Vappie Investigation; observe Vappie interview at PIB office.

Scott Huntsberry 4.20 hrs. \$ 215.00/hr.

01/09/23 Email correspondence regarding status and next steps in Vappie investigation (0.3); confer with Mr. Aronie regarding updates and status of Vappie investigation (0.2).

Anne B. Perry .50 hrs. \$ 516.60/hr.

01/09/23 Prepare for and participate in meeting with Judge Morgan and NOPD interim superintendent (1.4); prepare for and participate in meeting with monitoring team in advance of meetings with parties (2.0); meet with Mr. Huntsberry regarding Vappie interview (0.3); telephone conference with Chief Gernon regarding PSAB OPSE audits (0.4); meet with Mr. Douglass regarding same (0.2); correspond with judge Morgan regarding same (0.4); correspond with Judge Morgan regarding Vappie investigation (0.2); meet with member of Business Council and NOLA Coalition regarding community feedback regarding NOPD chief search (0.7); draft email to PIB chief regarding detailing reassigned investigators back to PIB (0.4).

Jonathan S. Aronie 6.00 hrs. \$ 516.59/hr.

01/10/23 Prepare for and participate in (via Zoom) meeting with Monitoring Team and DOJ (2.5); prepare for and participate in weekly PIB briefing regarding Vappie investigation (0.7); meet with Mr. Huntsberry regarding same (0.3); prepare for and participate in meeting with Monitoring Team, DOJ, and NOPD (2.5).

Jonathan S. Aronie 6.00 hrs. \$ 516.59/hr.

01/12/23 Attend Vappie Investigation meeting with Judge Morgan.

Scott Huntsberry .90 hrs. \$ 215.00/hr.

01/12/23 Prepare for and participate in all-hands status conference (2.0); prepare for and participate in video conference regarding Vappie investigation and related matters (0.7); meet with Judge Morgan (0.5); meet with Mr. Huntsberry regarding Vappie investigation (0.3); correspond with DOJ regarding task forces (0.2); correspond with DOJ regarding Vappie investigation (0.2).

Jonathan S. Aronie 3.70 hrs. \$ 516.59/hr.

01/13/23 Correspond regarding vehicle pursuit issues (0.3); attend to monitoring of Vappie investigation (1.0).

Jonathan S. Aronie 1.30 hrs. \$ 516.59/hr.

01/15/23 Review Vappie interview.

Jonathan S. Aronie 3.00 hrs. \$ 516.59/hr.

01/16/23 Attend to Vappie investigation monitoring.  
Jonathan S. Aronie .40 hrs. \$ 516.60/hr.

01/17/23 Prepare for and participate in weekly Vappie investigation call.  
Jonathan S. Aronie 1.00 hrs. \$ 516.59/hr.

01/18/23 Email Ms. Perry requesting Vappie Investigation update.  
Scott Huntsberry .10 hrs. \$ 215.00/hr.

01/18/23 Prepare for and meet with Judge Morgan regarding follow-up to onsite meetings and path forward (1.0); review coverage of City Council meeting regarding potential implications on Consent Decree (0.4); correspond with Chief Woodfork regarding outside agencies policing during Mardi Gras (0.2); review media statements from Chief Woodfork regarding application of the Consent Decree to outside agencies (0.2); correspond with Judge Morgan and Mr. Douglass regarding same (0.2); review amended Vappie divorce filing regarding implications for PIB investigation (0.3); correspond with Chief Sanchez regarding same (0.1).  
Jonathan S. Aronie 2.40 hrs. \$ 516.59/hr.

01/19/23 Correspond with Chief Sanchez regarding movement of Vappie follow-up interview (0.2); meet with DOJ regarding Vappie investigation (0.4); review materials regarding recent uses of force (0.7).  
Jonathan S. Aronie 1.30 hrs. \$ 516.59/hr.

01/23/23 Attend Vappie investigation Status and Planning meeting with Mr. Aronie and Ms. Perry with members of NOPD PIB unit.  
Scott Huntsberry 1.50 hrs. \$ 215.00/hr.

01/23/23 Participate in meeting with PIB investigators (1.4); draft questions for follow-up interview with Mr. Vappie (0.5).  
Anne B. Perry 1.90 hrs. \$ 516.59/hr.

01/23/23 Prepare for and participate in video conference with NOPD and IPM regarding Vappie investigation (1.0); prepare for and meet with Judge Morgan and Mr. Douglass regarding annual report (1.4).  
Jonathan S. Aronie 2.40 hrs. \$ 516.59/hr.

01/23/23 Participate in Vappie investigation call with OCDM, NOPD, and IPM (1.4); draft potential questions for Vappie interview (0.3).  
Nikole R. Snyder 1.70 hrs. \$ 425.43/hr.

01/24/23 Finalize list of interview questions for Vappie's second interview and email same to Mr. Aronie and Ms. Perry for review.  
Scott Huntsberry .30 hrs. \$ 215.00/hr.

01/24/23 Review updates to questions for follow-up interview with Mr. Vappie (0.4); confer with Messrs. Aronie and Huntsberry regarding questions for follow-up interview with Mr. Vappie (0.2).

Anne B. Perry .60 hrs. \$ 516.58/hr.

01/24/23 Meet with Mr. Douglass regarding annual report (0.3); review proposed questions for Vappie investigation (0.4).

Jonathan S. Aronie .70 hrs. \$ 516.59/hr.

01/25/23 Email correspondence regarding questions for follow-up interview with Mr. Vappie.

Anne B. Perry .10 hrs. \$ 516.60/hr.

01/31/23 Attend Vappie Investigation Status/Coordination meeting with IPM & PIB representatives, Mr. Aronie, and Ms. Perry.

Scott Huntsberry .50 hrs. \$ 215.00/hr.

01/31/23 Prepare for and participate in meeting with Judge Morgan and parties regarding Recruitment (1.0); prepare for and participate in weekly Vappie Investigation check in meeting (0.7); attend to National Testing issue (0.3); prepare for and meet with DOJ regarding ongoing compliance matters (0.4).

Jonathan S. Aronie 2.40 hrs. \$ 516.59/hr.

### **FOR PROFESSIONAL SERVICES THROUGH FEBRUARY 28, 2023**

02/01/23 Review first interview of Mr. Vappie (2.9); confer with Mr. Aronie regarding same (0.1).

Anne B. Perry 3.00 hrs. \$ 516.59/hr.

02/02/23 Attend Vappie Investigation update meeting with Lt. Jones.

Scott Huntsberry .30 hrs. \$ 215.00/hr.

02/03/23 Prepare for and meet with NOPD officer regarding current state of NOPD compliance (0.4); correspond with Ms. Turner regarding 88-page consultant report (0.1); correspond with Judge Morgan and Mr. Douglass regarding same (0.2); correspond with Mr. Sanchez regarding postponement of Vappie interview (0.2); meet with Judge Morgan regarding ongoing compliance matters (0.3).

Jonathan S. Aronie 1.20 hrs. \$ 516.59/hr.

02/06/23 Attend Vappie Investigation Status Meeting with Mr. Aronie and Ms. Perry.

Scott Huntsberry 1.00 hrs. \$ 215.00/hr.

02/06/23 Participate in Vappie status meeting; review articles regarding same.

Anne B. Perry 1.60 hrs. \$ 516.59/hr.

02/06/23 Review and revise documents relating to NOPD compliance (0.8); prepare for and participate in weekly check-in regarding Vappie investigation (0.7); meet with IPM regarding same (0.4).

Jonathan S. Aronie 1.90 hrs. \$ 516.59/hr.

02/06/23 Update OCDM 2023 schedule (0.7); continue drafting Supervision Checklist (0.5); participate in Vappie investigation update call (0.4); review Consent Decree dashboard to get updates on current compliance status (0.5).

Nikole R. Snyder 2.10 hrs. \$ 425.43/hr.

02/08/23 Prepare for and participate in meeting with DOJ and NOPD regarding current state of compliance tracker (1.7); prepare for and participate in meeting with Judge Morgan regarding PIB (0.5); meet with IPM regarding PIB (0.3); meet with Chief Sanchez regarding City Attorney attending Vappie interview (0.2).

Jonathan S. Aronie 2.70 hrs. \$ 516.59/hr.

02/14/23 Attend Vappie Investigation meeting with Ms. Perry, PIB, and OIPM personnel. Scott Huntsberry 1.00 hrs. \$ 215.00/hr.

02/15/23 Correspond with Dean Landrieu regarding public meeting (0.1); draft letter to PIB regarding Vappie investigation immediate action items (1.5); review NOPD response to draft annual report; review nepotism policy (0.5); meet with Mr. Huntsberry regarding forthcoming PIB review based on recent renewed allegations regarding PIB deficiencies and misconduct (0.5).

Jonathan S. Aronie 2.60 hrs. \$ 516.59/hr.

02/17/23 Prepare for and meet with PSAB regarding new policies (0.8); finalize PIB Vappie recommendations and forward to NOPD (1.0); prepare for public meeting (0.4); prepare for virtual court hearing (0.3); prepare for and meet with Judge Morgan regarding PIB recommendations (0.7).

Jonathan S. Aronie 3.20 hrs. \$ 516.59/hr.

02/23/23 Prepare for and participate in check-in call with PIB regarding Vappie interview (0.6); finalize Annual Report (1.8); confirm incorporation of all relevant and accurate comments from NOPD (0.5); meet with Judge Morgan regarding various compliance matters (0.5); correspond with Judge Morgan regarding Request for Admission responses (0.3); correspond with Judge Morgan regarding police chief search process (0.1); telephone conference with DA's office regarding NOPD probable cause for gun arrests (0.4); review media coverage regarding same (0.3); review correspondence from City Attorney regarding PIB conflict (0.3).

Jonathan S. Aronie 4.80 hrs. \$ 516.59/hr.

### **FOR PROFESSIONAL SERVICES THROUGH MARCH 31, 2023**

03/06/23 Prepare for and participate in weekly call with PIB regarding Vappie investigation (0.5); correspond with Chief Bowman regarding overlapping CD paragraphs (0.2); review correspondence from Monitoring Team regarding ongoing compliance projects (0.4); Meet with Mr. Douglass regarding ongoing NOPD monitoring matters, including Consent Decree status tracker (0.4); review media coverage regarding NOPD IT system (0.3); correspond with DOJ regarding overlapping CD requirements (0.3); draft email to Chief Gernon regarding same (0.4); meet with Mr. Douglass and Judge Morgan regarding Mr. Pichardo (0.3); prepare correspondence to Chief Woodfork regarding

same (0.4); review and revise same (0.3); correspond with DOJ regarding PBL time requirements (0.2); correspond with Dean Landrieu regarding public proceeding (0.2). Jonathan S. Aronie 3.90 hrs. \$ 516.59/hr.

03/07/23 Prepare for and conduct Public Meeting (2.0); prepare outline regarding same (1.0); meet with Mr. Douglass regarding same (0.2); meet with Judge Morgan regarding same (0.2); correspond with City official regarding Vappie transfer issue (0.2); prepare for and meet with CM Moreno and Judge Morgan regarding NOPD compliance and related Consent Decree matters (0.8); participate in zoom rehearsal for public meeting (0.5); prepare for and meet with Chief Murphy and DOJ regarding NOPD PBL request (0.5); prepare for and meet with Judge Morgan regarding NOPD personnel matters, national chief search, supervision, and other Consent Decree matters (0.7); review questions from community members in advance of public meeting (0.2); draft letter to City Attorney regarding Mr. Pichardo documents (0.4); telephone conference with AUSA Carter regarding US Attorney's Office quarterly meetings and request regarding NOPD consultants (0.3); review IACP contract regarding national chief search (0.3); finalize email regarding overlapping Consent Decree obligations and correspond with Chief Gernon regarding same (0.3); correspond with Chief Gernon regarding GOA report (0.1); prepare for and meet with Monitoring Team regarding ongoing compliance projects (0.8).

Jonathan S. Aronie 8.50 hrs. \$ 516.59/hr.

03/13/23 Attend Vappie Investigation update meeting.  
Scott Huntsberry .80 hrs. \$ 215.00/hr.

03/13/23 Prepare for and participate in weekly Vappie tag up call (0.4); meet with IPM regarding meeting with citizen in possession of PIB recordings (0.4); attend to Academy compliance matters (0.3); correspond with VIP regarding Vappie investigation (0.2). Jonathan S. Aronie 1.30 hrs. \$ 516.59/hr.

03/14/23 Review notice regarding leak of interviews from Vappie investigation.  
Anne B. Perry .20 hrs. \$ 516.60/hr.

03/14/23 Correspond with PIB chief regarding NOPD failure to attend weekly roundup call (0.2); meet with member of Ethics Board regarding various compliance matters (0.4); correspond with PIB chief regarding Vappie recordings disclosure (0.2); correspond with Judge Morgan regarding same (0.2); correspond with PIB Chief regarding interview with Mayor (0.2).

Jonathan S. Aronie 1.20 hrs. \$ 516.59/hr.

03/15/23 Prepare for and participate in NOPD Tracker meeting (1.0); prepare for and participate in telephone conference with City Attorney and IPM regarding inadvertent release of Vappie investigation data (0.5); prepare for and meet with Dean Landrieu regarding USDC proceeding at Loyola (0.4); correspond with Mr. Allen regarding Vappie investigation (0.2); correspond with USAO and DOJ regarding Vappie release (0.3). Jonathan S. Aronie 2.40 hrs. \$ 516.59/hr.

03/16/23 Review reports of allegedly leaked Vappie investigation and follow-up regarding same.  
David L. Douglass 1.30 hrs. \$ 516.59/hr.

03/17/23 Review media report regarding leaked Vappie Investigation and follow-up with Judge Morgan regarding media report that the Monitor did not return a request for comment.  
David L. Douglass .80 hrs. \$ 516.59/hr.

03/20/23 Confer with Ms. Perry regarding status of Vappie investigation.  
David L. Douglass .30 hrs. \$ 516.60/hr.

03/20/23 Confer with Judge Morgan regarding Vappie investigation.  
David L. Douglass .20 hrs. \$ 516.60/hr.

03/20/23 Confer regarding weekly updates; review fallout from inadvertent release of investigation interviews; confer with Mr. Douglass regarding Vappie investigation and follow up needed for same.  
Anne B. Perry .80 hrs. \$ 516.59/hr.

03/27/23 Prepare for and attend Vappie video call with Chief Sanchez et al. (0.7); meet with IPM regarding same (0.2); meet with Ms. Perry regarding same (0.2); meet with Mr. Douglass regarding same (0.2); meet with Mr. Douglass regarding Loyola Proceeding (0.2); review Consent Decree and correspond with Chief Sanchez regarding NOPD delay in providing documents required by the Consent Decree (0.6); meet with Mr. Douglass regarding same (0.1); meet with Mr. Douglass regarding meeting with Chief Woodfork (0.1).  
Jonathan S. Aronie \$ 516.59/hr.

03/30/23 Review document regarding new approach to compliance tracker (0.4); correspond with Mr. Douglass regarding same (0.2); continue working on analysis of PIB investigation of Officer Vappie (1.5); correspond with Chief Woodfork regarding interview statement that she was unaware of NOPD's compliance efforts from April to August of 2022 (0.3).  
Jonathan S. Aronie 2.40 hrs. \$ 516.59/hr.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,  
Plaintiff,

V.

CITY OF NEW ORLEANS,  
Defendant.

CIVIL ACTION NO.  
2:12-CV-01924-SM-DPC

JUDGE SUSIE MORGAN

MAG. DONNA PHILLIPS  
CURRAULT

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**Affidavit of Captain Kendrick C. Allen**

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STATE OF LOUISIANA  
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary Public, duly qualified and commissioned in and for the aforementioned Parish and State, personally came and appeared Kendrick C. Allen who, after first being duly sworn, declared that:

1. I was the lead investigator on the Officer Vappie investigation for the NOPD's Public Integrity Bureau, called PIB. I have conducted many PIB investigations. Those investigations include many investigations of alleged violations of the 16:35-hour rule and other overtime and billing cases.

2. I was joined in the investigation by Lt. Lawrence Jones who has extensive experience conducting PIB investigations at NOPD.

3. We supplied all evidence related to this specific case to the monitoring team, including approximately two terabytes of data placed on a hard drive and taken out of the PIB offices. All interviews, audio and video, were turned over to the

Affidavit of Captain Kendrick C. Allen

monitoring team immediately after the interview was conducted. License Plate Reader data and city phone data was also given to the monitoring team.

4. As a result of the many meetings I had with the monitoring team, I was were very concerned that there was a specific outcome to the investigation that was wanted for political reasons by the monitoring team. The pressure applied by certain monitor team members made it clear that this case was about the Mayor of New Orleans to them. PIB has no authority to investigate the mayor of New Orleans. PIB investigated Officer Vappie, who is a member of the NOPD.

5. The Vappie case was the first case I am aware of in which weekly meetings were held with the monitoring team as the case was being investigated. While the narrative was that they were there as just monitors, the team did have a lot of input and even produced questions that were later asked to Officer Vappie and other members of the executive protection team.

6. Also, the monitoring team had real time access to all the evidence for this specific case. At the onset of this investigation, PIB was advised by the monitoring team to place a "firewall" between the Superintendent of Police, City Attorney, Mayor's officer and PIB. This request was specifically usual, being that the Superintendent of Police is PIB's boss and the City Attorney's office is who PIB uses for legal advice on cases.

7. In this specific case, the investigation started as possible 16:35 working hour violation. During the investigation two more violations were found by the investigators and we explained how we found them, and evidence was provided

Affidavit of Captain Kendrick C. Allen

to support the disposition of sustained. Other than the original charge in a formal disciplinary investigation, it would not be common to give details on charges that the investigators find have not proven or charged the accused officer of.

8. To be clear, at no time was Officer Vappie under investigation for payroll Fraud. If the investigators had any evidence of it, then we would have had to produce a criminal investigation and follow PIB procedure for a criminal investigation. Because there was no evidence of payroll fraud, the investigators did not speak to it in their report and recommendations.

9. Lt. Jones and I considered the claims of payroll fraud as pushed by the monitors from early on in the investigation. In several meetings between Chief Sanchez, Lt. Jones, and I, we reviewed the evidence and determined that we did not reach a threshold for a criminal fraud case.

10. We assessed the evidence on several occasions during this investigation and never found any evidence of misrepresentation or a suppression of truth made with the intent to obtain an unjust advantage. Nor did we find that Officer Vappie received any payment for HANO while on the time clock for NOPD. In essence we did not find any evidence that would from a legal standpoint make this a criminal investigation.

11. During our weekly meetings with the monitoring team, there were certain comments made that were biased in nature towards the investigation by members of monitoring team.

Affidavit of Captain Kendrick C. Allen

12. During the investigation of Officer Vappie, the monitoring team specifically suggested that I and Lt. Jones, the other investigator, sustain the findings against Officer Vappie regarding nepotism and just let the Civil Service commission overturn the sustain disposition on appeal.

13. It was my understanding that the nepotism charge would open the door for payroll fraud as it would mean Officer Vappie was not working while on duty.

14. These comments were, and still are, very concerning because it is my goal, and the goal of PIB to conduct unbiased and accurate investigations at all times. It goes against everything I understood about NOPD policy to sustain findings despite a lack of evidence.

15. After the investigation was complete, and before the Pre-Disciplinary Hearing, an email was provided by Officer Vappie that showed that all overtime for the executive protection team was authorized by the Superintendent of Police. This email was communicated by former Deputy Chief Paul M. Noel. This excused deviations from the 16:35-hour rule by Officer Vappie or any executive protection team member.

16. As an investigator I had to differentiate speculation and opinions from evidence. According to his interview, Officer Vappie did nothing more or less than what he does waiting for the mayor at city hall. No other witness contradicted this testimony. No physical evidence contradicted this testimony. While some may interpret the time Officer Vappie spent at the Mayor's apartment as odd for police

Affidavit of Captain Kendrick C. Allen

work, Officer Vappie's job description on that particular detail is to serve the protection needs of the Mayor or others at her discretion. The expert testimony revealed this can include things like watering plants that otherwise would not be considered performance of an officer's duties.

17. It was NOPD professionalism standards that Officer Vappie violated by allowing the performance of his duties to make NOPD and his protectee look bad. That charge was sustained by our investigation.

18. During the course of this investigation, we never found any direct or physical evidence to collaborate that a personal relationship exists between the Mayor and Officer Vappie. NOPD Policy Chapter 13.38 NEPOTISM AND EMPLOYMENT CONFLICTS states that a Personal Relationship Includes marriage, cohabitation, dating or any other romantic or intimate relationship beyond mere friendship.

19. This definition of a personal relationship is important because this is the definition that the New Orleans Police Department, Department of Justice, and the Consent Decree Monitoring team has agreed upon. Officer Vappie in his interview described the relationship between the two as professional and we found no direct or physical evidence to refute that statement. Because of these factors or non-factors there was no violation of NOPD Policy Chapter 13.38 NEPOTISM AND EMPLOYMENT CONFLICTS.

20. We also found that all travel and hotel accommodations for the executive protection team, including Officer Vappie, was arranged by the Mayor's

Affidavit of Captain Kendrick C. Allen

scheduler and the city's travel office. At no time did the executive protection team, or Officer Vappie, choose where they would sit on a plane or the hotel in which they would sleep.

21. As is the normal policy during PIB investigations, I informed Officer Vappie's Bureau Chief that Officer Vappie would be taken off of reassignment during the administrative investigation. Only the Bureau Chief or Superintendent direct where any individual officer is assigned. This was done pursuant to the normal and routine PIB process and nothing to do with Officer Vappie individually.

Further, the affiant says not.



Kendrick C. Allen

SWORN TO AND SUBSCRIBED  
BEFORE ME THE UNDERSIGNED  
NOTARY PUBLIC THIS 14<sup>th</sup> DAY OF  
JUNE 2023.



Notary Public

JONATHAN D. LEWIS  
NOTARY PUBLIC  
STATE OF LOUISIANA  
Bar No. 37207  
My Commission is for Life

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,  
Plaintiff,

V.

CITY OF NEW ORLEANS,  
Defendant.

CIVIL ACTION NO.  
2:12-CV-01924-SM-DPC

JUDGE SUSIE MORGAN

MAG. DONNA PHILLIPS  
CURRAULT

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Affidavit of Michelle M. Woodfork

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STATE OF LOUISIANA  
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary Public, duly qualified and commissioned in and for the aforementioned Parish and State, personally came and appeared Michelle M. Woodfork, who, after first being duly sworn, declared that:

1. I am the Superintendent of Police for the New Orleans Police Department.
2. I have reviewed the video of Jonathan Aronie conducting a public meeting by zoom located at <https://www.sheppardmullin.com/multimedia-464> at the 1:12:52 – 1:13:47 mark.
3. I have also seen Mr. Aronie’s letter to Keith Sanchez of February 17, 2023, which is included as Attachment C to the Monitor’s June 5, 2023, letter to Judge Morgan. Mr. Aronie states that, “Outgoing Superintendent Ferguson, however, hours before his retirement, directed the return of Officer Vappie to the Mayor’s security detail. While this order, fortunately, was reversed by a deputy

chief and the City Attorney, the order itself created at the very least the appearance of interference in a PIB investigation.”

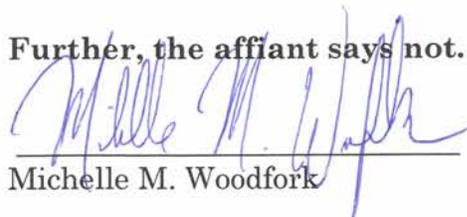
4. There was no order to reassign Officer Vappie to Executive Protection during my tenure. I am not aware of an order preceding my tenure.

5. To the contrary, former Superintendent Ferguson informed me just prior to his retirement that, per NOPD policy, Officer Vappie needed to be reassigned and that he should not be reassigned to Executive Protection.

6. I never planned or instructed that Officer Vappie be reassigned to Executive Protection.

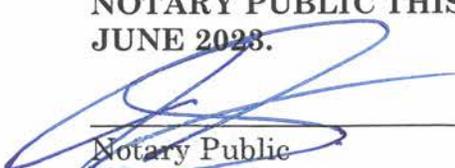
7. I am unaware of where Mr. Aronie got this misinformation or why he stated it as a fact to the public and the Court during a pending disciplinary investigation of Officer Vappie.

**Further, the affiant says not.**



Michelle M. Woodfork

**SWORN TO AND SUBSCRIBED  
BEFORE ME THE UNDERSIGNED  
NOTARY PUBLIC THIS 14<sup>th</sup> DAY OF  
JUNE 2023.**



Notary Public

**JONATHAN D. LEWIS  
NOTARY PUBLIC  
STATE OF LOUISIANA  
Bar No. 37207  
My Commission is for Life**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,  
Plaintiff,

V.

CITY OF NEW ORLEANS,  
Defendant.

CIVIL ACTION NO.  
2:12-CV-01924-SM-DPC

JUDGE SUSIE MORGAN

MAG. DONNA PHILLIPS  
CURRAULT

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**Affidavit of Shaun D. Ferguson**

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STATE OF LOUISIANA  
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary Public, duly qualified and commissioned in and for the aforementioned Parish and State, personally came and appeared Shaun D. Ferguson who, after first being duly sworn, declared that:

1. I served with the NOPD for 24 years. I was the Superintendent of the New Orleans Police Department from January of 2019 until December of 2022, when I retired.
2. I have reviewed the video of Jonathan Aronie conducting a public meeting by zoom located at <https://www.sheppardmullin.com/multimedia-464> at the 1:12:52 – 1:13:47 mark. I have also seen Mr. Aronie's letter to Keith Sanchez of February 17, 2023, which is included as Attachment A. Mr. Aronie alleges I undertook to reassign Officer Vappie to the Mayor's security team during the PIB investigation of his work on that same detail.
3. These public statements are untrue.

4. In December of 2022 Officer Vappie needed to be reassigned pursuant to the NOPD standing policy that officers in administrative disciplinary proceedings be reassigned back to regular duty.

5. I called the FBI and confirmed there was no open investigation of Officer Vappie.

6. I confirmed with PIB that its investigation was proceeding as administrative and not criminal.

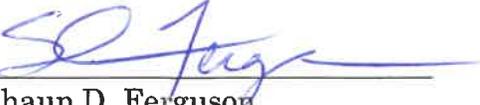
7. I was not instructed or encouraged to reassign Mr. Vappie to the Mayor's executive protection team by anyone. I never ordered that Officer Vappie be reassigned to Executive Protection during the PIB investigation, nor was I going to do that. Mr. Aronie's public statements to the contrary are untrue.

8. Officer Vappie needed to be reassigned, but he was not going back to the Mayor's security detail. I informed my successor, Interim Superintendent Woodfork of this issue and made clear that my suggestion was that he not be reassigned to Executive Protection, although the final decision on personnel is up to the Superintendent.

9. I did not discuss this issue with Interim Superintendent Woodfork after my retirement.

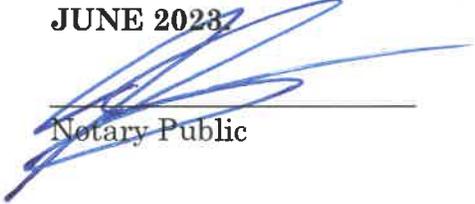
[continues on following page]

**Further, the affiant says not.**



Shaun D. Ferguson

**SWORN TO AND SUBSCRIBED  
BEFORE ME THE UNDERSIGNED  
NOTARY PUBLIC THIS 14<sup>th</sup> DAY OF  
JUNE 2023.**



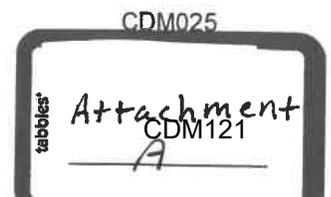
Notary Public

JONATHAN D. LEWIS  
NOTARY PUBLIC  
STATE OF LOUISIANA  
Bar No. 37207  
My Commission is for Life



**Attachment C**

**Monitoring Team's 2/17/23 Immediate Action Notice to PIB**





February 17, 2023

Dear Mr. Sanchez,

In early November 2022, local TV station Fox 8 began a series of stories involving the Mayor's security detail. The story raised a number of questions regarding the operation of that detail as well as the actions of a particular member, Officer Jeffrey Vappie. On November 10, the New Orleans City Council requested that the Office of the Consent Decree Monitor and the Office of the Independent Monitor conduct an independent investigation of the matter, citing "significant concerns about the apparent conflict of interest with the New Orleans Police Department being allowed to, again, investigate serious allegations involving Mayor Cantrell."

The Monitoring Team responded to the City Council on November 11 explaining that it lacked the authority to conduct investigations, but that it would monitor PIB's investigation of Officer Vappie closely to ensure it was effective, efficient, and without bias. As we understand it, PIB opened an investigation into the allegations in late November or early December 2022.

As you know, over the course of PIB's investigation, the Monitoring Team has met with your investigators, Captain Kendrick Allen and Lieutenant Lawrence Jones, on a weekly basis. While we have not been involved in the day-to-day affairs of the investigation, your team has been open with us regarding their strategy and the status of their activities. We appreciate the cooperation your team has shown us throughout this matter.

While we know the Vappie investigation has not yet concluded, the Monitoring Team has become aware of several issues that we believe the NOPD should address right away. Rather than waiting until the conclusion of PIB's investigation, we are bringing these matters to your attention at this time to ensure NOPD considers taking immediate steps to correct the concerns we identified. Importantly, we offer no opinions or recommendations regarding the Vappie investigation itself at this time. Our opinions and recommendations relate only to larger policy/process issues that are unrelated to the forthcoming substantive findings of the Vappie PIB investigation team.

Should you have any questions regarding these recommendations, do not hesitate to reach out to us.

Thank you for your continued cooperation in this matter.

Respectfully,

Jonathan Aronie  
Consent Decree Monitor

CDM026

CDM122



### Interim Recommendations Based On Vappie Investigation

1. **Supervision.** As you are aware, the NOPD officers assigned to the Executive Protection detail receive little if any oversight from NOPD supervisors. This appears to have been the case for years. The members of the detail indicated their belief that their only supervisor was the Mayor herself. While the Mayor seemingly is responsible for assignments and schedules, there is no indication the Mayor played any role in supervision beyond that. ***NOPD should take immediate action to ensure the members of the Executive Protection detail receive the “close and effective supervision” required by the Consent Decree.***
2. **Policy.** Currently, no written policy guides the operation of the Executive Protection detail or the actions of the officers assigned to that detail. Likewise, no written document (policy or otherwise) sets out the standards and protocols with which members of the Executive Protection team are expected to comply. The lack of written guidance almost certainly will impact PIB’s investigation of Officer Vappie. ***NOPD should take immediate action to develop clear policies and procedures governing the operation of Executive Protection detail and the officers assigned to that detail.*** As required by the Consent Decree, such policies and procedures should “define terms clearly, comply with applicable law and the requirements of the Consent Decree, and comport with best practices.”
3. **Performance Evaluations.** The Consent Decree requires that “officers who police effectively and ethically are recognized through the performance evaluation process, and that officers who lead effectively and ethically are identified and receive appropriate consideration for promotion” and that “poor performance or policing that otherwise undermines public safety and community trust is reflected in officer evaluations so that NOPD can identify and effectively respond.” Without any meaningful NOPD supervision, it is unclear to us who, if anyone, evaluates the performance of members of the Executive Protection detail. ***NOPD should take immediate action to ensure members of the Executive Protection detail are evaluated in the same manner as other NOPD officers.***
4. **Efficiency.** We understand that members of the Executive Protection team get paid for a full shift whether or not the Mayor is in town. It is unclear, however, what work they are performing while the Mayor is not in town beyond occasional administrative tasks like cleaning the Mayor’s car and catching up on Departmental paperwork. At a time when NOPD has vocally complained about its lack of officers — and used the lack of officers to explain its inability to comply with various Consent Decree obligations — it would seem to be quite inefficient to have multiple days when 1-2 additional officers are available to perform patrol work, but they are not performing patrol work. ***NOPD should consider identifying meaningful tasks members of the Executive Protection team can perform while the Mayor is out of town to contribute to the Department’s well-publicized efforts to combat its lack of personnel.***

CDM027

CDM123



5. **Legal Conflicts.** The City Attorney provides “legal advice to the Mayor, the City Council, and other city offices, departments, and boards,” including the NOPD. While this joint representation normally creates no conflict, when the Mayor is or may be a material witness in a PIB investigation, the risk of a real or perceived conflict is significant. Indeed, this occurred in the Vappie investigation when the City Attorney visited PIB to monitor the second interview of Officer Vappie. Situations like this can create the perception that City Hall is attempting to intimidate interviewees or investigators, or otherwise interfere in a PIB investigation. Such perception may be avoided when the Mayor is or may be a witness by (i) the imposition of a formal wall to block the exchange of information between the Mayor’s office/City Attorney’s Office and PIB and (ii) engaging outside counsel to support PIB throughout the investigation. The Office of the Independent Monitor made this suggestion in a thoughtful public letter to the City Council on February 9, 2023. The Monitoring Team agrees with the IPM’s concerns. ***NOPD should consider engaging outside counsel to advise PIB on matters when the City Attorney’s representation of the City, Mayor’s Office, and PIB could create a real or apparent conflict of interest.***
  
6. **Reassignment Of Officers Under Investigation.** We understand, pursuant to Policy 13.1, the Superintendent has the discretion to administratively reassign officers during certain PIB investigations. In this case, Officer Vappie had been moved out of the Executive Protection detail pending the PIB investigation, which was a sensible decision considering the nature of the allegations, the public profile of the investigation, and the likelihood that the Mayor would be a material witness in the investigation. Outgoing Superintendent Ferguson, however, hours before his retirement, directed the return of Officer Vappie to the Mayor’s security detail. While this order, fortunately, was reversed by a deputy chief and the City Attorney, the order itself created at the very least the appearance of interference in a PIB investigation. ***NOPD should consider revising its policy to prohibit officers reassigned due to a PIB investigation from being assigned back to their units until the conclusion of the PIB investigation without the express approval of the PIB Deputy Chief.***
  
7. **PIB Investigators.** During the course of the PIB investigation, the two investigators assigned to the Vappie investigation were moved out of PIB. The lead investigator, Lawrence Jones, was promoted to lieutenant and moved to the district patrol. The PIB Captain, Kendrick Allen, was assigned to command a district. Without at all suggesting these two promotions were not warranted, NOPD should have considered detailing both individuals back to PIB until the completion of the Vappie investigation. While Superintendent Woodfork assured the Monitoring Team both officers would be given adequate time to complete their investigation, as a practical matter, this is difficult to accomplish in practice. PIB readily concedes it lacks adequate personnel to perform aspects of its investigation in the best of times (e.g., reviewing videos and documents). Adding a full time job to Allen’s and Jones’s schedules on top of their PIB jobs virtually guarantees both jobs will be compromised to some extent. ***NOPD should consider adopting a policy of detailing promoted officers back to PIB for limited timeframes when necessary to complete significant pending investigations.***

CDM028

CDM124



8. **Initial Investigation Letters.** At the outset of the investigation, PIB alerted Officer Vappie it had opened an administrative investigation initiated by a public complaint. The letter advised Officer Vappie that PIB would focus on an alleged violation of the 16.35 hour rule *as well as other matters*. PIB was aware at that time, however, of several other potential violations by Officer Vappie as a result of the Fox 8 coverage, including potential violations of NOPD's professionalism, conflict, and time charging rules. While PIB represented to the Monitoring Team that the general "other matters" language was all that was required to put Officer Vappie on notice of the allegations against him, the limited wording of the initial letter created avoidable problems during the Vappie interview. ***NOPD should consider the pros and cons of including a more complete description of the conduct under investigation in its initial letters to investigation subjects.***

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

**UNITED STATES OF AMERICA,  
Plaintiff,**

**V.**

**CITY OF NEW ORLEANS,  
Defendant.**

**CIVIL ACTION NO.  
2:12-CV-01924-SM-DPC**

**JUDGE SUSIE MORGAN**

**MAG. DONNA PHILLIPS  
CURRAULT**

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**Affidavit of Donesia D. Turner**

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**STATE OF LOUISIANA  
PARISH OF ORLEANS**

**BEFORE ME**, the undersigned Notary Public, duly qualified and commissioned in and for the aforementioned Parish and State, personally came and appeared Donesia D. Turner who, after first being duly sworn, declared that:

1. I am the City Attorney for the City of New Orleans.
2. Jonathan Aronie, the court-appointed Consent Decree Monitor, wrote to Keith Sanchez on February 17, 2023. The letter is included as Attachment C to the Monitor's June 5, 2023, letter to Judge Morgan regarding the investigation of Officer Jeffrey Vappie by the NOPD Public Integrity Bureau.
3. At the third page of the letter, at paragraph 5, Mr. Aronie reports multiple facts that directly relate to my role as City Attorney for the City of New Orleans.
4. Mr. Aronie states that, "Outgoing Superintendent Ferguson, however, hours before his retirement, directed the return of Officer Vappie to the Mayor's security detail. While this order, fortunately, was reversed by a deputy chief and the

City Attorney, the order itself created at the very least the appearance of interference in a PIB investigation.” This public statement mirrors a public statement made Mr. Aronie during public meetings earlier this year which caused news reports to repeat this allegation.

5. I am unaware of any order, formal or informal, by NOPD, directing that Officer Vappie be reassigned to Executive Protection.

6. As such, there was no such order for me to “reverse”. To this day I have not seen any evidence such an order, instruction, or plan by former Superintendent Ferguson existed.

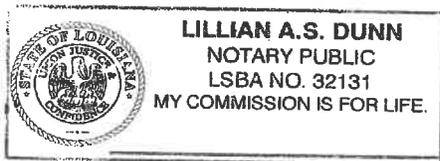
7. I am aware Officer Vappie needed to be reassigned according to NOPD policy, but to my knowledge there was never any effort, plan or instruction to return him to Executive Protection.

**Further, the affiant says not.**

  
DONESIA D. TURNER

**SWORN TO AND SUBSCRIBED  
BEFORE ME THE UNDERSIGNED  
NOTARY PUBLIC THIS 9<sup>th</sup> DAY OF  
JUNE 2023.**

  
NOTARY PUBLIC



**DISCIPLINARY HEARING DISPOSITION**

Superintendent

Bureau Commander

Bureau Commander's Committee

Commander

To: Superintendent Michelle Woodfork

Date: 05/25/2023

From: Captain Preston Bax

PIB Control #: 2022-0513-R

On Thursday, May 25, 2023, a Disciplinary Hearing was held on the above referenced PIB case 2022-0513-R. As the Hearing Officer, I reviewed the charge(s) against SPO Jeffery Vappie, Employee # 008913, assigned to the ISB/SID. After consideration of the evidence presented, it is my opinion that the charge(s) should be classified as follows:

Check  if additional sustained violation(s) (ASV)

<u>RULE NUMBER &amp; NAME</u>	<u>A</u>	<u>DISPOSITION</u>
Rule 4: Performance of Duty; Paragraph 2: Instructions from an authoritative source; to wit NOPD Chapter 22.08 Police Secondary Employment; Paragraph 32	<input type="checkbox"/>	EXONERATED
Rule 3: Professional Conduct; Paragraph 1: Professionalism	<input type="checkbox"/>	SUSTAINED
Rule 4: Performance of Duty; Paragraph 3: Devoting Entire Time to Duty	<input type="checkbox"/>	SUSTAINED
Rule IX, Section 1, Paragraph 1.1, of the city Civil Service Rule relative to Maintaining Standards of Service	<input type="checkbox"/>	SUSTAINED

As a result, it is my recommendation that SPO Jeffery Vappie should be disciplined as follows:

<u>RULE NUMBER &amp; NAME</u>	<u>A</u>	<u>PENALTY/CATEGORY</u>
Rule 4: Performance of Duty; Paragraph 2: Instructions from an authoritative source; to wit NOPD Chapter 22.08 Police Secondary Employment; Paragraph 32	<input type="checkbox"/>	No Penalty 105 Attached
Rule 3: Professional Conduct; Paragraph 1: Professionalism	<input type="checkbox"/>	Level A /1 <sup>st</sup> Offense O-R-1 Letter of Reprimand
Rule 4: Performance of Duty; Paragraph 3: Devoting Entire Time to Duty		Level A /1 <sup>st</sup> Offense O-R-1 Letter of Reprimand
Rule IX, Section 1, Paragraph 1.1, of the city Civil Service Rule relative to Maintaining Standards of Service		NO PENALTY

2022-0513-R / Jeffery Vappie

**Comments (optional):**

*If an additional sustained violation(s) is recommended, a 105 articulating how the additional violation(s) was determined shall be attached, and made a part of this form.*

*If the recommended penalty deviates from the presumptive penalty, a 105 articulating the reasons for the deviation shall be attached, and made a part of this form.*

**Signature of Hearing Officer:**

  
\_\_\_\_\_  
Captain Preston Bax

Date: 5/25/23

  
\_\_\_\_\_  
~~Concur / Do Not Concur~~

Date: 5-25-2023

**Captain Precious Banks**

  
\_\_\_\_\_  
Concur / ~~Do Not Concur~~

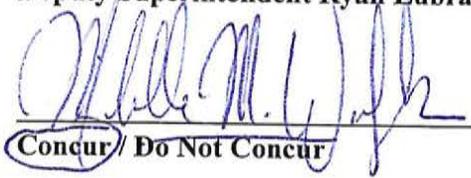
Date: 5-25-2023

**Captain Michael Glasser**

  
\_\_\_\_\_  
~~Concur / Do Not Concur~~

Date: 6-8-23

**Deputy Superintendent Ryan Lubrano**

  
\_\_\_\_\_  
~~Concur / Do Not Concur~~

Date: 6/14/2023

**Michelle Woodfork  
Superintendent of Police**

*INSTRUCTIONS:* The Hearing Officer shall be responsible for forwarding to PIB, via the appropriate chain of command, both the original Hearing Notification and the original Hearing Disposition forms, along with the entire investigative report.

Original – PIB investigative report file

Redacted  
Redacted  
Redacted

---

**From:** Michelle M. Woodfork <mmwoodfork@nola.gov>

**Sent:** Wednesday, January 11, 2023 10:41 PM

**To:** Jonathan Aronie <JAronie@sheppardmullin.com>

**Cc:** Hans Ganthier <hganthier@nola.gov>; Keith A. Sanchez <kasanchez@nola.gov>; Donesia D. Turner <Donesia.Turner@nola.gov>; Stephanie M. Landry <stmlandry@nola.gov>; Raven Batiste <rbatiste@nola.gov>

**Subject:** Re: OCDM re PIB

Good evening,

Per our conversation, Lt. Lawrence Jones and Captain Kendrick Allen will be afforded ample time to complete the aforementioned investigation. I know and I am confident the investigation will be completed thoroughly and timely. Mr. Aronie, going forward, please direct any request or suggestions concerning personnel changes or the detail of my command staff or essential personnel, directly to me. Chief Deputy Ganthier nor any of the deputy chiefs have the authority to make those decisions. I would hope that you understand and will respect my request. As I stated previously, both Captain Allen and Lt. Jones will be afforded an ample amount of time and resources to thoroughly and efficiently complete the investigation into

Officer Vappie. I along with Deputy Chief Sanchez are personally monitoring their progress and if an issue(s) arise that I deem to be a hindrance to either investigator, I will immediately intervene to ensure the investigation is not impacted. If you have any questions or further concerns, please feel free to contact me directly.

**Michelle M. Woodfork**  
**Superintendent of Police**  
**New Orleans Police Department**  
715 S. Broad St.  
New Orleans, La. 70119  
**504-658-5757 (office)**  
**504-252-8269 (cellular)**  
<https://joinnopd.org/home/>

---

**From:** Michelle M. Woodfork <[mmwoodfork@nola.gov](mailto:mmwoodfork@nola.gov)>  
**Sent:** Wednesday, January 11, 2023 10:08 PM  
**To:** Hans Ganthier <[hganthier@nola.gov](mailto:hganthier@nola.gov)>  
**Subject:** Re: OCDM re PIB

Thank you, Chief Ganthier.

**Michelle M. Woodfork**  
**Superintendent of Police**  
**New Orleans Police Department**  
715 S. Broad St.  
New Orleans, La. 70119  
**504-658-5757 (office)**  
**504-252-8269 (cellular)**  
<https://joinnopd.org/home/>

---

**From:** Hans Ganthier <[hganthier@nola.gov](mailto:hganthier@nola.gov)>  
**Sent:** Wednesday, January 11, 2023 10:05 PM  
**To:** Michelle M. Woodfork <[mmwoodfork@nola.gov](mailto:mmwoodfork@nola.gov)>  
**Subject:** Fwd: OCDM re PIB

Chief.

You were not included in this e Ali from Jonathan Aronie. See below.

Hans Ganthier  
Chief Deputy Superintendent  
Field Operations Bureau  
New Orleans Police Department

Sent from my Verizon, Samsung Galaxy smartphone  
Get [Outlook for Android](#)

---

**From:** Jonathan Aronie <[JAronie@sheppardmullin.com](mailto:JAronie@sheppardmullin.com)>  
**Sent:** Tuesday, January 10, 2023 11:35:55 AM  
**To:** Hans Ganthier <[hganthier@nola.gov](mailto:hganthier@nola.gov)>  
**Cc:** Keith A. Sanchez <[kasanchez@nola.gov](mailto:kasanchez@nola.gov)>; Stella Cziment <[scziment@nolaipm.gov](mailto:scziment@nolaipm.gov)>; Anne Perry <[APerry@sheppardmullin.com](mailto:APerry@sheppardmullin.com)>  
**Subject:** OCDM re PIB

**EMAIL FROM EXTERNAL SENDER: DO NOT click links, or open attachments, if sender is unknown, or the message seems suspicious in any way. DO NOT provide your user ID or password. If you believe that this is a phishing attempt, use the reporting tool in your Outlook to send this message to Security.**

Hans,

Thank you for the email you sent regarding Kendrick and Lawrence having adequate time to complete their investigation of Jeffrey Vappie despite their recent reassignments. Despite your email, I continue to believe they will not, as a practical matter, have the time they need. Indeed, they both already are being pulled away sporadically to attend to their District duties even during our weekly check-in calls. Further, having Kendrick, Lawrence, and Keith in physically different locations is likely to harm the efficiency of the investigation.

In addition to the actual burdens and inefficiencies the reassignments will cause, I fear the reassignments also will create a significant negative *perception* that could tarnish the PIB investigation.

While I can't and don't make personnel decisions for the Department, I recommend you detail Lawrence back to PIB until the conclusion of the Vappie investigation. Frankly, I would love to see you detail both Lawrence and Kendrick back to PIB until the conclusion of the investigation, but I understand it will be more difficult to do that with Kendrick than with Lawrence.

To be clear, I am NOT requesting a permanent reassignment. I'm thrilled Lawrence and Kendrick

have been given this opportunity to move up within the Department. My request only is for a short-term detail back to PIB for the purpose of completing the Vappie investigation.

I'm happy to discuss this in more detail by phone if helpful. I'm tied up in OCDM/ DOJ/ NOPD meetings today, but will do my best to make time tomorrow.

I look forward to your thoughts.

-Jonathan

Jonathan Aronie  
Consent Decree Monitor  
Sheppard Mullin LLP  
Washington, DC  
202.747.1902 (w)  
202.302.4855 (c)

[Jaronie@sheppardmullin.com](mailto:Jaronie@sheppardmullin.com)

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

**DEPARTMENT OF POLICE  
INTEROFFICE CORRESPONDENCE**

**TO:** Michelle M. Woodfork **DATE:** 05/30/2023  
Superintendent of Police

**FROM:** Captain Precious M. Banks  
Public Integrity Bureau

**SUBJECT:** Cover Letter for PIB CTN 2022-0513-R

Superintendent Michelle M. Woodfork,

The attached formal disciplinary investigation has a formal recommended disposition for Senior Police Officer Jeffery Vappie as “**Sustained**” for the violation of **Rule 4: Performance of Duty; Paragraph 2: Instructions from an Authoritative Source; to wit NOPD Chapter 22.08 Police Secondary Employment; Paragraph 32 which states:** *No member, including Reserve officers, shall work more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period. These hours are cumulative and include normal scheduled work hours, overtime, court time, off-duty police secondary employment, or outside employment. Members must have 7 hours and 25 minutes of unpaid, off-duty time within every 24-hour period.* After reviewing the attached Formal Disciplinary Investigation and the associated facts and circumstances, the panel did not concur with the Investigator’s recommended disposition.

**Senior Police Officer Jeffery Vappie**

**In the investigation under 2022-0513-R, the investigators, Captain Kendrick Allen and Lieutenant Lawrence Jones, made the following conclusion:**

Based upon the preponderance of evidence, SPO Jeffery Vappie was accused of working more than 16 hours and 35 minutes within a 24-hour period, when on several occasions while assigned to the Executive Protection Section he violated this NOPD Chapter 22.08 Police Secondary Employment. On Wednesday, November 9, 2022, Lieutenant Jones reviewed a media request from WVUE a local news station indicating that SPO Vappie may have violated NOPD policy. The request indicated SPO Vappie may have violated policy when on several occasions while assigned to the City of New Orleans Mayor Executive Protection team he worked more than 16 Hours and 35 minutes within a 24-hour period. The request also indicated SPO Vappie may have neglected his duty when he attended a Board meeting with the City of New Orleans Housing Authority while on duty. The request also indicated that SPO Vappie may have spent numerous hours with his Protectee at the Upper Pontalba Apartments both on duty and off duty.

During the investigation, Capt. Allen and Lt. Jones discovered based on all the evidence available to them on September 28, 2022, SPO Vappie worked for 18 hours within a 24-hour period, while assigned to the Consultant Chief Fausto B. Pichardo and not his normal Executive Protection assignment. The investigators documented during SPO Vappie’s administrative statement regarding the 16:35 overage, SPO Vappie stated several times that “*It’s always been that way*” when dealing with overtime. However, the investigators observed when Sergeant Wondell Smith was embedded in the executive protection team, he would move the team’s time to adjust for the Protectee’s schedule, if a late event occurred. The investigators reviewed SPO Vappie’s ADP timecard for the week of September 26, 2022, to October 8, 2022, noting on September 28,

2022, it appeared that SPO Vappie worked for 18 hours. The timecard remarks indicated SPO Vappie was assigned to the Consultant Chief Fausto B. Pichardo and not his normal Executive Protection assignment.

**Assessment**

After reviewing **NOPD Chapter 22.08, NOPD Chapter 13.15 Overtime Payment Request**, the completed investigation including its exhibits, and presented evidence at the Disciplinary Hearing held on May 24, 2023, this panel recommends Senior Police Officer Vappie be **EXONERATED on Rule 4: Performance of Duty; Paragraph 2: Instructions from an Authoritative Source; to wit NOPD Chapter 22.08 Police Secondary Employment; Paragraph 32.**

The panel notes the inherent challenge of having two policies that appear to address secondary employment and overtime. The panel made an in-depth analysis to reveal that **NOPD Chapter 22.08 Police Secondary Employment; Paragraph 32** mirrors, in pertinent parts, the language of **NOPD Chapter 13.15 Overtime Payment Requests; Paragraph 6** which states *“No member, including Reserve officers, shall work more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period. These hours are cumulative and include normal scheduled work hours, overtime, court time, off-duty police secondary employment, or outside employment...”* The panel further considered the language of **NOPD Chapter 22.08 Police Secondary Employment** which defines Secondary Employment as *“the off-duty employment, for compensation, of any NOPD member by another individual, business, establishment, or organization where the member is performing the duties of a police officer or a function of the police department.”*

In its review, the panel determined that SPO Vappie did work beyond 16 hours and 35 minutes. At first glance, SPO Vappie working 18 hours appeared to be a violation as described in **NOPD Chapter 13.15 Overtime Payment Request** (which could have been the most appropriate violation to consider at the inception of the investigation). However, as a member of the NOPD Executive Protection overtime was expressly authorized in an email authored by former NOPD Deputy Chief Paul Noel on February 23, 2021. The email advised that *“per the Superintendent the Mayor's Security Detail can work overtime as necessary”* and it was disseminated to Capt. Joseph Waguespack Sr., Sgt. Shumeca Chadwick, Lt. Christopher Johnson, and Sgt. Tokishiba Lane. The referenced email will be attached to this correspondence.

This panel finds that there was no evidence presented or factually determined to support SPO Vappie participated in secondary employment as defined in **NOPD Chapter 22.08 Police Secondary Employment**. SPO Vappie worked for 18 hours within a 24-hour period, while he was assigned to work with NOPD Executive Protection. He was functioning in his normal and routinely assigned role in which he was permitted to work overtime.

**DISPOSITION RECOMMENDATIONS**

**SPO Jeffery Vappie**

**Rule 4: Performance of Duty; Paragraph 2: Instructions from an Authoritative Source; to wit NOPD Chapter 22.08 Police Secondary Employment; Paragraph 32.....EXONERATED**

PIB CTN# 2022-0513-R

Page 3 of 3

Respectfully Submitted,

---

Captain Precious M. Banks  
Public Integrity Bureau

**CONCUR/DO NOT CONCUR**

---

Captain Preston Bax Jr. /Date

**CONCUR/DO NOT CONCUR**

---

Captain Michael Glasser/Date

**CONCUR/DO NOT CONCUR**

---

Deputy Chief Keith Sanchez/Date

**CONCUR/DO NOT CONCUR**

---

Superintendent Michelle Woodfork/Date

ADMINISTRATIVE REASSIGNMENT NOTIFICATION

DATE: November 9, 2022 P.I. B. CONTROL NO.: CTN 2022-0513-R

TO: Senior Police Officer Jeffery Vappie; Employee ID# 08913; I.S.B. / Mayor Security  
(Rank, Name, & S. S. # OF REASSIGNED EMPLOYEE)

FROM: Deputy Superintendent Keith A. Sanchez - Public Integrity Bureau  
(Rank & Name of Issuing Authority)

SUBJECT: Administrative Reassignment

from I.S.B / Mayor Security to F.O.B.

You are hereby notified that as of 2 : 00 am/pm, on 11 / 09 / 2022 you have been  
(Time) (Date)  
placed on Administrative Reassignment Status.

This action has been taken pending a departmental inquiry into the below listed alleged violation of departmental regulation, violation of law, or administrative reason. (State date, time, and location of alleged incident. Department regulations, statutes, or ordinances must be quoted by title, article, section, paragraph, and sub-paragraph as applicable.)

Officer Vappie you were identified to be involved in an Administrative investigation by the  
Public Integrity Bureau. You are being placed on Administrative Re-Assignment pending  
the conclusion of the investigation.

In accordance with the following complaint, it has been determined that you may have violated  
Rule 4 Performance of Duty; Paragraph 4 Neglect of Duty C6 Failing to comply wit instructions,  
oral or written, from any authoritative source to wit: N.O.P.D. Chapter 22.08 Police Secondary  
Employment Paragraph 32 which states: No member, including Reserve officers, shall work more than  
more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period.

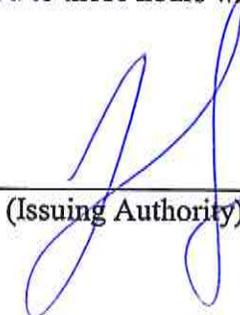
You are directed to report to F.O.B. / 715 S. Broad Street  
(assignment)

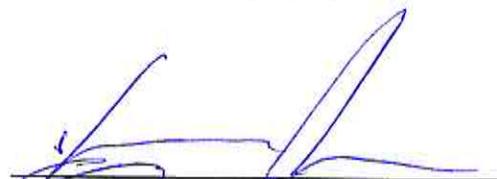
on 11 / 10 / 2022 at 7:25 : A.M. in plain clothes.  
(Date) (Time)

Your privilege of working outside paid details is hereby suspended.

Your police commission is also limited to those hours when you are at work and at your actual place of assignment.

  
(Reassigned Employee)

 LAURENCE JONES  
(Issuing Authority)

  
Approved / Disapproved  
Superintendent of Police

**RETURN TO FULL DUTY STATUS**

Effective \_\_\_\_\_, at \_\_\_\_\_ am/pm, this Administrative Reassignment is hereby cancelled and you are reinstated to full regular duty. All of the restrictions placed on you during the Administrative Reassignment are removed.

You are further instructed to contact \_\_\_\_\_, of the \_\_\_\_\_, regarding reporting time to your regular assignment.

REMARKS: \_\_\_\_\_  
\_\_\_\_\_

Acknowledged: \_\_\_\_\_ Date: \_\_\_\_\_

Served by: \_\_\_\_\_

- cc: 1 - Superintendent of Police
- 1 - Public Integrity Bureau
- 1 - Reassigned employee's Bureau Commander
- 1 - Reassigned employee's Commander
- 1 - Employee Relations Unit
- 1 - Reassigned employee

**ADMINISTRATIVE RE-ASSIGNMENT NOTIFICATION**

**RETURN TO FULL DUTY STATUS**

**CTN# 2022-0513-R**

Effective **Wednesday, December 21, 2022, at 4:00** am/pm, this Administrative Reassignment of **Senior Police Officer Jeffery Vappie** is hereby cancelled and you are reinstated to full regular duty. All of the restrictions placed on you during the Administrative Reassignment are removed. Officer Vappie you are further instructed to contact **Sergeant Tokishiba Lane**, Supervisor of the Executive Protection Section, regarding reporting time to your regular assignment.

Acknowledged: [Signature] Date: 12/21/22

Served by: SET-LAWRENCE JONG [Signature]

RETURN APPROVED BY: Capt [Signature] DATE: 12-21-22  
[RANK/NAME]

REMARKS:

- cc: 1 - Superintendent of Police
- 1 - Public Integrity Bureau
- 1 - Reassigned employee's Bureau Commander
- 1 - Reassigned employee's Commander
- 1 - Employee Relations Unit
- 1 - Reassigned employee

NOPD FORM AR-1 (revised 01-04)



# Monitoring Team Review of PIB Administrative Investigations Processes

21 June 2023

## DOJ Finding 7 (March 2011)

- “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 . . . .”
- “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 policy-community relationship . . . .”

# Executive Summary

- The Monitoring Team undertook this review to evaluate the durability of PIB's reforms in the context of a high-profile investigation
- Our review identified multiple violations of the Consent Decree:
  - Failure to include and investigate all allegations
  - Failure to consider circumstantial evidence and apply the correct legal standard
  - Failure to make reasonable credibility determinations
  - Failure to understand and comply with certain requirements
- Our review also suggested the appearance of favoritism within PIB, which has been a common complaint from NOPD officers over the years
- We are concerned that if PIB cannot get it right on such a high-profile, public investigation conducted by its most experienced personnel then perhaps it is not getting it right on other investigations as well
- Further, NOPD's refusal to address the Monitor's concerns raises serious questions about its commitment to full and effective implementation of the Consent Decree

# Agenda

- PIB Violations

- NOPD violated CD ¶¶399
- NOPD violated CD ¶¶415
- NOPD violated CD ¶¶414
- NOPD violated CD ¶¶413
- NOPD violated CD ¶¶454
- NOPD violated CD ¶¶470, 472
- NOPD violated CD ¶¶409, 419
- NOPD violated CD ¶¶306, 313

- Policy/Procedure Recommendations
- Witness Interviews
- Officer Reassignments
- Conclusion

# Background





# Consent Decree Violation 1

NOPD Violated CD ¶399

# Summary

- PIB received complaints from multiple sources alleging payroll fraud by Officer Vappie
- PIB did not include the payroll fraud allegation in its intake paperwork
- The failure to include the allegation in the intake paperwork led to an overly narrow analysis and prejudiced PIB's investigation and findings

# Operative CD Paragraphs

- 390. **NOPD agrees to accept all misconduct complaints**, including anonymous and third-party complaints, for review and investigation. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. . . .
- 399. NOPD agrees to develop and implement a complaint classification protocol **that is allegation-based rather than anticipated outcome-based** to guide PIB in determining where a complaint should be assigned. . . .

# Fox8 Email Complaint Raised A Wide Range Of Issues Relating to Officer Vappie

- “We have 45 days of surveillance footage. Mayor Cantrell spent a total of 4 days, 16 hours, and 36 minutes during those 45 days. Of those days, the minimum time Officer Vappie was there was 1 hour and 1 minute (9/10) and the maximum was 10 hours and 47 minutes (8/9).
- Officer Vappie was the only member of Mayor Cantrell's security team that we saw enter the Upper Pontalba Apartments. during the 45 days.
- On August 9, Officer Vappie wasn't listed as being a part of Mayor Cantrell's security team (according to her calendar). He arrived at 7:55 am with a bag of groceries and a case of bottled water. He was there until 3:09 pm. He returned at 8:36 pm and left at 12:42 am. According to city documents, he was on the clock for the NOPD from 8am-8pm that day.
- On August 16, he arrived at 7:55 am and left with Mayor Cantrell in workout clothes at 8:40 AM. He returned at 10:00 am and stayed in the apartment until 2:16 pm. He was assigned to her detail that day and worked from 9am-9pm.”



# Complaint (continued)

- “There are more days like the two above, but we wanted to give you a snapshot of some of the findings that might be mentioned in our story.
- Office Vappie started working details for Mayor Cantrell in May 2021.
- Mayor Cantrell appointed Office Vappie to the HANO Board. He attended the first meeting in March 2022. On at least three occasions, he attended a HANO meeting while also being on the NOPD clock.
- He has made more in overtime this year than the other members of Mayor Cantrell's security team.
- He is the only member of Mayor Cantrell's security team that flew first class with her - on a trip to San Francisco.
- During the 27 days at the apartment, he spent more than an hour there 33 different times, often visiting more than once in a day.”



# The Subsequent Story Raised The Payroll Fraud Allegation Even More Clearly



By [Lee Zurik](#) and [Dannah Sauer](#)

Updated: Nov. 9, 2022 at 11:05 PM EST



NEW ORLEANS (WVUE) - Newly-obtained surveillance video has led to more questions about how Mayor LaToya Cantrell is spending her time and taxpayer dollars.

While investigating whether [Mayor Cantrell was living at the city-owned Upper Pontalba Apartments](#), FOX 8 obtained 45 days of [surveillance video](#) from a French Market Corporation camera outside the building. That video showed Cantrell spent many hours inside the apartment, often during the workday, and sometimes stayed overnight.

The head of the Metropolitan Crime Commission, Rafael Goyeneche, said that could be a violation of a city policy that states city property is for work-related purposes and not personal benefit.

As FOX 8 looked into more of the surveillance video, we found the videos show Mayor Cantrell is also spending hours there with one member of her security team, leading to questions about what work is being done as the two collect taxpayer-funded paychecks.

# A Citizen Whistleblower Then Re-Confirmed

**From:** C JG <[gallagher.dr@gmail.com](mailto:gallagher.dr@gmail.com)>  
**Sent:** Monday, November 14, 2022 5:17:49 PM (UTC-5)  
**To:** eFile-Morgan <[eFile-Morgan@laed.uscourts.gov](mailto:eFile-Morgan@laed.uscourts.gov)>  
**Subject:** Continued Payroll Fraud at the NOPD

**CAUTION - EXTERNAL**

As can be seen in recent Lee Zurick pieces, payroll fraud is alive and well and extends into the upper ranks of the NOPD as well as the Mayors own security detail. As I have mentioned to the OIG, the IPM, the Mayor, the City Council, Jonathan Aronic and to the NOPD itself, an independent audit of the NOPD must be conducted. The response to this request has been deafening in its silence. The result is that I am the only person examining these payroll fraud allegations and must initiate each investigation through a direct request or by providing the press with the relevant records.

While I am certainly encouraged by the NOPD's action with respect to Officer Richardson, she remains an anomaly and officers who have far worse payroll fraud issues continue in their current

As can be seen in recent Lee Zurick pieces, payroll fraud is alive and well and extends into the upper ranks of the NOPD as well as the Mayors own security detail. As I have mentioned to the OIG, the

effort covering for officers payroll fraud allegations, in suspensions of the officers activity and really should be officer of PIB, Sabrina Ric only NOPD officer to have officers I was easily able to fraud.

- 1) They know th
- 2) Officers lack
- 3) They lack the
- 4) They are encc fraud
- 5) Inability to operate or even understand spreadsheets
- 6) Intense pressure from the administration and ranking officers to intentionally do a poor job

To date I have identified 10 ways in which NOPD officers are engaged in payroll fraud and an additional 9 methods officers use to inflate their paychecks which violate NOPD's own internal policies. As a result of my work on this issue I have been followed by NOPD officers after interviews with the press, my building on UNO's campus has been surrounded by NOPD officers and friends and family have been approached by uniformed NOPD officers in some attempt to apply pressure to myself.

In speaking with two honest PIB officers these issues are so severe that honest officers are concerned for their own jobs and their promotion prospects if they were to conduct a rigorous examination of any payroll fraud allegations. The demotion of Capt. Gernon stands as a stark example to all those in PIB who might produce a thorough report.

# The Monitoring Team Made Sure PIB Was Aware Of The Whistleblower's Complaint

Re: Continued Payroll Fraud at the NOPD



Jonathan Aronie

To Keith A. Sanchez

Cc Anne Perry; David Douglass; Scot Huntsberry

Reply

Reply All

Forward

Thu 12/8/2022 10:28 AM

If there are problems with how this message is displayed, click here to view it in a web browser.

Keith,

Some of this may be helpful re the ongoing Vappie investigation. Some also might go beyond Vappie. The material that goes beyond Vappie I assume you will treat as a new public complaint/allegation.

Let us know if you want to discuss anything. Scot has extensive experience working with Skip and his data.

Thanks!

-Jonathan

Jonathan Aronie  
Sheppard Mullin LLP  
Washington, DC  
202.747.1902 (w)  
202.302.4855 (c)  
[Jaronie@sheppardmullin.com](mailto:Jaronie@sheppardmullin.com)

# Yet PIB Excluded the Payroll Fraud Allegation From Its Intake Form

**INITIATION OF A FORMAL DISCIPLINARY INVESTIGATION**

CONTROL NUMBER: 2022-0513-R      DATE COMPLAINT RECEIVED: 11/08/2022  
DATE FORM 230 RECEIVED BY PIB: 11/09/2022      DATE INITIATION FORM COMPLETED: 11/11/2022

DOMESTIC INCIDENT: \_\_\_      SEXUAL HARASSMENT: \_\_\_

<input checked="" type="checkbox"/> Public Complaint	<input type="checkbox"/> <u>Source</u> NOPD Supervisor	<input type="checkbox"/> NOPD Employee
--	---	--

Violation Observed ___ In Person ___	<u>How Complaint Received</u> Telephone ___ Correspondence ___ Investigation <input checked="" type="checkbox"/>
--------------------------------------	---

Investigator Initiating Complaint: Sergeant Lawrence Jones

## Alleged Rule Violation/s (State Specific Rule):

V1: Rule 4 Performance of Duty; Paragraph 4 Neglect of Duty C6 Failing to comply with instructions, oral or written, from any authoritative source to wit: N.O.P.D. Chapter 22.08 Police Secondary Employment Paragraph 32 which states: No member, including Reserve officers, shall work more than more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period.

Complaint Occurred:

<b>Duty Status:</b> On Duty <input checked="" type="checkbox"/> / Off ___ Detail ___ 1 <sup>st</sup> <input checked="" type="checkbox"/> / 2 <sup>nd</sup> ___ / 3 <sup>rd</sup> ___	<b>Shift:</b>	<b>Clothing:</b> Regular Uniform ___ Task Force Uniform ___ Plainclothes <input checked="" type="checkbox"/>
---	---------------	---

Total Number of Accused Officers: 1

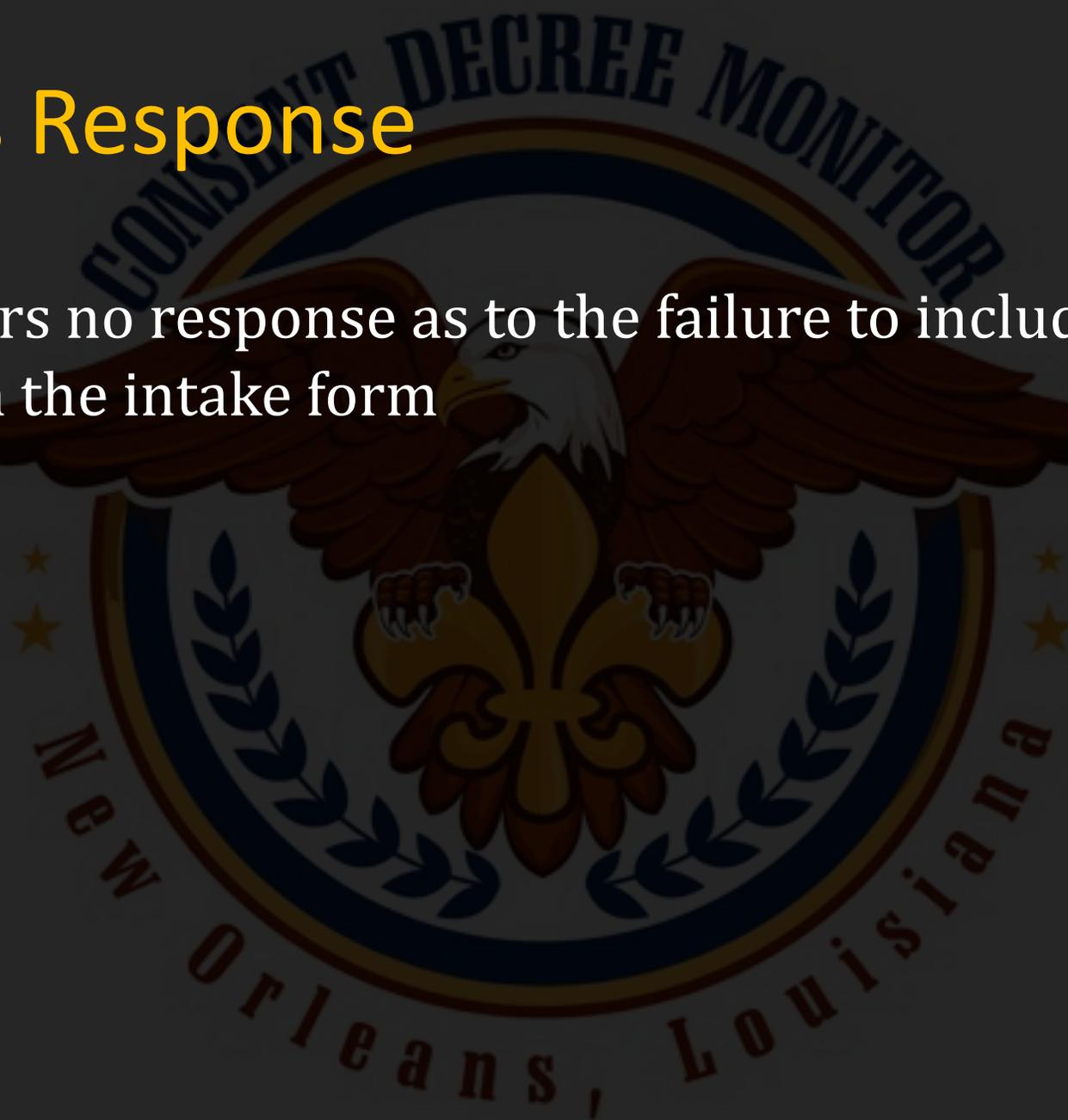
Accused Member: Rank, Name, Race, Sex, Employee #, Assignment  
Senior Police Officer Jeffery Vappie, B, M, Emp. ID# 08913, ISB/ Executive Protection

Suspended: \_\_\_

Reassigned:

# The City's Response

- The City offers no response as to the failure to include the allegation on the intake form



## In Short

- The CD requires all complaints to be broadly construed, accurately recorded, and fully investigated
- PIB erroneously truncated the scope of the complaints related to Officer Vappie
- That decision significantly prejudiced the investigation, analysis, and discipline
- That decision also feeds a longstanding narrative of favoritism and nepotism within PIB



# Consent Decree Violation 2

NOPD Violated CD ¶415

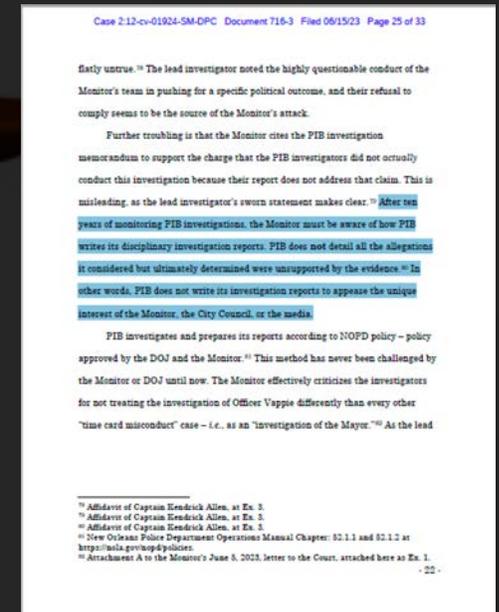
# Summary

- Perhaps because it did not include the payroll fraud allegation on the intake form, PIB never analyzed and identified a disposition for the payroll fraud allegation
- The Consent Decree is explicit : Every allegation of misconduct shall receive one of four dispositions
- This is to prevent allegations from not being addressed
- As DOJ found in 2011: “Policies and practices for complaint intake do not ensure that complaints are complete and accurate,[and] systematically exclude investigation of certain types of misconduct...”

# The City's Response

- “...After ten years of monitoring PIB investigations, the Monitor must be aware of how PIB writes its disciplinary investigation reports. PIB does not detail all the allegations it considered but ultimately determined were unsupported by the evidence...”

- City's Response at 25



# Operative CD Paragraphs

- 415. The misconduct investigator **shall explicitly identify and recommend one of the following dispositions** for each allegation of misconduct in an administrative investigation:
  - A) Unfounded...
  - B) Sustained...
  - C) Not Sustained...
  - D) Exonerated...

# Operative Paragraphs (continued)

- NOPD Policy 52.1.1
- Paragraph 91. The misconduct investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:
  - Unfounded ...
  - Sustained ...
  - Not sustained ...
  - Exonerated ...
  - Resigned Under Investigation (RUI) ...
  - Retired Under Investigation (RUI) ...

# The PIB Report Is Silent As To The Apartment-Related Payroll Fraud Allegation

- PIB did not analyze the evidence
  - Indeed, the PIB report includes no analysis
  - As described later in this presentation, PIB did not weigh any circumstantial evidence
  - PIB failed to identify one of the required dispositions

# In Short

- Either
  - PIB failed to analyze the facts relating to the payroll fraud implications of the time Officer Vappie spent in the Pontalba apartment, as the PIB report shows
- Or
  - PIB simply chose not to “detail all the allegations it considered but ultimately determined were unsupported by the evidence . . .,” as the City argues
- In either case, PIB violated paragraph 415 of the Consent Decree
- **This is a material violation. Only through accurate complaint intake and transparent analyses and dispositions can the public – and NOPD officers – trust the PIB process.**



# Consent Decree Violation 3

NOPD Violated CD ¶414

# Summary

- The Consent Decree & NOPD policy requires PIB findings to be “by a preponderance of the evidence”
  - This means the facts must show the alleged action/inaction was “more likely than not” to have occurred
  - The standard is significantly less strict than “beyond a reasonable doubt”
- PIB recommended a sustain on three counts, but failed to apply the correct legal standard

# Operative Paragraphs

- CD 414: “The resolution of any misconduct complaint must be based upon the **preponderance of the evidence**....”
- NOPD Policy 51.1.2: Misconduct investigators must “reach a conclusion supported by the **preponderance of the evidence** and prepare a written recommendation ....”
- NOPD Policy 26.2: “**Preponderance of the evidence**—Such evidence that when considered and compared with that opposed to it has more convincing force and produces in one’s mind the belief that what is sought to be proven is more likely true than not true.”

# First 'Sustain' Properly Applied Standard

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## Disciplinary Recommendations

### Senior Police Officer Jeffery Vappie

Rule 4: Performance of Duty: Paragraph 2: Instructions from an authoritative source; to wit  
N.O.P.D. Chapter 22.08 Police Secondary Employment Paragraph 32.....**SUSTAINED**

*No member, including Reserve officers, shall work more than 16 hours and 35 minutes (16.58 hours) within a 24-hour period. (The 24-period begins the first time the member reports for either regular duty or police secondary employment.) These hours are cumulative and include normal scheduled work hours, overtime, court time, off-duty police secondary employment, or outside employment*

Captain Kendrick Allen proved beyond a preponderance of evidence that Senior Police Officer Jeffery Vappie violated this rule when on, on September 28, 2022, Officer Vappie worked for 18 hours within a 24 hour period. The remarks indicate that Officer Vappie was assigned to the Consultant Chief Fausto B. Pichardo and not his normal Executive Protection assignment.

# Second 'Sustain' Uses Incorrect Language

## OTHER SUSTAINED VIOLATIONS

### **Rule 3: Professional Conduct, Paragraph 1: Professionalism..... SUSTAINED**

*Employees shall conduct themselves in a professional manner with the utmost concern for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any individual or otherwise act in a manner which brings discredit to the employee or the New Orleans Police Department.*

Senior Police Officer Vappie may have violated this rule when Officer Vappie spent numerous hours alone with the Protectee outside of his regular tour of duty goes against the training and ethics of an Executive Protection member. So much so, that Deputy Charles Ellis and Louis Martinez, brought his behavior to his attention and requested that he stop.

# Third 'Sustain' Uses Incorrect Language

## Rule 4: Performance of Duty, Paragraph 3: Devoting Entire Time to Duty..... SUSTAINED

*Employees shall not read, play games, watch television/movies, or otherwise engage in entertainment while on duty, except as may be required in the performance of duty, or by authority of their respective Bureau Chief. They shall not engage in activities or personal business which would cause them to neglect or be inattentive to duty.*

**Senior Police Officer Vappie was not attentive to his duty** as an Executive Protection member when he attended the HANO Board Meeting on two separate occasions, March 29, 2022 and August 30, 2022, while still on duty with the New Orleans Police Department.

# The City's Response

- “...There was not sufficient evidence that Officer Vappie was not performing his duties while in the Mayor’s apartment to support – by a preponderance of evidence – that he was engaged in payroll fraud....”
  - City Response at 31

# The City Does Not Dispute The Underlying Violation

- The City does not disagree PIB applied the incorrect legal standard when it documented a “may have violated” finding on the professionalism allegation
- Beyond that, the City’s response is nothing more than outside counsel’s after-the-fact argument as to what PIB *could* have concluded
- But PIB didn’t reach these conclusions because PIB never analyzed the evidence

## In Short

- The Consent Decree and NOPD policy require administrative findings to be evaluated using a “preponderance of the evidence” standard
- PIB failed to apply the proper legal standard even though the evidence supported sustaining the allegations using the proper legal standard
- PIB’s actions violated NOPD policy and the Consent Decree
- This sort of failure increases risk of decisions being overturned on an appeal



# Consent Decree Violation 4

NOPD Violated CD ¶413

# Summary

- The CD and NOPD policy require PIB investigators to consider all direct, physical, *and circumstantial* evidence
- The investigative report demonstrates PIB did not consider all circumstantial evidence
- The failure to consider circumstantial evidence may have caused PIB to fail to hold Officer Vappie fully accountable for his actions/inactions

# Operative Paragraphs

- CD 413: “In each investigation, NOPD shall consider all relevant evidence, *including circumstantial*, direct, and physical evidence, as appropriate, and make credibility determinations based upon that evidence....”
- Policy 52.1.1, ¶80: “80. In each investigation, NOPD shall consider all relevant evidence, *including circumstantial*, direct, and physical evidence, as appropriate, and make credibility determinations based upon that evidence....”

# The City's Response

- “There is speculation of what Officer Vappie was doing, and the Monitor is unusually focused on the speculation it calls circumstantial evidence....”
  - City's Response at 31.

# Circumstantial Evidence Defined

- “Circumstantial evidence is indirect evidence that does not, on its face, prove a fact in issue *but gives rise to a logical inference that the fact exists*. Circumstantial evidence requires drawing additional reasonable inferences in order to support the claim.”
  - Cornell Law School LII
- Circumstantial evidence is used by courts and juries all the time. Circumstantial evidence IS EVIDENCE.

# Circumstantial Evidence Suggesting Possible Payroll Fraud *Not Dealt With In PIB Report*

- Officer Vappie spent many hours in the City's Upper Pontalba apartment.
- Officer Vappie was the only officer among the executive protection team who spent any time in the Upper Pontalba apartment. All other officers stayed outside the apartment while protecting the Mayor. Had the time in the Upper Pontalba apartment truly been work time, other officers presumably would have taken their turn doing the same.
- Officer Vappie changed clothes, used the shower, and undertook various non-security tasks while in the apartment with and without the Mayor.
- Officer Vappie spent time in the Upper Pontalba apartment both on and off duty.
- Even when Officer Vappie left the Upper Pontalba apartment late at night after spending several hours in the apartment, the Mayor often walked alone to her car in the French Quarter without any security, strongly suggesting Officer Vappie was not spending time in the apartment because of any credible threat to the Mayor's safety.
- The news story about the time Officer Vappie spent in the Upper Pontalba apartment led to a prompt divorce filing from Officer's Vappie wife, an unlikely reaction to an actual, transparent executive protection detail.
- No officer spent time inside the Mayor's residence, which would have been the case had there been a credible threat to the Mayor's safety.
- Multiple other members of the Mayor's Executive Protection team testified during the PIB investigation to the unprofessional nature of Officer Vappie's actions, which, they felt, brought discredit to the NOPD.
- The one other witness who could have corroborated Officer Vappie's statement, the Mayor, refused to be interviewed by PIB.

# In Short

- The Consent Decree and NOPD policy require PIB investigators to consider circumstantial evidence
- Circumstantial evidence was not adequately considered or documented
- Consequently, the payroll fraud allegation was not given a disposition as required by NOPD policy and the Consent Decree
- **Circumstantial evidence are FACTS, NOT speculation**
- **The failure to consider all evidence, direct and indirect, creates risk to ALL PIB investigations**



# Consent Decree Violation 5

NOPD Violated CD ¶413

# Summary

- The Consent Decree and NOPD Policy require PIB to assess the credibility of all witnesses based upon the totality of the evidence
- PIB assessed and documented the credibility of all witnesses *except for Officer Vappie*
- The failure to assess credibility can tarnish an investigation and can create the appearance of favoritism toward a witnesses

# Operative Paragraphs

- CD ¶ 413: “In each investigation, NOPD shall consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations based upon that evidence.”
- NOPD Policy 52.1.2: “In each investigation, the investigator shall consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations based upon that evidence. . . . ”

# PIB Failed To Assess and Document Officer Vappie's Credibility

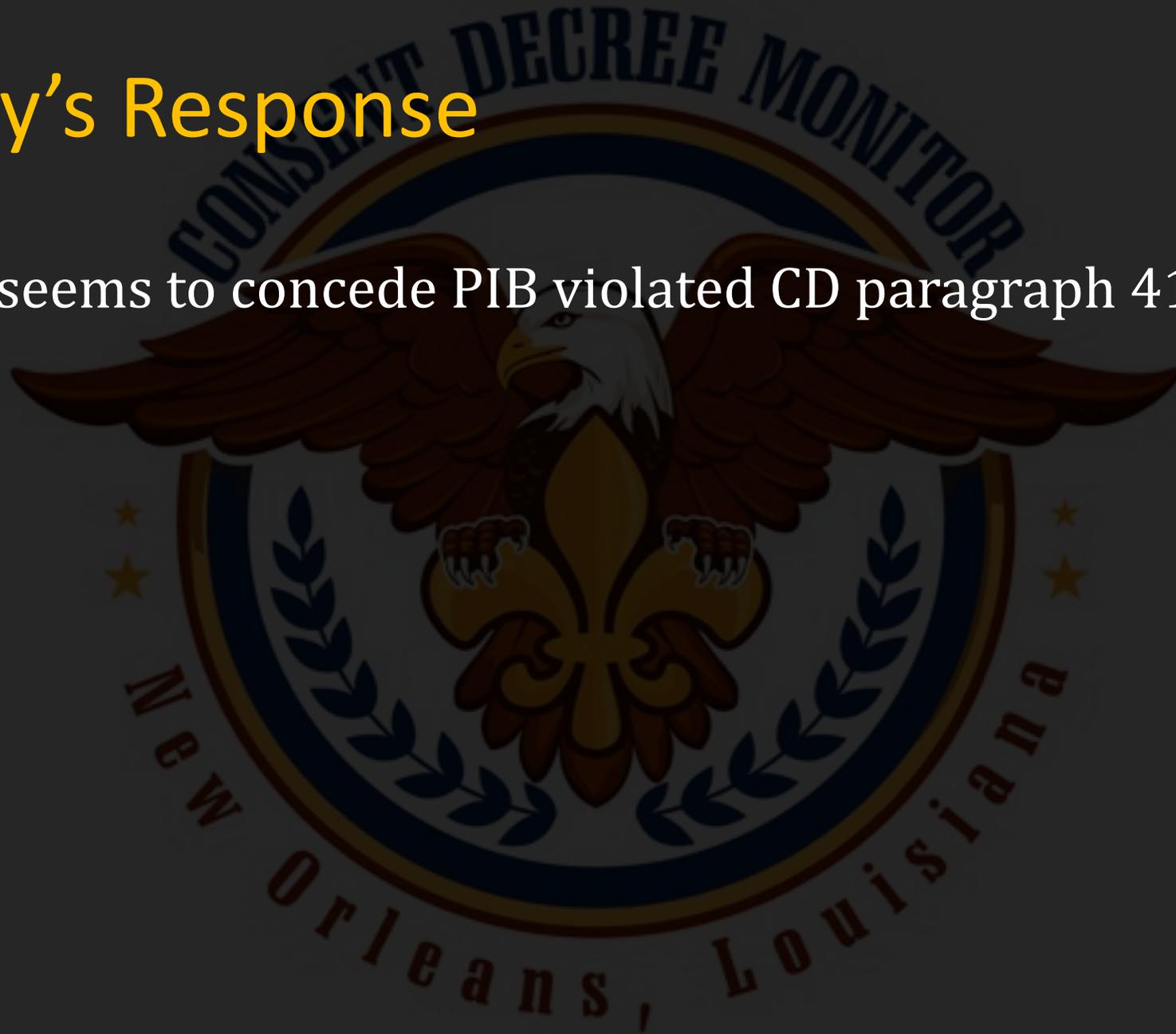
- All witnesses were found credible and findings were clearly documented (e.g., “Officer X was found credible”)
- Officer Vappie was not found credible or non-credible
  - “After comparing Officer Vappie administrative statement with the evidence reviewed during this investigation, **the investigators were unable to confidently assess his credibility. . . .**”

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Senior Police Officer Jeffery Vappie – After comparing Officer Vappie administrative statement with the evidence reviewed during this investigation, the investigators were unable to confidently assess his credibility. During his interview Officer Vappie seemed confused about his work schedule rotation, antagonistic regarding his tactical positioning while dining with his Protectee and unable to articulate some of his duties when he was not with the Protectee. However, the investigator does not have any evidence that Officer Vappie made any attempt to willfully misled or was untruthful in any statement that was given during this administrative investigation. During the interview, related to the 16:35 coverage, Officer Vappie stated several times that “It’s always been that way” when dealing with overtime. However, the investigators observed when Sergeant Wondell Smith was embedded in the executive protection team he would move the teams time to adjust for the Protectee schedule, if a late event occurred. This in fact is not a blemish on Officer Vappie credibility but rather a paradigm shift in how the executive protection team time was managed after a removal of a supervisor and the lack of a policy governing this unit.

# The City's Response

- The City seems to concede PIB violated CD paragraph 413.



## In Short

- Assessing credibility is not always an easy task
- But the complexity of the analysis does not relieve NOPD of the obligation to make the assessment
- Saying “we were unable to assess his credibility” is simply another way of saying we did not do what is required of us with regard to credibility assessments



# Consent Decree Violation 6

NOPD Violated CD ¶ 454

# Operative CD Paragraph

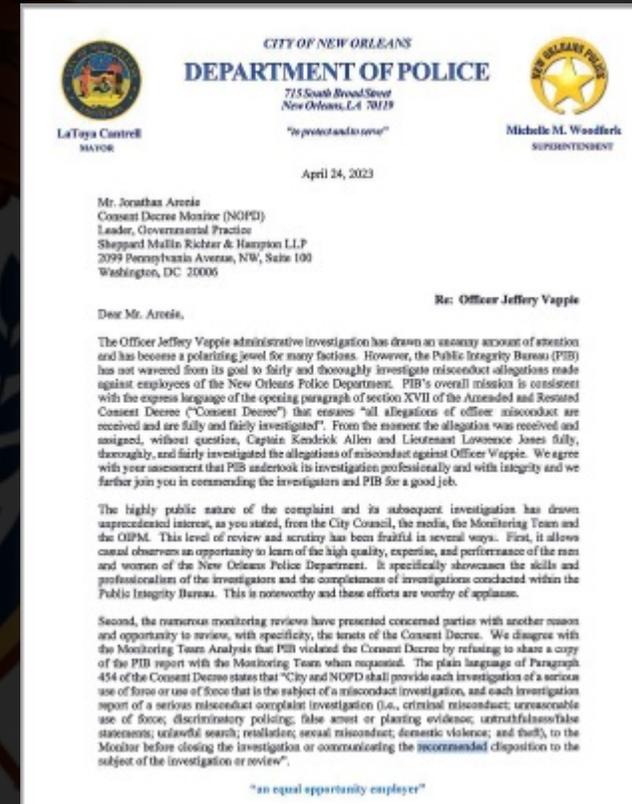
- CD 454: “City and NOPD shall provide each . . . investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; **untruthfulness/false statements**; unlawful search; retaliation; sexual misconduct; domestic violence; and **theft**), **to the Monitor before closing the investigation** or communicating the recommended disposition to the subject of the investigation or review. **The Monitor shall review each . . . serious misconduct complaint investigation and recommend for further investigation any . . . misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence.** The Monitor shall provide written instructions for completing any investigation determined to be incomplete or inadequately supported by the evidence. The Superintendent shall determine whether the additional investigation or modification recommended by the Monitor should be carried out. Where the Superintendent determines not to order the recommended additional investigation or modification, the Superintendent will set out the reasons for this determination in writing. . . .”

# CD Paragraph 454 (simplified)

- NOPD shall provide each serious misconduct complaint investigation to the Monitor before closing the investigation
- A “serious misconduct investigation” includes any investigation involving
  - Untruthfulness
  - False Statements
  - Theft
- The Monitor reviews and provides instructions to fix shortcomings
- *The Superintendent* accepts or rejects *with a written explanation*

# NOPD's Response

- “No allegation of misconduct by Officer Vappie was described, suggested, hinted at or articulated as conduct that requires the release of the investigation pursuant to Paragraph 454....”
  - Letter from Michelle Woodfork to Jonathan Aronie (April 24, 2023) at 4.



# Initial Complaint Alleged Payroll Fraud

Media request from Fox 8 News.

Gregory A. Joseph  
Director of Communications  
Office of Mayor LaToya Cantrell  
City of New Orleans | 1300 Perdido Street | Suite 2E041 New Orleans, LA 70112  
[Gregory.Joseph@nola.gov](mailto:Gregory.Joseph@nola.gov) 504.658.4924 (o) | 504.409.1492 (c) | 504.658.4938 (f)



**City of New Orleans**  
Mayor LaToya Cantrell

From: Lee Zurik <[lee.zurik@gray.tv](mailto:lee.zurik@gray.tv)>  
Sent: Tuesday, November 1, 2022 10:31 AM  
To: Mayor's Communications Team <[communications@nola.gov](mailto:communications@nola.gov)>  
Subject: WVUE Request

EMAIL FROM EXTERNAL SENDER: DO NOT click links, or open attachments, if sender is unknown, or

the HANO Board. He attended the first meeting in  
attended a HANO meeting while also being on the  
in the other members of Mayor Cantrell's security  
security team that flew first class with her -- on a trip  
ent more than an hour there 33 different times, often  
tion, or want someone to do it on your behalf,  
mber 2.

ions@nola.gov>  
links, or open attachments, if sender is unknown, or  
NOT provide your user ID or password. If you believe  
g tool in your Outlook to send this message to  
ntrell. We have questions about some of them:  
urned at 5:24 CST. That day, nothing was on Mayor

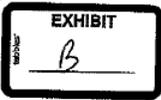
at day, Officer Vappie billed taxpayers for 18 hours of work -- from  
but I think that gives you an idea of what we are asking about. Our  
ember 8.  
rk  
Chief Investigative Reporter  
wvutv.com

“On August 9, Officer Vappie wasn’t listed as being a part of Mayor Cantrell’s security team (according to her calendar). He arrived at 7:55 am with a bag of groceries and a case of bottled water. He was there until 3:09 pm. He returned at 8:36 pm and left at 12:42 am. According to city documents, he was on the clock for the NOPD from 8am-8pm that day.”

\*\*\*

“There are more days like the . . . above, but we wanted to give you a snapshot of some of the findings that might be mentioned in our story. . . .”

- There are more days like the two above, but we wanted to give you a snapshot of some of the findings that might be mentioned in our story.
- Office Vappie started working details for Mayor Cantrell in May 2021.



billed taxpayers for 19 hours of work that Sunday -- from  
ber 16), she had two events. One at 9:00 am the other

# The Story That Followed Raised The Payroll Fraud Question Even More Clearly



By [Lee Zurik](#) and [Dannah Sauer](#)

Updated: Nov. 9, 2022 at 11:05 PM EST



NEW ORLEANS (WVUE) - Newly-obtained surveillance video has led to more questions about how Mayor LaToya Cantrell is spending her time and taxpayer dollars.

While investigating whether [Mayor Cantrell was living at the city-owned Upper Pontalba Apartments](#), FOX 8 obtained 45 days of [surveillance video](#) from a French Market Corporation camera outside the building. That video showed Cantrell spent many hours inside the apartment, often during the workday, and sometimes stayed overnight.

The head of the Metropolitan Crime Commission, Rafael Goyeneche, said that could be a violation of a city policy that states city property is for work-related purposes and not personal benefit.

As FOX 8 looked into more of the surveillance video, we found the videos show Mayor Cantrell is also spending hours there with one member of her security team, leading to questions about what work is being done as the two collect taxpayer-funded paychecks.

# A Citizen Whistleblower Then Re-Confirmed

**From:** C JG <[gallagher.dr@gmail.com](mailto:gallagher.dr@gmail.com)>  
**Sent:** Monday, November 14, 2022 5:17:49 PM (UTC-5)  
**To:** eFile-Morgan <[eFile-Morgan@laed.uscourts.gov](mailto:eFile-Morgan@laed.uscourts.gov)>  
**Subject:** Continued Payroll Fraud at the NOPD

**CAUTION - EXTERNAL**

As can be seen in recent Lee Zurick pieces, payroll fraud is alive and well and extends into the upper ranks of the NOPD as well as the Mayors own security detail. As I have mentioned to the OIG, the IPM, the Mayor, the City Council, Jonathan Aronic and to the NOPD itself, an independent audit of the NOPD must be conducted. The response to this request has been deafening in its silence. The result is that I am the only person examining these payroll fraud allegations and must initiate each investigation through a direct request or by providing the press with the relevant records.

While I am certainly encouraged by the NOPD's action with respect to Officer Richardson, she remains an anomaly and officers who have far worse payroll fraud issues continue in their current

As can be seen in recent Lee Zurick pieces, payroll fraud is alive and well and extends into the upper ranks of the NOPD as well as the Mayors own security detail. As I have mentioned to the OIG, the

effort covering for officers payroll fraud allegations, in suspensions of the officers activity and really should be officer of PIB, Sabrina Ric only NOPD officer to have officers I was easily able to fraud.

- 1) They know th
- 2) Officers lack
- 3) They lack the
- 4) They are encc fraud
- 5) Inability to operate or even understand spreadsheets
- 6) Intense pressure from the administration and ranking officers to intentionally do a poor job

To date I have identified 10 ways in which NOPD officers are engaged in payroll fraud and an additional 9 methods officers use to inflate their paychecks which violate NOPD's own internal policies. As a result of my work on this issue I have been followed by NOPD officers after interviews with the press, my building on UNO's campus has been surrounded by NOPD officers and friends and family have been approached by uniformed NOPD officers in some attempt to apply pressure to myself.

In speaking with two honest PIB officers these issues are so severe that honest officers are concerned for their own jobs and their promotion prospects if they were to conduct a rigorous examination of any payroll fraud allegations. The demotion of Capt. Gernon stands as a stark example to all those in PIB who might produce a thorough report.

# The Monitoring Team Made Sure PIB Was Aware Of The Whistleblower's Complaint

Re: Continued Payroll Fraud at the NOPD

 Jonathan Aronie

To  Keith A. Sanchez

Cc  Anne Perry;  David Douglass;  Scot Huntsberry

Thu 12/8/2022 10:28 AM

 If there are problems with how this message is displayed, click here to view it in a web browser.

Keith,

Some of this may be helpful re the ongoing Vappie investigation. Some also might go beyond Vappie. The material that goes beyond Vappie I assume you will treat as a new public complaint/allegation.

Let us know if you want to discuss anything. Scot has extensive experience working with Skip and his data.

Thanks!

-Jonathan

Jonathan Aronie  
Sheppard Mullin LLP  
Washington, DC  
202.747.1902 (w)  
202.302.4855 (c)  
[Jaronie@sheppardmullin.com](mailto:Jaronie@sheppardmullin.com)

# Weighing The Evidence

## The Facts

- The Fox8 allegation suggested potential payroll fraud
- The Fox8 stories clearly alleged potential payroll fraud
- PIB repeatedly confirmed to the Monitoring Team that it was investigating the payroll fraud allegations
- A subsequent citizen complainant reiterated the payroll fraud allegation
- **The City's filing concedes "payroll fraud was investigated" (p 24)**

## Interim Superintendent's Letter

- "No allegation of misconduct by Officer Vappie was described, suggested, hinted at or articulated as conduct that requires the release of the investigation pursuant to Paragraph 454...."

# The City's Further Response

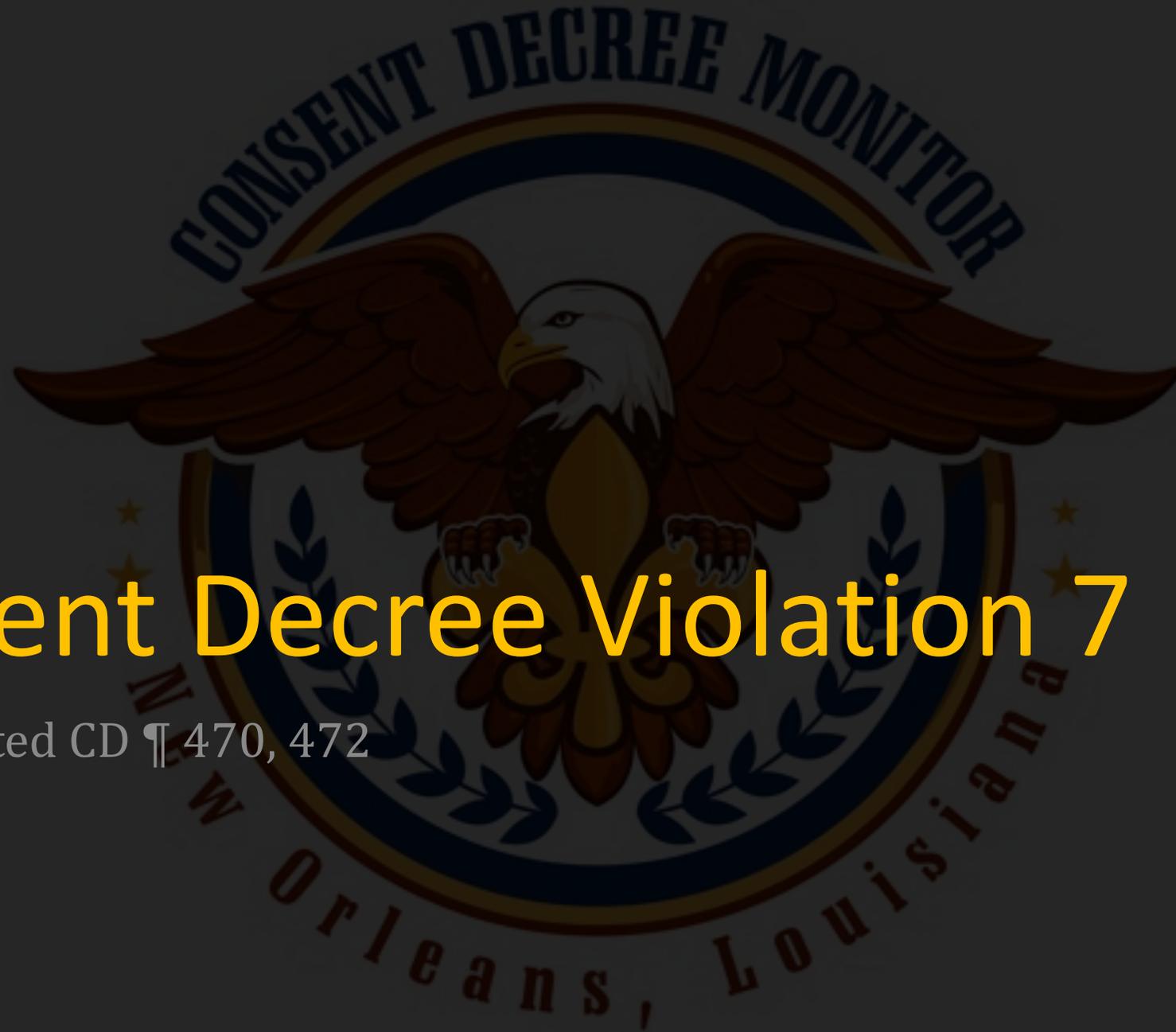
- “...The charges against Officer Vappie are serious, as are all charges investigated by PIB. They are not, however, of the nature NOPD has ever treated as a “serious misconduct complaint” as used by Paragraph 454....”
  - City's Response at 26.

# Is Payroll Fraud “Serious Misconduct”?

- Yes. Alleged payroll fraud is most definitely “serious misconduct”
- Payroll fraud is covered by three separate elements of the definition of “serious misconduct”:
  - Untruthfulness
  - False Statement
  - Theft
- Each clearly covers payroll fraud, and each is explicitly listed in paragraph 454 of the Consent Decree

# In Short

- Fox8 raised allegations of payroll fraud
- A whistleblower reiterated the payroll fraud allegation
- OCDM & IPM raised the payroll fraud allegation
- PIB consistently confirmed to OCDM & IPM its investigation would cover payroll fraud
- The City concedes PIB investigated the payroll fraud allegation
- **Despite all this, the PIB investigative report did not include any analysis of the payroll fraud allegation**
- **NOPD and the City use the absence of the analysis to argue the investigation was not of “serious misconduct”**



# Consent Decree Violation 7

NOPD Violated CD ¶ 470, 472

# Operative CD Paragraphs

- “The Monitor shall have access to all necessary individuals, facilities, **and documents**, which shall include access to Agreement related trainings, meetings, and reviews, such as critical incident reviews, use of force review boards, and disciplinary hearings.”
  - Consent Decree ¶470
- The Monitoring Team shall have “**full and direct access to City and NOPD documents** that the Monitoring reasonably deems necessary to carry out the duties assigned to the Monitor . . . .”
  - Consent Decree ¶472

# OCDM Made Multiple Requests For The PIB Report

Jan-Feb  
2023  
OCDM and  
IPM  
requested  
copies of  
PIB report  
multiple  
times

3/27/23  
OCDM  
reiterated  
request  
for report  
in writing

3/29/23  
OCDM  
reiterated  
request,  
citing to  
¶454

4/3/23  
OCDM  
reiterated  
request

4/3/23  
PIB finally  
shared  
invest.  
report

3/10/23  
PIB  
concluded  
invest.  
and sent  
to Dep.  
Chief

3/27/23  
OCDM  
reiterated  
request,  
citing to  
CD ¶¶ 470  
and 472

3/31/23  
OCDM  
reiterated  
request

4/3/23  
OCDM  
called  
Interim  
Super.

# The City's Response

- NOPD concedes it did not provide the requested report, but argues it was not required to provide the report because payroll fraud does not constitute serious misconduct.
  - PIB 4/24/23 Response at 1.
- NOPD confuses ¶454 with ¶¶470 and 472

Under ¶¶ 470 and 472, the Monitoring Team is entitled to “full and direct access” to all documents it “reasonably deems necessary” to carry out its duties.

## In Short

- Consent Decree provides for unfettered access to relevant documents
- Monitoring Team made multiple requests, all rebuffed by NOPD
- This is the first time since the outset of the Consent Decree that NOPD has refused to promptly honor document requests
- PIB provided the requested report only well after its investigation had concluded



# Consent Decree Violation 8

NOPD Violated CD ¶¶409, 419

# Summary

- The CD and NOPD policy require PIB to take significant measures to protect the confidentiality of investigations
- At the outset of the Vappie investigation, the Monitoring Team and the IPM advised PIB to implement special protections
  - The Monitoring Team and the IPM advised PIB to establish a small circle of individuals with authorized access
  - PIB agreed on the importance of confidentiality and agreed that only a small circle within PIB would have access to investigation materials
- PIB's actions unnecessarily compromised the confidentiality of the Vappie investigation

# Operative Paragraphs

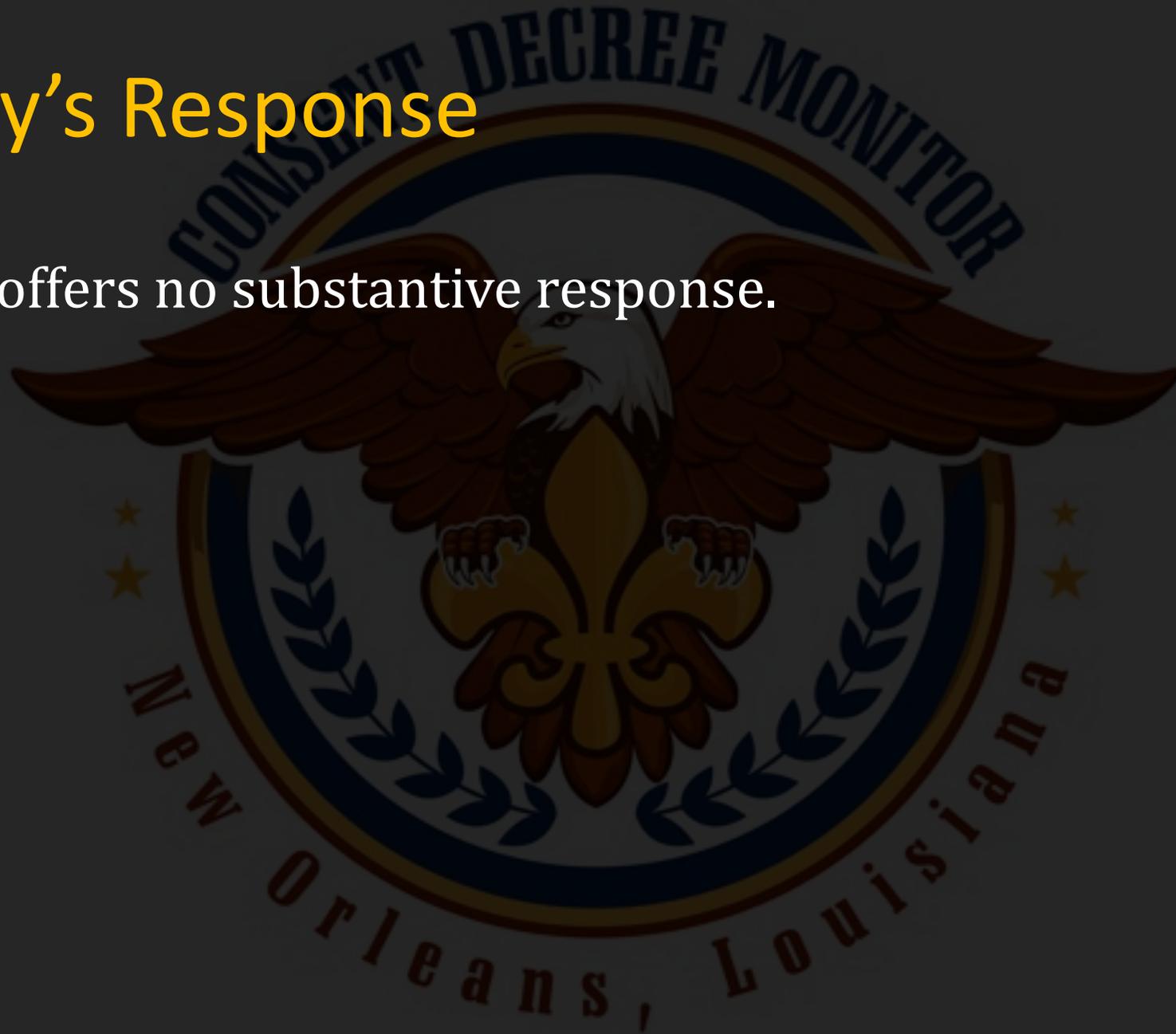
- Consent Decree paragraph 409 requires that “all misconduct investigation interview recordings shall be stored and maintained in a secure location within PIB.”
- Consent Decree paragraph 419 requires that “all investigation reports and related documentation and evidence shall be securely maintained in a central and accessible location . . . .”

# PIB Took Unnecessary Risks

- PIB shared a copy of witness interview audio recordings with the City Attorney's Office
- The audio recordings shared with the City Attorney's Office apparently were shared on a non-password protected USB drive
- NOPD reassigned the two PIB investigators into the districts during the investigation, which meant they were working on highly confidential matters from outside the confines of PIB

# The City's Response

- The City offers no substantive response.



## In Short

- The confidentiality of PIB investigations is critical for many reasons, including
  - Ensuring the integrity of the investigation
  - Avoiding improper pressure on the investigation team and the witnesses
  - Avoiding the risk that information from an administrative investigation could contaminate a subsequent criminal investigation
- It is too early to know whether the failure to ensure confidentiality here will lead to these problems



# Consent Decree Violation 9

NOPD Violated 306,313

# Summary

- The Monitoring Team informed PIB from the outset of the importance of investigating supervisors to evaluate their culpability, if any, in the alleged wrongdoing
- NOPD closed its investigation without looking into the actions/inactions of Officer Vappie's chain of command
- PIB's actions prevented the Department from holding supervisors accountable for their potential failure to provide close and effective supervision

# Operative Paragraphs

- Consent Decree paragraph 306: “NOPD supervisors shall be held accountable for providing the close and effective supervision necessary to direct and guide officers.”
- Consent Decree paragraph 313: “NOPD shall hold commanders and supervisors directly accountable for the quality and effectiveness of their supervision, including whether commanders and supervisors identify and effectively respond to misconduct ....”

# The Monitoring Team Reminded PIB To Include Supervisors In Its Investigation

- PIB shared its witness list in early December 2022
- The Monitoring Team recommended a key addition
- PIB failed to interview most supervisors

## 3. What and where is the evidence?

After the analytical review of the data collected, we will have a clearer understanding of the policies which officer Vappie may be in violation of. After this review we will also be able to determine if any criminal or state ethics violations exist. This review will also be completed by December 9, 2022.

### Potential Witnesses

These interviews will be schedule starting the week of December 19, 2022. Captain Allen will have to perform two night watch captain tours the week of December 12 and will not be able to conduct interviews that week.

Carol Johnson ( HANO)

Katrina Simmons (Mayor's Office Scheduling person)

All current members of the mayor's executive protection team [Do you plan to interview the deputy on the detail as well?]

Sgt. T Lane. (Payroll entry for executive protection team and listed supervisor)

~~Officer Jeffery Vappie~~

Each supervisor up the chain of command from Lane to the cognizant Deputy Chief (and the Chief if necessary) [It's important we understand who knew what when.]

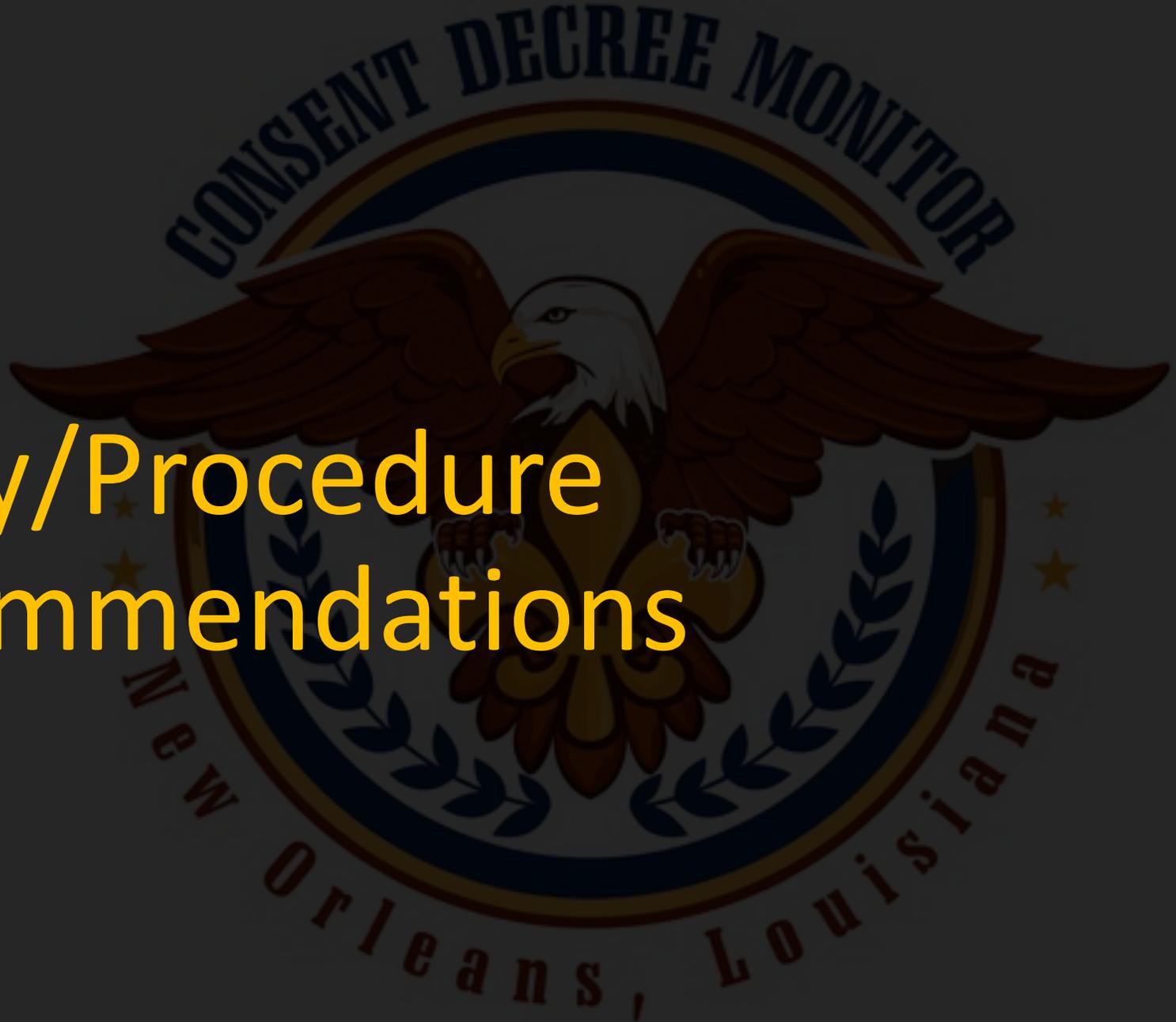
# The City's Response

- The City does not offer a substantive response
- Rather, the City attacks the Monitoring Team for too closely monitoring the PIB investigation, including wanting to review PIB's interview plans and outlines (City Response at 21)

But this is precisely what paragraph 454 calls upon the Monitoring Team to do – provide guidance that can be used by PIB BEFORE it closes its investigation.

## In Short

- A thorough investigation includes investigating up the chain of command
- Supervisors must be held accountable for their failure to closely and effectively supervise
  - The Consent Decree requires it
- PIB failed to interview supervisors as part of the Vappie investigation
- This will make it hard to ensure supervisors are held accountable for their actions/inactions

The background features a large, semi-transparent seal. The seal is circular with a blue border. At the top, the words "CONSENT DECREE MONITOR" are written in a blue, serif font, following the curve of the top border. In the center is a bald eagle with its wings spread, perched on a fleur-de-lis. The eagle's body is brown, and its head is white with a yellow beak. Below the eagle is a blue laurel wreath. At the bottom of the seal, the words "New Orleans, Louisiana" are written in a blue, serif font, following the curve of the bottom border. Two small blue stars are positioned on either side of the bottom text.

# Policy/Procedure Recommendations

# Summary

- On February 17, 2022, the Monitoring Team sent PIB an *Immediate Action Recommendation* setting out multiple recommendations
- PIB has not replied to the Monitoring Team's recommendations
- However, PIB is in the process of implementing at least some of the recommendations (including an EP policy, which is under review)

# Recommendations

- **Supervision.** Executive protection officers currently receive no meaningful supervision. “NOPD should take immediate action to ensure the members of the Executive Protection detail receive the ‘close and effective supervision’ required by the Consent Decree.”
- **Policy.** No policy currently governs executive protection officers. “NOPD should take immediate action to develop clear policies and procedures governing the operation of Executive Protection detail and the officers assigned to that detail.”
- **Performance Evaluations.** It is unclear how executive protection officers can be meaningfully evaluated. “NOPD should take immediate action to ensure members of the Executive Protection detail are evaluated in the same manner as other NOPD officers.”
- **Efficiency.** Executive protection officers are paid for a full shift even when their proctee is not in town. “NOPD should consider identifying meaningful tasks members of the Executive Protection team can perform while the Mayor is out of town to contribute to the Department’s well-publicized efforts to combat its lack of personnel.”

OCDM Confidential: PIB Immediate Action Recommendations

Jonathan Aronie  
To: Keith A. Sanchez  
Cc: Donesia Turner; Jonas Geissler (CRT); Michelle Woodfork; David Douglass

Filed to ND

You replied to this message on 3/14/2023 11:56 AM.

2023-02-17 PIB Advice re Vappie.pdf  
336 KB

Keith,

Attached is a letter setting out a few recommendations flowing out of the PIB investigation we have been monitoring. As the investigation has not concluded yet, we have not included recommendations or comments regarding the substance of the investigation itself. Our recommendations, at this point, are limited to structure/process issues.

As you will see, some of the recommendations would require input and actions from other bureaus/city departments. We understand you will need to involve non-PIB individuals should the Department/City decide to implement those recommendations.

We do not plan to make this letter public at this point. Down the road, however, we likely will incorporate these recommendations — along with NOPD’s corrective actions — into a public report, including, perhaps, into a public report covering PIB more broadly. We will let you know before we do so.

I look forward to discussing these with you at your convenience.

-Jonathan

Jonathan Aronie  
Consent Decree Monitor

# Recommendations (continued)

- **Legal Conflicts.** The dual role the City Attorney plays can create a conflict when the Mayor is a witness in an investigation. “NOPD should consider engaging outside counsel to advise PIB on matters when the City Attorney’s representation of the City, Mayor’s Office, and PIB could create a real or apparent conflict of interest.”
- **Reassignment Of Officers Under Investigation.** Investigation subjects can be reassigned and assigned back to their original assignments during an investigation. “NOPD should consider revising its policy to prohibit officers reassigned due to a PIB investigation from being assigned back to their previous units until the conclusion of the PIB investigation without the express approval of the PIB Deputy Chief.”
- **PIB Investigators.** PIB investigators can be moved out of PIB (e.g., when they are promoted) in the middle of a significant investigation, as happened in the middle of the Vappie investigation. “NOPD should consider adopting a policy of detailing promoted officers back to PIB for limited timeframes when necessary to complete significant pending investigations.”
- **Initial Investigation Letters.** PIB’s initial letter to Officer Vappie was inexplicably narrowly worded. “NOPD should consider the pros and cons of including a more complete description of the conduct under investigation in its initial letters to investigation subjects.”

# The City's Response

## What The City Contends

“...The Monitor now calls the letter an “Immediate Action Notice,” but those words are not found anywhere in the document...”

(City Response at 15)

## What The Facts Reveal

**From:** Jonathan Aronie <[JAronie@sheppardmullin.com](mailto:JAronie@sheppardmullin.com)>  
**Date:** February 17, 2023 at 5:04:37 PM EST  
**To:** "Keith A. Sanchez" <[kasanchez@nola.gov](mailto:kasanchez@nola.gov)>  
**Cc:** Donesia Turner <[donesia.turner@nola.gov](mailto:donesia.turner@nola.gov)>, "Jonas Geissler (CRT)" <[Jonas.Geissler@usdoj.gov](mailto:Jonas.Geissler@usdoj.gov)>, Michelle Woodfork <[mmwoodfork@nola.gov](mailto:mmwoodfork@nola.gov)>, David Douglass <[ddouglass@sheppardmullin.com](mailto:ddouglass@sheppardmullin.com)>  
**Subject:** OCDM Confidential: PIB Immediate Action Recommendations

Keith,

Attached is a letter setting out a few recommendations flowing out of the PIB investigation we have been monitoring. As the investigation has not concluded yet, we have not included recommendations or comments regarding the substance of the investigation itself. Our recommendations, at this point, are limited to structure/process issues.

As you will see, some of the recommendations would require input and actions from other bureaus/city departments. We understand you will need to involve non-PIB individuals should the Department/City decide to implement those recommendations.

We do not plan to make this letter public at this point. Down the road, however, we likely will incorporate these recommendations — along with NOPD's corrective actions — into a public report, including, perhaps, into a public report covering PIB more broadly. We will let you know before we do so.

I look forward to discussing these with you at your convenience.

-Jonathan

**From:** Jonathan Aronie <[JAronie@sheppardmullin.com](mailto:JAronie@sheppardmullin.com)>  
**Date:** February 17, 2023 at 5:04:37 PM EST  
**To:** "Keith A. Sanchez" <[kasanchez@nola.gov](mailto:kasanchez@nola.gov)>  
**Cc:** Donesia Turner <[donesia.turner@nola.gov](mailto:donesia.turner@nola.gov)>, "Jonas Geissler (CRT)" <[Jonas.Geissler@usdoj.gov](mailto:Jonas.Geissler@usdoj.gov)>, Michelle Woodfork <[mmwoodfork@nola.gov](mailto:mmwoodfork@nola.gov)>, David Douglass <[ddouglass@sheppardmullin.com](mailto:ddouglass@sheppardmullin.com)>  
**Subject:** OCDM Confidential: PIB Immediate Action Recommendations

## In Short

- The Monitoring Team believes these recommendations are critical
  - To ensure compliance with the Consent Decree and
  - To ensure the sustainability of the reforms NOPD has made over the years
- While NOPD has taken steps to implement some of these recommendations, PIB has not yet responded to our February 2023 email
- Accordingly, we are not in a position to opine on the meaningfulness of NOPD's corrective actions at this time



# Officer Reassignments

# Reassignment of Officer Vappie Back to EP During Investigation

- On 12/22, the Monitoring Team was notified by a member of NOPD's leadership team of an effort to reinstate Officer Vappie back to the Mayor's security team in the middle of the PIB investigation
- After many calls from the Monitoring Team questioning the decision, NOPD leadership quashed the effort
- On 3/7, the media asked about the attempted reassignment during a public meeting
  - The Monitoring Team confirmed an effort was made to reinstate Officer Vappie
- In response to a media inquiry, the City issued a nonresponsive statement:
  - "At no time since she was sworn in has Chief Woodfork attempted to reassign Officer Vappie to executive protection."

# The City's Response

- “Mr. Aronie fueled such speculation during the investigation with his **erroneous conspiracy theory** about reinstating Officer Vappie to the Mayors EP team. . . .”
  - City Response at 31.

# NOPD Document Confirms The Reassignment Attempt

## ADMINISTRATIVE RE-ASSIGNMENT NOTIFICATION

### RETURN TO FULL DUTY STATUS

CTN# 2022-0513-R

Effective Wednesday, December 21, 2022, at 4:00 am/pm, this Administrative Reassignment of Senior Police Officer Jeffery Vappie is hereby cancelled and you are reinstated to full regular duty. All of the restrictions placed on you during the Administrative Reassignment are removed. Officer Vappie you are further instructed to contact Sergeant Tokishiba Lane, Supervisor of the Executive Protection Section, regarding reporting time to your regular assignment.

Acknowledged:

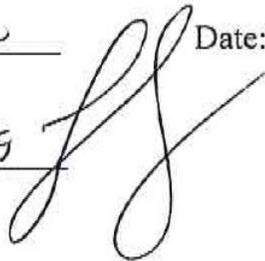


Date:

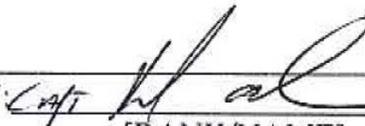
12/21/22

Served by:

SET-LAWRENCE JONES



RETURN APPROVED BY:

  
[RANK/NAME]

DATE:

12-21-22

# Recommendation

- Currently, investigation subjects can be reassigned and assigned back to their original assignments during an investigation.
- “NOPD should consider revising its policy to prohibit officers reassigned due to a PIB investigation from being assigned back to their previous units until the conclusion of the PIB investigation without the express approval of the PIB Deputy Chief.”



# Witness Interviews

# Summary

- PIB's initial interview plan did not include three material witnesses
  - Mayor Cantrell
  - NOPD Consultant Fausto Pichardo
  - Former Superintendent Shaun Ferguson
- The Monitoring Team recommended adding all three to the witness list
- PIB sent requests to all three, and all three refused

# Operative CD Paragraphs

- ¶405. “All witnesses . . . Shall provide a written statement regarding the incident or be interviewed as described below.”
- ¶410. “NOPD agrees to require officers to cooperate with administrative investigations, including appearing for an interview when requested by an NOPD or Inspector General investigator . . . .”
- ¶14. “NOPD means the New Orleans Police Department and its agents, officers, supervisors, and employees . . . .”
- CD XVII. “NOPD and the City agree to ensure that all allegations of officer misconduct are received and are fully and fairly investigated....”

# City and NOPD Leaders Refused To Be Interviewed

- Former Superintendent Ferguson declined to be interviewed, which was his right as a private citizen
- Consultant Pichardo declined to be interviewed, but could have and should have been compelled to do so by his employer, the NOPD
- The Mayor declined to be interviewed, which contravenes the spirit of the Consent Decree and the express term that “NOPD *and the City* agree to ensure that all allegations of officer misconduct are . . . fully and fairly investigated . . . .” (CD XVII)

# In Short

- The quality of PIB investigations hinges on the cooperation of material witnesses
- Every officer invited to be interviewed, whether current or former, did so
- In contrast, three leaders, including the Mayor, declined
- These refusals suggest a lack of understanding of or respect for the accountability process
- The failure to make Fausto Pichardo available violated the Consent Decree
- NOPD should have explored whether it had other tools available to convince these individuals to participate in such an important process

# Conclusion



# Conclusion

- NOPD and the City
  - Violated multiple terms of the Consent Decree
  - Failed to conduct a meaningful analysis of Officer Vappie's potential payroll fraud
  - Failed to evaluate supervisor accountability
  - Fed a long-standing narrative that PIB plays favorites
  - Reduced officer and community trust in integrity of accountability process
- **NOPD and the City's actions raise serious questions regarding PIB's ability to conduct a fair, thorough, impartial, and effective misconduct investigations with integrity**

# THANK YOU

OCDM Website:

<http://consentdecreemonitor.com/>

Questions for Monitoring Team:

[monitoringteam@consentdecreemonitor.com](mailto:monitoringteam@consentdecreemonitor.com)

Comments/Questions for Judge Morgan:

[aburns@consentdecreemonitor.onmicrosoft.com](mailto:aburns@consentdecreemonitor.onmicrosoft.com)

OCDM LinkedIn Page:

<https://www.linkedin.com/company/consent-decree-monitor-new-orleans/>

**From:** [Jonathan Aronie](#)  
**To:** [Daniel E. Davillier](#)  
**Cc:** [David Douglass](#); [Donesia D. Turner](#); [mmwoodfork@nola.gov](mailto:mmwoodfork@nola.gov); [nlgernon@nola.gov](mailto:nlgernon@nola.gov); [jonas.geissler@usdoj.gov](mailto:jonas.geissler@usdoj.gov); [megan.marks@usdoj.gov](mailto:megan.marks@usdoj.gov); [Charles F. Zimmer, II](#)  
**Subject:** Re: OCDM: Supporting Documents  
**Date:** Monday, July 3, 2023 12:44:37 PM

---

I'll let Judge Morgan know.  
Thanks for the reply.  
Have a good holiday.

Jonathan

Jonathan S. Aronie  
Sheppard Mullin Richter & Hampton LLP  
202.747.1902 (office)  
202.302.4855 (cell)

On Jul 3, 2023, at 1:23 PM, Daniel E. Davillier  
<[ddavillier@davillierlawgroup.com](mailto:ddavillier@davillierlawgroup.com)> wrote:

---

Jonathan, I hope all is well. The email below was forwarded to me. I have discussed it with the City and NOPD representatives included on the email. If this is a directive from the Court, we respectfully request that it be in the form of an order of the Court so that we may respond appropriately. Thank you.

Daniel

Daniel E. Davillier  
**Davillier Law Group, LLC**  
935 Gravier Street, Suite 1702  
New Orleans, LA 70112  
email: [ddavillier@davillierlawgroup.com](mailto:ddavillier@davillierlawgroup.com)

**Phone** (504) 582-6998 | **Fax** (504) 582-6985

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**From:** Jonathan Aronie <JAronie@sheppardmullin.com>

**Sent:** Friday, June 30, 2023 2:43 PM

**To:** Nicholas L. Gernon <nlgernon@nola.gov>

**Cc:** Charles F. Zimmer, II <czimmer@davillierlawgroup.com>; Donesia D. Turner <Donesia.Turner@nola.gov>; Michelle M. Woodfork (mmwoodfork@nola.gov) <mmwoodfork@nola.gov>; Geissler, Jonas (CRT) (Jonas.Geissler@usdoj.gov) <Jonas.Geissler@usdoj.gov>; Marks, Megan (CRT) <Megan.Marks@usdoj.gov>; David Douglass <DDouglass@sheppardmullin.com>

**Subject:** OCDM: Supporting Documents

Nick -

Judge Morgan has asked me to collect certain documents and information relating to statements made by the City during the recent PIB/Vappie hearing. I have set out her specific requests below. Once you have the chance to look them over, I'd appreciate it if you would give me a sense of how long you think it will take to gather the requested materials. Here are the requests:

<!--[if !supportLists]-->1. <!--[endif]-->At the status conference, in the context of its discussion of Consent Decree paragraph 415, the City stated NOPD did not give the payroll fraud allegation an analysis or disposition because the lead investigator did not think the initial evidence warranted it. The City went on to state that it is a routine practice of PIB to not fully analyze and give dispositions to all allegations, and that it has no plans to change this practice. The Court would like to see any policy, directive, or standard operating procedure that supports this practice.

<!--[if !supportLists]-->2. <!--[endif]-->The City represented to the Court at the status conference that it is a routine practice for NOPD to assign officers to the Orleans Parish Communications District (OPCD) while on administrative leave pending a PIB administrative investigation. The Court would like to see any policies, standard operating procedures, or other documentation that supports this representation, including examples of when this has occurred previously.

<!--[if !supportLists]-->3. <!--[endif]-->The City suggested that

it is a standard policy for NOPD to reassign officers back to their original duty locations (within 30 days, as I recall) of the opening of an administrative investigation. The Court would like to see the policy, directive, or standard operating procedure that supports this statement if such exists. The Court also would like information regarding what event occurred on December 21, 2022 that led to Officer Vappie being reassigned on that date.

<!--[if !supportLists]-->4. <!--[endif]-->Further to this same point, the City represented that it is standard practice for the bureau to which an officer under investigation has been reassigned to then immediately further reassign that officer to a different duty location. The Court would like to see the policy, directive, or standard operating procedure that supports this representation if such exists.

<!--[if !supportLists]-->5. <!--[endif]-->The Court would like to see all paperwork regarding Officer Vappie's various reassignments over the course of his PIB investigation, including the paperwork reflecting his initial purported reassignment to OPCD, his reassignment (and who approved the reassignment) back to Executive Protection on December 21, 2022, his reassignment out of Executive Protection into Assets and Forfeitures on December 21 or 22, 2022, and his reassignment to Executive Protection Detail in June 2023.

<!--[if !supportLists]-->6. <!--[endif]-->In its June 15<sup>th</sup> report, the Monitoring Team took issue with the March 10 Vappie investigation report not being reviewed or signed by the Superintendent, but instead being signed "for" the Superintendent by the Deputy Chief of PIB. The NOPD represented in its original response to the Monitoring Team's PIB report that this practice is "loosely described in old policies" and "subject to various interpretations." NOPD went on to say it is "reviewing to determine its utility at this stage." The Court would like to see the "old policies" that "loosely describe" the contrary policy referenced in the NOPD's response. Additionally, the Court would like a timeline for the NOPD's review of the current process. (As an aside, if NOPD sees the need to modify its current policies in this area, it should reach out right away to the United States and the Monitoring Team to

coordinate any necessary policy and/or Consent Decree modifications.)

Thank you in advance for your attention to this matter. If any of these requests turn out to be overly burdensome, let me know and we can discuss ways to potentially reduce the burden.

Thanks!

-Jonathan

**Jonathan Aronie**

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

**UNITED STATES OF AMERICA**

**CIVIL ACTION**

**VERSUS**

**NO. 12-1924**

**CITY OF NEW ORLEANS**

**SECTION: “E” (2)**

**ORDER AND REASONS**

Before the Court are the Objections to Rule to Show Cause (“Rule”) filed by the City of New Orleans (“City”).<sup>1</sup> The United States Department of Justice (“DOJ”) filed a Memorandum of Law in Opposition to the City of New Orleans’ Objections to the Court’s Rule to Show Cause.<sup>2</sup>

**INTRODUCTION**

It is axiomatic that district courts located within the Fifth Circuit are obligated to follow the precedents set by that court. In *U.S. v. Alcoa, Inc.*, the Fifth Circuit reiterated its long-held position that district courts have wide discretion to enforce consent decrees:

These cases reinforce the principle that district courts have the power and ordinarily must hold parties to the terms of a consent decree. . . . And by these cases, district courts have wide discretion to enforce decrees and to implement remedies for decree violations. . . . “[Once] the district court enters the settlement as a judicial consent decree ending the lawsuit, the settlement takes on the nature of a judgment.” . . . “Courts have, and must have, the inherent authority to enforce their judicial orders and decrees in cases of civil contempt. Discretion . . . must be left to a court in the enforcement of its decrees.”<sup>3</sup>

Because the Rule is an exercise of the Court’s power to *enforce* the terms of the New Orleans Police Department Consent Decree, the City’s objection must be denied.

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<sup>1</sup> R. Doc. 734. Although the City captioned the pleading as “objections,” the City makes only one objection—that the Court has amended the Consent Decree by making a material change to its terms.

<sup>2</sup> R. Doc. 735.

<sup>3</sup> 533 F.3d 278, 284 (5<sup>th</sup> Cir. 2008) (first quoting *Ho v. Martin Marietta Corp.*, 845 F.2d 545, 548 (5<sup>th</sup> Cir. 1988)), (then quoting *Cook v. Ochsner Found. Hosp.*, 559 F.2d 270, 272 (5<sup>th</sup> Cir. 1977)).

## **BACKGROUND**

On July 24, 2012, DOJ filed the complaint in this matter against the City, seeking declaratory and injunctive relief after an extensive investigation of the New Orleans Police Department (“NOPD”),<sup>4</sup> pursuant to the Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 14141 (“Section 14141”); the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (the “Safe Streets Act”); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and its implementing regulations, 28 C.F.R. §§ 42.101-.112 (“Title VI”).

On that same day, July 24, 2012, the City and DOJ filed a Joint Motion and Memorandum for Entry of Consent Decree.<sup>5</sup> On September 14, 2012, the City and DOJ filed a Joint Supplemental Motion for Entry of Consent Decree incorporating certain agreed upon modifications to the Consent Decree.<sup>6</sup> The Court approved the Joint Motion for Entry of Consent Decree, as amended, on January 11, 2013.<sup>7</sup> In 2018, the parties prepared a restated and amended Consent Decree, incorporating all amendments approved by the Court through October 2, 2018. For the convenience and benefit of the public and the parties, the Court approved the Amended and Restated Consent Decree on October 2, 2018<sup>8</sup> and filed the document in the record that same day.<sup>9</sup>

On or around November 9, 2022, the Public Integrity Bureau for the NOPD (“PIB”) opened an administrative investigation into Officer Jeffrey Vappie, a member of the NOPD Executive Protection Unit.<sup>10</sup> In accordance with the terms of the Consent Decree, the court-appointed Consent Decree Monitor (“Monitor”), in cooperation with the Office

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<sup>4</sup> R. Doc. 1 at ¶¶ 1, 14-16.

<sup>5</sup> R. Doc. 2.

<sup>6</sup> R. Doc. 114.

<sup>7</sup> R. Doc. 159.

<sup>8</sup> R. Doc. 564.

<sup>9</sup> R. Doc. 565.

<sup>10</sup> R. Doc. 714-4.

of the Independent Police Monitor, monitored the PIB investigation.<sup>11</sup> Although the complaint initiating the PIB investigation centered on Officer Vappie's conduct, the Monitor's review focused on PIB's compliance with the Consent Decree in the course of the Officer Vappie investigation.<sup>12</sup>

Before the investigation was complete, on February 17, 2023, the Monitor sent an Immediate Action Notice<sup>13</sup> to the Deputy Superintendent of the PIB calling to his attention several ongoing violations of the Consent Decree uncovered in the Monitor's review of the Officer Vappie investigation, including failure to provide close and effective supervision as required by the Consent Decree and failure to adopt policies and procedures that comply with the Consent Decree.<sup>14</sup> The Monitor also noted a likely failure to conduct performance evaluations as required by the Consent Decree in light of the lack of close and effective supervision. The Monitor specifically stated, "Our opinions and recommendations relate only to larger policy/process issues that are unrelated to the forthcoming substantive findings of the Vappie PIB Investigation team."<sup>15</sup> Although the Monitor described the issues as ones "NOPD should address right away,"<sup>16</sup> NOPD did not respond to the Monitor and took no corrective action.

On March 10, 2023, PIB issued its Investigation Report on Officer Vappie.<sup>17</sup> Interim Superintendent Michelle Woodfork approved the discipline imposed on Officer Vappie<sup>18</sup> on June 14, 2023,<sup>19</sup> and, to the Court's knowledge, Officer Vappie did not appeal

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<sup>11</sup> R. Doc. 714-2.

<sup>12</sup> R. Doc. 714.

<sup>13</sup> The fact that the Monitor sent an Immediate Action Notice to PIB supports the Monitor's position that its recommendations related to larger policy/process issues within PIB and not just the Officer Vappie investigation.

<sup>14</sup> R. Doc. 714-3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 2.

<sup>17</sup> R. Doc. 714-4.

<sup>18</sup> Officer Vappie received two letters of reprimand. R. Doc. 735-3 at 140. (Depo. of Sanchez.)

<sup>19</sup> Attachment A to this Order and Reasons.

the decision. In its review of the PIB Investigation Report, the Monitor identified multiple instances in which PIB failed to comply with the Consent Decree in the course of the investigation. Among other things, the Monitor found that PIB, in violation of the clear terms of the Consent Decree, did not include all allegations against Officer Vappie in the complaint intake form, specifically PIB did not include the allegation of payroll fraud. As a result, PIB also violated the Consent Decree by not fully investigating the payroll fraud allegation, not giving the payroll fraud allegation a disposition, and not documenting its analysis of the payroll fraud allegation. PIB also violated the Consent Decree by not applying the correct legal standard to all of its findings and not making a credibility determination regarding Officer Vappie.<sup>20</sup>

The Monitor shared these and other findings with the parties and the Court in its May 3, 2023 Report (“Monitor’s PIB Report”).<sup>21</sup> The City filed a response to the Monitor’s PIB Report but did not address the Monitor’s substantive findings, except to make conclusory statements that the Vappie investigation did not involve a serious misconduct complaint and that the violations of paragraphs 381, 382, 383, and 424 had been resolved.<sup>22</sup>

Even after the Immediate Action Notice and the Monitor’s PIB Report, PIB did not acknowledge that it had violated the Consent Decree in the course of the Officer Vappie investigation in some or all of the ways identified by the Monitor and did not represent that it would correct any deficiencies. Instead, PIB ignored the Immediate Action Notice and has steadfastly denied, without support, that it has violated the Consent Decree in any way. In fact, in its written response to the Monitor’s Vappie Investigation Report, the

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<sup>20</sup> The specific Consent Decree requirements violated are listed *infra* at pp. 8-11.

<sup>21</sup> R. Doc. 694.

<sup>22</sup> R. Doc. 697 at 3, 5-6.

City denied that violations of the Consent Decree had occurred and, as proof, asserted that the Officer Vappie investigation proceeded in just the same manner as any other investigation.<sup>23</sup> PIB has announced that it handles all investigations the same way it handled the Vappie investigation and that it intends to continue to do so, apparently even if the Monitor has found that its actions violate the Consent Decree.

The violations identified involve core components of the reform of PIB, such as including all factual allegations in the complaint intake form, fully investigating and reaching a disposition on all factual allegations, applying a preponderance of the evidence standard to all its findings, considering all evidence including circumstantial evidence, and making credibility assessments of all witnesses. The importance of these issues strikes at the core of the Consent Decree and go far beyond the significance of the Vappie investigation. In fact, in its investigation of the New Orleans Police Department that led to the entry of the Consent Decree, DOJ cited longstanding and entrenched practices of the NOPD and structural deficiencies in its systems and operations, including its failure to fully investigate allegations of misconduct,<sup>24</sup> as justification for the entry of the Consent Decree. The parties and the Court have consistently recognized the importance of the operations of PIB to reform of the NOPD.

After the PIB investigation of Officer Vappie was complete, the Monitor issued its June 15, 2023 Special Report on PIB's handling of the Vappie investigation (the "Monitor's Vappie Investigation Report"), noting that "the NOPD's response to the Monitoring Team's analysis raises serious concerns that we believe require the Court's immediate attention."<sup>25</sup> The Monitor identified PIB's violations of the Consent Decree

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<sup>23</sup> R. Doc. 697.

<sup>24</sup> R. Doc. 1-1.

<sup>25</sup> R. Doc. 714 at 1.

and various NOPD policies and procedures in the course of the Vappie investigation. The Monitor also identified the City's refusal to share information and documents with the Monitoring Team, a clear violation of Consent Decree paragraphs 454, 470, and 472.

DOJ filed a response to the Monitor's Vappie Investigation Report;<sup>26</sup> in its Response, DOJ expressed its agreement with the Monitor's conclusions.<sup>27</sup> The City filed a response to the Monitor's Vappie Investigation Report.<sup>28</sup> Rather than respond to the Monitor's findings regarding violations of the Consent Decree, the City's response focused on particular facts relating only to the Vappie investigation and ad hominem attacks against the Monitor. Once again, PIB failed to acknowledge that it had violated any provisions of the Consent Decree and failed to express any intent to come into compliance.

The Monitor also raised concerns relating to the timeliness of PIB investigations and imposition of discipline in the Monitor's PIB Report, Vappie Investigation Report, 2022 Annual Report (published in 2023)<sup>29</sup>, and 2023 First Quarter Report.<sup>30</sup> The Monitor, in the 2022 Annual Report, explained that the "central focus of the 2022 audit was to determine whether administrative investigations are being completed within times proscribed by the Consent Decree and NOPD policy."<sup>31</sup> The Monitor also raised concerns about the timeliness of the City's notification to the complainant of the outcome of an investigation. The City and NOPD did not contest the Monitor's findings<sup>32</sup> and, instead, stated that these paragraphs "are being addressed and have been addressed and the non-

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<sup>26</sup> R. Doc. 715.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> R. Doc. 718.

<sup>29</sup> R. Doc. 674.

<sup>30</sup> R. Doc. 702.

<sup>31</sup> R. Doc. 674 at 50.

<sup>32</sup> R. Doc. 697 at 5. The City's response did not include any discussion of the audit or its findings.

compliant nature reflects the audited period only and not our current compliance.”<sup>33</sup> At least the City acknowledged these violations, but its repeated but empty promises to correct the violations are no longer sufficient.

On Thursday, June 21, 2023, this Court held an in-court status conference to hear from the Monitor regarding its review of PIB’s investigative processes and its concerns about violations of the Consent Decree revealed in the course of the investigation into allegations against Officer Vappie.<sup>34</sup> At the status conference, the Monitor stated that the Monitor’s work on these issues was not a review of Officer Vappie but was a “review of PIB’s processes and procedures and how PIB undertook the investigation.”<sup>35</sup> The Monitor presented substantial evidence of violations by the City of Consent Decree paragraphs 399, 415, 414, 413, 454, 470, 472, 409, 419, 306, 313, 403, and 420.<sup>36</sup>

#### **RULE TO SHOW CAUSE**

On July 21, 2023, the Court issued a Rule to Show Cause why the City should not be found to have violated eight provisions of the Consent Decree with respect to the conduct of Public Integrity Bureau (“PIB”) investigations and two provisions of the Consent Decree regarding timeliness of investigations, imposition of discipline, and notification of complainants.<sup>37</sup>

The Rule is the result of substantial evidence presented by the Monitor in its Immediate Action Notice and the reports described above, as well as at the status

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<sup>33</sup> *Id.* at 6. Despite the City’s repeated assurances that the timeliness of PIB investigations, its imposition of discipline, and the notification of complainants is being addressed, the Court has seen no evidence that these clear violations of the Consent Decree are being corrected. Instead, the violations remain with no resolution in sight.

<sup>34</sup> R. Doc. 726.

<sup>35</sup> *Id.* at p. 7.

<sup>36</sup> *See generally* R. Doc. 726.

<sup>37</sup> R. Doc. 729.

conference on June 21, 2023,<sup>38</sup> that the City and NOPD have violated all or portions of thirteen paragraphs of the Consent Decree.

The relevant portions of the Consent Decree paragraphs in question are italicized below:

**Paragraph 399:** *NOPD agrees to develop and implement a complaint classification protocol that is allegation-based rather than anticipated outcome-based to guide PIB in determining where a complaint should be assigned. This complaint classification protocol shall ensure that PIB or an authorized outside agency investigates allegations including:*

- a)** serious misconduct, including but not limited to: criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft;
- b)** misconduct implicating the conduct of the supervisory or command leadership of the subject officer; and
- c)** subject to the approval by the Deputy Superintendent of PIB, allegations that any commander requests be conducted by PIB rather than the subject officer's District/Division.<sup>39</sup>

**Paragraph 415:** *The misconduct investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:*

- a)** *"Unfounded," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did not occur or did not involve the subject officer;*
- b)** *"Sustained," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur;*
- c)** *"Not Sustained," where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred; or*
- d)** *"Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate NOPD policies, procedures, or training.<sup>40</sup>*

**Paragraph 414:** *The resolution of any misconduct complaint must be based upon the preponderance of the evidence. A misconduct investigation*

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<sup>38</sup> See R. Doc. 726.

<sup>39</sup> R. Doc. 726 at 9-10.

<sup>40</sup> *Id.* at 15-16.

shall not be closed simply because the complaint is withdrawn or because the alleged victim is unwilling or unable to provide additional information beyond the initial complaint. In such instances, the investigation shall continue as necessary within the allowable investigation timeframes established under this Agreement to resolve the original allegation(s) where possible based on the evidence and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense shall not be the deciding factor as to whether an NOPD officer committed the alleged misconduct, nor shall it justify discontinuing the investigation.<sup>41</sup>

**Paragraph 413:** *In each investigation, NOPD shall consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations based upon that evidence. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will NOPD disregard a witness' statement merely because the witness has some connection to the complainant or because of any criminal history. NOPD shall make efforts to resolve material inconsistencies between witness statements.*<sup>42</sup>

**Paragraph 454:** *City and NOPD shall provide each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft), to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review. The Monitor shall review each serious use of force investigation and each serious misconduct complaint investigation and recommend for further investigation any use of force or misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence. The Monitor shall provide written instructions for completing any investigation determined to be incomplete or inadequately supported by the evidence. The Superintendent shall determine whether the additional investigation or modification recommended by the Monitor should be carried out. Where the Superintendent determines not to order the recommended additional investigation or modification, the Superintendent will set out the reasons for this determination in writing. The Monitor shall provide recommendations so that any further investigation or modification can be concluded within the timeframes mandated by state law. The Monitor may coordinate with the IPM in conducting these use of force and misconduct investigation reviews.*<sup>43</sup>

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<sup>41</sup> *Id.* at 17-18.

<sup>42</sup> *Id.* at 20-26.

<sup>43</sup> *Id.* at 26-31.

**Paragraph 470:** *To facilitate its work, the Monitor may conduct on-site visits and assessments without prior notice to the City and NOPD. The Monitor shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement related trainings, meetings, and reviews, such as critical incident reviews, use of force review boards, and disciplinary hearings. NOPD shall notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, in-custody death, or arrest of any officer.*<sup>44</sup>

**Paragraph 472:** *City and NOPD shall ensure that the Monitor has full and direct access to all City and NOPD documents and data that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement, except any documents or data protected by the attorney-client privilege. The attorney-client privilege may not be used to prevent the Monitor from observing reviews and trainings such as use of force review boards, or disciplinary hearings. Should the City and NOPD decline to provide the Monitor access to documents or data based on privilege, the City and NOPD shall inform the Monitor and DOJ that they are withholding documents or data on this basis and shall provide the Monitor and DOJ with a log describing the documents or data and the basis of the privilege for withholding.*<sup>45</sup>

**Paragraph 409:** *All misconduct investigation interview recordings shall be stored and maintained in a secure location within PIB.*<sup>46</sup>

**Paragraph 419:** *All investigation reports and related documentation and evidence shall be securely maintained in a central and accessible location until the officer who was a subject of the complaint has severed employment with NOPD.*<sup>47</sup>

**Paragraph 306:** *NOPD supervisors shall be held accountable for providing the close and effective supervision necessary to direct and guide officers. Close and effective supervision requires that supervisors: respond to the scene of certain arrests; review each arrest report; respond to the scene of uses of force as required by this Agreement; investigate each use of force (except those investigated by FIT); review the accuracy and completeness of officers' Daily Activity Reports; respond to each complaint of misconduct; ensure that officers are working actively to engage the community and increase public trust and safety; and provide counseling, redirection, and support to officers as needed, and that supervisors are held accountable for performing each of these duties.*<sup>48</sup>

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<sup>44</sup> *Id.* at 31-33.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 33-36.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* 36.

**Paragraph 313:** *NOPD shall hold commanders and supervisors directly accountable for the quality and effectiveness of their supervision, including whether commanders and supervisors identify and effectively respond to misconduct, as part of their performance evaluations and through non-disciplinary corrective action, or through the initiation of formal investigation and the disciplinary process, as appropriate.*<sup>49</sup>

**Paragraph 403:** *All administrative investigations conducted by PIB shall be completed within the time limitations mandated by state law and within 90 days of the receipt of the complaint, including assignment, investigation, review and final approval, unless granted an extension as provided for under state law or Civil Service exemption, in which case the investigation shall be completed within 120 days. Where an allegation is sustained, NOPD shall have 30 days to determine and impose the appropriate discipline, except in documented extenuating circumstances, in which case discipline shall be imposed within 60 days. All administrative investigations shall be subject to appropriate interruption (tolling period) as necessary to conduct a concurrent criminal investigation or as provided by law.*<sup>50</sup>

**Paragraph 420:** *Each misconduct complainant will be kept informed periodically regarding the status of the investigation. The complainant will be notified of the outcome of the investigation, in writing, within ten business days of the completion of the investigation, including regarding whether any disciplinary or non-disciplinary action was taken.*<sup>51</sup>

The Court also ordered the City to produce certain documents to assist the Court in evaluating whether the City has violated the paragraphs of the Consent Decree listed above:

1. Any policy, directive, or standard operating procedure that authorizes NOPD to not fully investigate or document all factual allegations of misconduct if the lead investigator makes an early determination that the allegation lacks merit.
2. Any policy, directive, or standard operating procedure that authorizes the City to not fully analyze and give dispositions to all allegations.
3. Policies, standard operating procedures, or other documentation that authorize the City to assign officers on administrative leave to the Orleans Parish Communications District, including concrete examples of when this has occurred previous to the Officer Vappie investigation.
4. The policy, directive, or standard operating procedure authorizing reassignment of officers on administrative leave back to their original duty

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<sup>49</sup> *Id.* at 36-37.

<sup>50</sup> R. Doc. 694 at 30.

<sup>51</sup> *Id.* at 32.

locations, and information regarding any event that occurred on or around December 21, 2022 that led to Officer Vappie being reassigned on that date.

5. The policy, directive, or standard operating procedure that authorizes the bureau to which an officer under investigation has been reassigned to then immediately further reassign that officer to a different duty location, including concrete examples of when this has occurred previous to the Officer Vappie investigation.
6. All paperwork regarding Officer Vappie's various reassignments over the course of his PIB investigation, and all policies, directives, and standard operating procedures that authorize the manner in which Officer Vappie's reassignments were handled.
7. The "old policies" that "loosely describe" the practice of PIB investigations being reviewed and approved by the Deputy Chief of PIB rather than the Superintendent.<sup>52</sup>

On July 31, 2023, the City filed an emergency petition for a writ of mandamus to the United States Court of Appeals for the Fifth Circuit.<sup>53</sup> In its petition, the City argued that this Court had exceeded its authority with respect to the Consent Decree and requested that the Fifth Circuit vacate this Court's Rule to Show Cause and issue guidance to this Court concerning the limits of its jurisdiction.<sup>54</sup>

On August 2, 2023, the Fifth Circuit denied the writ without prejudice and administratively stayed for fourteen days from the date thereof, to give the district court an opportunity to entertain any objections, requests for extensions, or motions for protective orders that the parties may wish to file in response to the Rule to Show Cause.<sup>55</sup>

On August 7, 2023, the City filed its objection.<sup>56</sup> The City did not file any request for an

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<sup>52</sup> In its written response to the Monitor's Vappie Investigation Report, the City denied that violations of the Consent Decree had occurred and, as proof, asserted that the Officer Vappie investigation proceeded in just the same manner as any other investigation. Because of the assertions made by the City, including its representation that it conducts all investigations in the same manner it conducted the Officer Vappie investigation, a determination of whether the City is violating the Consent Decree must include an examination of whether, as the City repeatedly asserts, Officer Vappie was treated exactly as any other NOPD officer. R. Doc. 697.

<sup>53</sup> *In re: City of New Orleans*, No. 23-30520 (5th Cir. July 31, 2023).

<sup>54</sup> *Id.* at Dkt. No. 2.

<sup>55</sup> *Id.* at Dkt. No. 14.

<sup>56</sup> R. Doc. 734.

extension at that time<sup>57</sup> or file a motion for a protective order, presumably because the documents to be produced are neither voluminous nor confidential.

**THE COURT HAS JURISDICTION TO  
ENFORCE THE CONSENT DECREE**

In the Court's original Order and Reasons approving the Consent Decree on January 11, 2013, the Court specifically retained jurisdiction over this matter, including the right to enforce the Consent Decree:

The Court retains jurisdiction over this matter, including but not limited to the right to interpret, amend and **enforce** the Consent Decree and to appoint a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure, until the final remedy contemplated by the Consent Decree has been achieved.<sup>58</sup>

In *U.S. v. Alcoa, Inc.*, the Fifth Circuit reiterated its long-held position that district courts have wide discretion to enforce consent decrees:

These cases reinforce the principle that district courts have the power and ordinarily must hold parties to the terms of a consent decree. . . . And by these cases, district courts have wide discretion to enforce decrees and to implement remedies for decree violations. . . . “[Once] the district court enters the settlement as a judicial consent decree ending the lawsuit, the settlement takes on the nature of a judgment.”. . . “Courts have, and must have, the inherent authority to enforce their judicial orders and decrees in cases of civil contempt. Discretion . . . must be left to a court in the enforcement of its decrees.”<sup>59</sup>

The Supreme Court has “long recognized that a district court possesses inherent powers that are ‘governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition

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<sup>57</sup> The City did file a request for clarification of the briefing schedule on August 16, 2023. R. Doc. 737. The Court granted the request. R. Doc. 738.

<sup>58</sup> R. Doc. 159 at p. 8 (emphasis added). This Order remains in effect.

<sup>59</sup> 533 F.3d 278, 284 (5<sup>th</sup> Cir. 2008) (first quoting *Ho v. Martin Marietta Corp.*, 845 F.2d 545, 548 (5<sup>th</sup> Cir. 1988)), (then quoting *Cook v. Ochsner Found. Hosp.*, 559 F.2d 270, 272 (5<sup>th</sup> Cir. 1977)).

of cases.”<sup>60</sup> The Fifth Circuit notes that one inherent power flowing from Article III of the U.S. Constitution is a court’s “power ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’”<sup>61</sup> “[T]his power fits most appropriately in the . . . second category of inherent powers[, which] encompasses those ‘necessary to the exercise of all others.’ For the most part, these powers are those deemed necessary to protect the efficient and orderly administration of justice and those necessary to command respect for the court’s orders, judgments, procedures, and authority.”<sup>62</sup>

“[A] consent decree, although founded on the agreement of the parties, is a judgment.”<sup>63</sup> “[A] consent decree is a ‘settlement agreement subject to continued judicial policing.’”<sup>64</sup> “It is well-settled that a federal court has the inherent authority to enforce its own orders, including consent decrees agreed to by parties and approved by the Court.”<sup>65</sup> “[T]he [C]ourt has an independent duty to ensure that the terms of the decree are effectuated.”<sup>66</sup> “Exactly how a court should enforce and protect its orders is an issue largely left to the discretion of the court entering the order, so long as that discretion is exercised reasonably.”<sup>67</sup> District courts have the power to hold parties to the terms of a

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<sup>60</sup> *Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630–631 (1962) and citing *United States v. Hudson*, 7 Cranch 32, 34 (1812)).

<sup>61</sup> *In re Stone*, 986 F.2d 898, 903 (5th Cir. 1993) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

<sup>62</sup> *Id.* at 902–03.

<sup>63</sup> *United States v. City of Miami*, 664 F.2d 435, 439 (5th Cir. 1981) (Rubin, J., concurring) (citing *United States v. Kellum*, 523 F.2d 1284, 1287 (5th Cir. 1975)).

<sup>64</sup> *Vanguards of Cleveland v. City of Cleveland*, 23 F.3d 1013, 1017 (6th Cir. 1994) (quoting *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983)).

<sup>65</sup> *Chisom v. Jindal*, 890 F.Supp.2d 696, 710 (E.D. La. Sept. 1, 2012) (Morgan, J.) (citing *United States v. Alcoa, Inc.*, 533 F.3d 278, 287 (5th Cir. 2008)).

<sup>66</sup> *Sweeton v. Brown*, 1991 WL 181751, at \*6 (6th Cir. Sept. 17, 1991) (quoting 10 CYCLOPEDIA OF FEDERAL PROCEDURE § 35.25 at 294 (3d ed. 1984) (citing *Stotts v. Memphis Fire Dep’t*, 679 F.2d 541 (6th Cir. 1982), *rev’d on other grounds sub. nom. Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561 (1984))); see also R. Doc. 565 at p. 122, ¶ 486 (imposing a duty on the Court to “ensure that the requirements of th[e] [Consent Decree] are properly and timely implemented”).

<sup>67</sup> *Chisom*, 890 F.Supp.2d at 711; see also *Alcoa*, 533 F.3d at 287 (“Discretion must be left to a court in the enforcement of its decrees.” (cleaned up)). <sup>15</sup> *Alcoa*, 533 F.3d at 286.

consent decree and have wide discretion to implement remedies for decree violations, including holding the parties in civil contempt.<sup>15</sup>

**THE CITY'S ARGUMENTS ARE UNAVAILING**

**The Rule to Show Cause is not an amendment of the Consent Decree.**

In the “Issue Presented” portion of its objection to the Rule, the City states that the Rule “directs that the PIB investigation of one officer will be used to determine NOPD’s compliance with the Decree instead of the outcome assessment and audit tests required by the Decree. . . . This is a material change to the Decree that is far more onerous and inequitable than the agreed upon terms of the Decree.”<sup>68</sup> “[T]he City again objects to the jurisdiction of the Court to unilaterally change the Decree and issue this Rule.”<sup>69</sup> Thus, the City’s only objection is that the Court has amended the Consent Decree.

The City highlights the references in the Court’s January 11, 2013 Order approving the Consent Decree to the Court’s continuing jurisdiction to *interpret*<sup>70</sup> and *amend* it.<sup>71</sup> The City “objects to the jurisdiction of this Court to unilaterally change the Decree and issue this rule.”<sup>72</sup> The Rule is not an amendment of the Consent Decree. The parties and the Court are well aware of the process for amending the Consent Decree. In fact, approximately 13 motions have been filed and granted to do just that.<sup>73</sup>

As the Court understands it, the City’s argument is that the Court has made a material change to the Consent Decree by proposing to determine whether the Consent

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<sup>68</sup> R. Doc. 734 at 5-6.

<sup>69</sup> R. Doc. 734 at 17.

<sup>70</sup> The City has not argued the Court is interpreting the Consent Decree. The PIB states that it is following the “plain language” of the Consent Decree.

<sup>71</sup> *Id.* at 12. See note 13 (*emphasis added*).

<sup>72</sup> *Id.* at 17.

<sup>73</sup> The City of New Orleans filed unopposed *ex parte* motions to amend the consent decree at R. Docs. 362, 494, 504, 519, and 620. The City of New Orleans and the United States of America filed joint motions to amend the consent decree at R. Docs. 335, 389, 467, 506, 530, 546, and 561. On October 2, 2018, an Amended and Restated Consent Decree was filed by the Court. R. Doc. 565. On March 8, 2022, the City of New Orleans filed an unopposed *ex parte* motion to amend the consent decree at R. Doc. 620.

Decree has been complied with based *solely* on the Vappie investigation. The City argues the Court is requiring “the City to show it should not be held in contempt of court based on a single investigation by PIB.”<sup>74</sup> This is a mischaracterization of the Rule which clearly states that the City must “show cause why it should not be found to have violated (1) the eight provisions of the Consent Decree with respect to the conduct of PIB investigations, as set forth above, and (2) the provisions of the Consent Decree regarding timeliness of investigations, imposition of discipline, and notification of complainants.”<sup>75</sup> The focus of the Rule is not the Officer Vappie investigation. The Court will not use this individual event to deem NOPD non-compliant with the Consent Decree and in contempt of court. The Rule will be decided based on the substantial evidence of non-compliance with specific provisions of the Consent Decree in the Monitor’s Immediate Action Notice,<sup>76</sup> the Monitor’s PIB Report,<sup>77</sup> the Monitor’s Vappie Investigation Report,<sup>78</sup> the Monitor’s 2022 Annual Report,<sup>79</sup> and the Monitor’s 2023 First Quarter Report,<sup>80</sup> as well as any evidence of compliance offered by the City or of non-compliance offered by DOJ.

The City incorrectly labels the Rule as an “investigation” based on one specific PIB investigation.<sup>81</sup> The Rule is not an investigation into Officer Vappie’s actions or the discipline imposed on him.<sup>82</sup> Officer Vappie’s disciplinary action was completed and discipline was imposed on June 15, 2023.<sup>83</sup> There is no longer an Officer Vappie

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<sup>74</sup> R. Doc. 734 t 16.

<sup>75</sup> R. Doc. 729 at 11.

<sup>76</sup> R. Doc. 714-3

<sup>77</sup> R. Doc. 694.

<sup>78</sup> R. Doc. 714.

<sup>79</sup> R. Doc. 674.

<sup>80</sup> R. Doc. 702. It is likely many if not all of these violations have been included in other audits and reports, but those listed are the most recent examples.

<sup>81</sup> R. Doc. 734 at 14, 16.

<sup>82</sup> Nevertheless, a single incident may demonstrate a violation of the Consent Decree if the violation is purposeful. Otherwise, the City and NOPD could pick the cases in which it chooses to follow the Consent Decree and shield those in which it does not from scrutiny.

<sup>83</sup> See Attachment A.

investigation and no longer an open Officer Vappie disciplinary action. There is no reason for the Court to investigate Officer Vappie and no way for the Court to have an impact on the discipline imposed on him. The Officer Vappie investigation is relevant only because it revealed PIB's structural deficiencies leading to violations of the Consent Decree and, importantly, PIB has represented that it conducts all investigations in the same way it investigated Officer Vappie and *intends to continue to do so*. This is important because the violations identified by the Monitor involve core components of the reform of PIB, such as including all factual allegations in the complaint intake form, fully investigating and reaching a disposition on all factual allegations, applying a preponderance of the evidence standard to all its findings, failing to consider circumstantial evidence, and making credibility assessments of all witnesses. These issues strike at the core of the Consent Decree and go far beyond the significance of the Vappie investigation.

The purpose of the Court's Rule is to enforce the paragraphs of the Consent Decree identified by the Monitor as not being in compliance.<sup>84</sup> "The City acknowledges the equitable powers of the Court to enforce its judgement (sic), including this Decree."<sup>85</sup> The City does not dispute the Court's continuing jurisdiction to *enforce* the Consent Decree.

**The Rule does not implicate Federalism Concerns.**

The City argues that the Rule implicates sensitive federalism concerns.<sup>86</sup> As the City well knows, this argument is misplaced in the context of the City's objection to the Rule. Instead, federalism concerns come into play in the context of a Rule 60(b)(5) motion to terminate a consent decree because its enforcement is no longer equitable.<sup>87</sup> In

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<sup>84</sup> R. Doc. 729 at 6, 10.

<sup>85</sup> R. Doc. 734 at 7.

<sup>86</sup> R. Doc. 734 at 21.

<sup>87</sup> The City has made these arguments in its pending Motion to Terminate the Consent Decree. R. Doc. 629-1.

*Horne v. Flores*,<sup>88</sup> cited by the City in its objection,<sup>89</sup> the Supreme Court explains that federalism concerns may justify termination of a consent decree under Rule 60(b)(5) but only if the consent decree has been implemented. “If a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper.”<sup>90</sup>

In the context of a Rule 60(b)(5) motion to terminate a consent decree, the first step in the analysis is to determine whether there is an ongoing violation of federal law. The City has presented no evidence that there are no ongoing violations of federal law. Instead, the City, without support or explanation, claims it is “approximately 90% compliant with *every single subparagraph* the the Decree. . . .”<sup>91</sup> Such a sweeping statement requires support.<sup>92</sup> In reality, the Monitor’s Report covering the second quarter of 2023 documents extensive material violations, made worse when NOPD “(i) refused to acknowledge them, (ii) refused to engage in meaningful dialogue to remedy them, and (iii) represented that it intended to continue violating some of them.”

Furthermore, “several courts have held that federalism concerns do not prevent a federal court from enforcing a consent decree to which state officials have consented.”<sup>93</sup>

### **CONCLUSION**

If, as the City argues, the Court is determining the City’s compliance with the Consent Decree based on the PIB investigation of one officer, and this investigation does not reflect the true state of the City’s “institutional level”<sup>94</sup> of compliance, the City is free to avail itself of the offer made in note 44 of the Rule and repeated herein to assure the

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<sup>88</sup> 557 U.S. 433, 447.

<sup>89</sup> R. Doc 734 at 21.

<sup>90</sup> 557 U.S. at 450.

<sup>91</sup> R. Doc. 734 at 19.

<sup>92</sup> R. Doc. 736 at 10.

<sup>93</sup> *Stone v. Ctr. V. Los Angeles Cnty. Metro. Transp. Auth.*, 263 F.3d 1041, 1050 (9<sup>th</sup> Cir. 2001).

<sup>94</sup> R. Doc. 734 at 18.

Court that, if there were any violations of the Consent Decree in the Officer Vappie investigation, they have been remedied and to produce to the Court the policies, training, and operational procedures in place to ensure that the City is and will continue to be in compliance with the Consent Decree.<sup>95</sup> The City's failure to do so, thus far, and its statements that PIB intends to continue conducting investigations in the same way it conducted the Officer Vappie investigation, raised the Court's legitimate concern and led to the entry of the Rule requiring the City to show cause why it should not be found to have violated the Consent Decree.

The New Orleans Police Department Consent Decree is an Order of this Court. This Court has an independent duty to ensure that the terms of its Order are effectuated in an expeditious manner. To preserve the procedures necessary to command respect for the Court's Order and its authority, the Court finds it necessary to deny the City's objection and to schedule a hearing on the Rule to Show Cause. Because of the delay resulting from the City's filing a writ of mandamus to the Fifth Circuit Court of Appeals, the Court will continue the date of the hearing on the Rule and the dates by which the parties must file pre-hearing memoranda and produce documents.

### **ORDER**

The City is required to appear in Court on **August 31, 2023, at 2:00 p.m.**, to show cause why it should not be found to have violated (1) the provisions of the Consent Decree with respect to the conduct of PIB investigations, as set forth above, and (2) the provisions of the Consent Decree regarding timeliness of investigations, imposition of discipline, and notification of complainants.<sup>96</sup>

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<sup>95</sup> R. Doc 729 at 11.

<sup>96</sup> To the extent the City concedes it has violated any of these provisions of the Consent Decree listed above, see pp.7-10, supra, the City will not be subject to sanction so long as it has remedied the violation and produces the policies, training, and operational procedures put in place to ensure that future violations will not occur.

The City and DOJ may, upon notice to the Court by **August 25, 2023**, present live testimony at the hearing.

The City must file a pre-hearing memorandum, not to exceed twenty-five pages excluding attachments, on or before **August 25, 2023**, addressing the issues raised above and attaching the documents the City has been ordered to produce<sup>97</sup> and any additional documents the City wishes to rely on at the Show Cause hearing.

The DOJ must file a pre-hearing memorandum, not to exceed twenty-five pages excluding attachments, on or before **August 29, 2023**, addressing the issues raised above and attaching any documents it wishes to rely on at the Show Cause hearing.

A finding that the City has not shown cause why it should not be found to be in violation of these provisions of the Consent Decree may, after notice and hearing, result in the City being held in contempt of Court and sanctioned.

**New Orleans, Louisiana, this 19th day of August, 2023.**

  
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**SUSIE MORGAN**  
**UNITED STATES DISTRICT JUDGE**

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<sup>97</sup> See pp. 10-11, *supra*.

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

**UNITED STATES OF AMERICA,  
Plaintiff,**

**V.**

**CITY OF NEW ORLEANS,  
Defendant.**

**CIVIL ACTION NO.  
2:12-CV-01924-SM-DPC**

**JUDGE SUSIE MORGAN**

**MAG. DONNA PHILLIPS  
CURRAUL**

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**OBJECTIONS TO RULE TO SHOW CAUSE  
BY THE CITY OF NEW ORLEANS**

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Respectfully submitted this 7<sup>th</sup> day of August 2023,

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As a result of the Court's July 21, 2023 Rule to Show Cause, the City filed an emergency petition for writ of mandamus to the United States Fifth Circuit Court of Appeal asserting its objections.<sup>1</sup> The Fifth Circuit denied the petition without prejudice and stayed the Rule to Show Cause to allow the Court to consider the objections raised in the City's petition. Pursuant to the orders of the Fifth Circuit and this Court, the City reiterates its longstanding objections to Court and OCDM conduct beyond the Decree and U.S. Constitution.

#### **I. ISSUE PRESENTED**

The Amended and Restated Consent Decree ("Decree") tests NOPD's compliance through agreed upon audit methodologies of system-wide data to determine if there is an ongoing pattern or practice of unconstitutional policing. No individual sample has ever been used to determine NOPD's compliance in the preceding ten years. The Court's *sua sponte* Rule to Show Cause ("Rule") (R. Doc. 729) directs that the PIB investigation of one officer will be used to determine NOPD's compliance with the Decree instead of the outcome assessment and audit tests required by the Decree.

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<sup>1</sup> The Court was provided with a hard copy, including exhibits, on the day of filing. In order to avoid unnecessary clutter, the City has attached a copy of that petition at Exhibit 1, but excluded the voluminous exhibits which represent materials already docketed in this matter.

Using one sample to determine NOPD's compliance creates a perfection-based model where any individual example selected by the Court, OCDM, or DOJ can trigger a non-compliance determination – and the resulting contempt of court sanctions now threatened. This is a material change to the Decree that is far more onerous and inequitable than the agreed upon terms of the Decree.

The City objects and asks the Court to vacate its pending Rule to Show Cause in order to comply with the Decree.

## **II. SUMMARY OF THE CITY'S OBJECTION**

On multiple occasions over the past several years, the City has objected to instructions, orders, statements, and initiatives of the Court and OCDM that the City asserts were outside the jurisdiction of the Court, including:

- December 6, 2018, New Orleans City Attorney objection regarding limits of monitor conduct and authority, at R. Doc. 568.
- November 30, 2020, Notice of Full and Effective Compliance with the NOPD Consent Decree, at R. Doc. 629-5, noting the deviation from the Decree by demanding that NOPD become a “world class police force” as stated by the Court at R. Doc. 256, p. 44.
- August 16, 2022, Motion to Terminate the Consent Decree, R. Doc. 629.
- August 31, 2022, Motion for Miscellaneous Relief regarding OCDM's refusal to comply with the Decree, at R. Doc. 632-1.
- September 23, 2022, Motion for Reconsideration of non-public status conference rulings, at R. Doc. 643-1.

- April 21, 2023, Motion for Leave to File Excess Pages (denied at R. Doc. 692)) regarding Court, OCDM and monitor conduct outside the Decree, at R. Doc. 689-3.
- May 8, 2023, argument and exhibits regarding Court, OCDM and monitor conduct outside the Decree (struck by the Court via R. Doc. 699) at R. Doc. 698.

The instant objection raises that same fundamental jurisdictional objection in regard to the ongoing investigation regarding Officer Vappie by OCDM and the Court, and the material modification of the compliance methods set forth in the Decree.

Stated plainly, the City respectfully asserts that the Court has exceeded its constitutional authority. The Court notes that there are no rules or statutes directing the Court, or the parties, as to exactly how to conduct institutional reform consent decree litigation. The City asserts that Fed. R. Civ. P. 1 instructs that every matter before this Court – including consent decrees – must comply with the Federal Rules. The City acknowledges the equitable powers of the Court to enforce its judgements, including this Decree. But the City asserts that the controlling jurisprudence directs that the Court’s equitable powers must be *carefully* used to obtain expressly stated terms, and nothing more. “Modification of a consent decree is not a remedy to be lightly awarded, especially where the design is not to relieve a party of obligations but to impose new responsibilities. A contrary rule would discourage compromise for fear of adverse judicial

modification.” *Walker v. United States HUD*, 912 F. 2d 819, 825 (5<sup>th</sup> Cir. 1990), citing *Ruiz v. Lyndaugh*, 811 F. 2d 856,860 (5<sup>th</sup> Cir. 1987).

The Court has determined that it may hold the City and NOPD in contempt of court for failing to comply with the Decree paragraphs related to PIB based on a single investigation of one officer, rather than through the audit process agreed to by the City and DOJ in the Decree. This materially and adversely changes the Decree and exceeds the Court’s jurisdiction.

The fact that the single example the Court has selected as the new litmus test for compliance is a disciplinary investigation of one member of the Mayor’s executive protection detail, which is not even mentioned in the Consent Decree and does not involve any constitutional policing issues, only highlights the federalism concerns expressed from the first debates over equitable federal judicial power.<sup>2</sup>

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<sup>2</sup> *See, e.g.*, The Federalist Papers: No. 47 (“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny... In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct.”) (2008 Lillian Goldman Law Library).

### III. STATEMENT OF THE CASE

#### A. Measuring Compliance with the Consent Decree

As this Court knows intimately, most of the Decree's 700+ subparagraphs are devoted to NOPD policy and procedure and do not address the powers of the court or OCDM. DOJ and City agreed that compliance with the Decree, and the resulting end of federal control, would be reached once NOPD developed new policies, trained officers on those policies, and tested compliance *via* OCDM's outcome assessments and audits.<sup>3</sup> "Full and Effective Compliance" shall be defined to require sustained compliance with all material requirements of this Agreement or sustained and continuing improvement in constitutional policing, as demonstrated pursuant to the Agreement's outcome measures." *See* Consent Decree (R. Doc. 565) at para. 491.

OCDM's role as court-appointed monitor is set forth in express detail. Paragraphs 444 through 492, explain that OCDM "shall assess and report whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in the constitutional and professional treatment of individuals by NOPD."<sup>4</sup> "The Monitor shall conduct compliance reviews or audits as necessary to determine whether the City and NOPD have

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<sup>3</sup> *See* Consent Decree (R. Doc. 565) at paras. 447 and 450.

<sup>4</sup> *See* Consent Decree (R. Doc. 565) at para. 444.

implemented and continue to comply with the material requirements of this Agreement.”<sup>5</sup> The methodology for the audits is subject to City and DOJ approval.<sup>6</sup> OCDM is then charged to publicly report the results of its audits to the Court.<sup>7</sup>

OCDM is subject to the supervision and orders of the Court, but *only* inside the framework of the Decree.<sup>8</sup> OCDM is prohibited from functioning as the superintendent or replacing any NOPD functions – including NOPD disciplinary functions. *Id.* For example, specific investigations of a particular officer or a specific disciplinary decision are *not* subject to OCDM approval and cannot replace the audit function at the core of OCDM’s role.<sup>9</sup> As OCDM has admitted in writing multiple times, “the Monitoring Team does not investigate specific matters.”<sup>10</sup> The only small exception is found at paragraph 454, which allows OCDM to make suggestions regarding “serious misconduct investigations” before completion of the investigation.

Audits and reviews are global evaluations of patterns and practices reduced to empirical data to demonstrate systemic compliance. As of April 2022,

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<sup>5</sup> See Consent Decree (R. Doc. 565) at para. 447.

<sup>6</sup> See Consent Decree (R. Doc. 565) at paras. 450 – 453.

<sup>7</sup> See Consent Decree (R. Doc. 565) at paras. 445 and 457.

<sup>8</sup> See Consent Decree (R. Doc. 565) at para. 445.

<sup>9</sup> OCDM Report, 6/15/2023, R. Doc. 714, at Attachment B.

<sup>10</sup> OCDM Report, 6/15/2023, R. Doc. 714, at Attachment B.

OCDM had announced that NOPD had moved 15 of 17 areas into full and effective compliance. This Court announced the universal expectation that the final two areas would be moved into full and effective compliance in July of 2022. Putting aside the disagreements about the meaning of these announcements, it cannot be disputed that NOPD had made tremendous strides with regard to systemic constitutional policing. But that could never be determined from an individual event, no matter the political theater, or media interest in a particular event. As Your Honor explained: “[t]he Consent Decree is effectuated ... to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law.” Rule to Show Cause, R. Doc. 729, at p. 2. As OCDM has repeated over the years, there will always be individual examples of non-compliance but they cannot be used as the gauge for the entire department anymore than one example of compliance would support an assertion of NOPD systemic compliance. And as OCDM declared specifically regarding PIB:

While room exists for further improvement in a few areas, and the Monitoring Team will ensure those further improvements are made over the coming months, **the Consent Decree does not call for perfection.** Accordingly, **we are pleased to move**

**NOPD into Full and Effective Compliance in the area of Misconduct Investigations.**<sup>11</sup>

Similarly, as recently as April of 2022, Mr. Aronie reminded the public that perfection is not the goal of the Decree by referencing allegedly criminal conduct regarding payroll:

[I]t's important that you all keep in mind that the **NOPD is not a perfect department**. The recent revelation regarding officers double-billing, some potentially criminally on their secondary employment detail was quite concerning. The current slowdown in recruiting is troubling. And the fact that some districts continue to adhere to outdated and inefficient administrative practices is frustrating. **But we all must remember that perfection is not the goal of the consent decree, full and effective compliance is. As you will hear today the NOPD continues to make great strides toward that goal.**<sup>12</sup>

The constitutional difficulty in this matter arises from the Court's holding that it "specifically retained jurisdiction over this matter, including but not limited to the right to **interpret, amend**, and enforce the Consent Decree until the final **remedy contemplated** by the Consent Decree has been achieved."<sup>13</sup> *Sua sponte* amendments of the Decree's express terms to achieve remedies the

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<sup>11</sup> Annual Report of the Office of the Consent Decree Monitor for 2020, February 16, 2021, R. Doc. 613-1 at 15.

<sup>12</sup> Transcript of public status conference of 4/22/2022, at R. Doc. 648, p. 8:17 – 9:1.

<sup>13</sup> R. Doc. 729, Rule to Show Cause, at p. 2 (*emphasis added*).

Court interprets into the Decree is at the heart of the constitutional crisis facing the City.

The Court's civilianization and funding efforts offer good examples of the problem. Each may be a good idea that helps NOPD to become a more effective department. But neither is part of the Decree. As the Fifth Circuit ruled, nothing in paragraph 12 of the Decree (regarding resources) authorized the Court to order City personnel into court to speak about those initiatives: "Nothing in the short and plain one-sentence text of paragraph 12 of the Consent Decree, on which the district court wholly relies, authorizes the subject order setting the public hearing."<sup>14</sup> The same is true of the Court's investigation of PIB's handling of one routine investigation.

Paragraph 487 allows for the modification of the Decree by joint stipulation of the City and DOJ, with this Court's approval. It does not allow either party, *or this Court*, to unilaterally change the terms to broaden the unwritten equitable powers of the Court. The City asserts that material changes to the core terms of the Decree based on the subjective views of the Court, OCDM or DOJ are stark violations of the constitutional limits on federal courts. This has resulted in an unfortunate and unsustainable antagonism between the City and NOPD, on one hand, and the Court and OCDM on the other.

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<sup>14</sup> R. Doc. 684, at p. 3.

The role of the Court is defined by the Decree as separate and distinct from the court-appointed monitor. The Decree sets out the role of each litigant, the monitor, and the Court, as separate and critical gears in a complex machine, with core democratic principles in the balance. The Decree makes clear at multiple paragraphs that “[i]f the Parties disagree ... [they] may seek Court resolution.” Consent Decree (R. Doc. 565) at para. 451; *see also* paras. 23, 445, 456, 478, 479, 480, 483, 484, 491, 492.

A search of every use of the word “court” in the Decree illuminates quickly that the Court does not have any investigative, managerial, or public reporting duties. It is understood that the Court does not agree with this interpretation, instead viewing the Court itself as the monitor and OCDM as the eyes and ears of the Court-as-monitor. As the City has objected to previously, conflating the words “court” and “monitor” in the Decree violates the Decree and simultaneously deprives the City of the neutral arbiter of disputes set out in that controlling agreement.

But even if this interpretation of the Decree was correct, it still would not empower the Court to use *sua sponte* investigations to deem NOPD non-compliant with the Decree based on one specific PIB investigation. The outcome assessment and audit functions are still the means agreed upon to evaluate compliance. The “monitor” has access to data reasonably needed to do its job to

audit and report, but it does not have the authority to investigate officers, or challenge discipline, or conduct specific investigations.<sup>15</sup>

OCDM's extensive and repetitive investigations of PIB's investigation of Officer Vappie in conjunction the Court's order for reassignment records and other data targeted at that one specific officer under the guise of a broad compliance determination violates the Decree and the essential federalism principals detailed below. Worse, when the Court assumes the role of investigator, the City has no independent arbiter of the reasonableness of its demands – except *via* mandamus. This puts the City in the untenable position of being adverse to the Court itself.

**B. The City Has Raised this Issue Many Times.**

The Court has conducted numerous *sua sponte* public events called “public status conferences” and “public hearings” that are not tied to any motion filed by a party. The Court has expressed frustration that NOPD and City employees are not made available for examination by the Court before the press at these events.<sup>16</sup> But the Decree does not require such public testimony. The City has struggled to navigate these public events without the benefit of the Federal Rules of Civil Procedure or statutory guidance. NOPD was not placed in receivership

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<sup>15</sup> See Consent Decree (R. Doc. 565) at para. 471, and OCDM Report, 6/15/2023, R. Doc. 714, at Appendix B.

<sup>16</sup> See, e.g., R. Doc. 726, transcript 6/21/2023 at 73:13-22.

and the Court is not in charge of NOPD or City operations. The City and NOPD respectfully seek to ensure that all parties are operating in accordance with the Decree and the Federal Rules of Civil Procedure. The City is entitled to apply the systemic compliance methods set forth in the Decree in order to demonstrate its material compliance.

Changing the Decree to allow the Court to require the City to show why it should not be held in contempt of court based on a single investigation by PIB is well beyond what the City consented to in the Decree. This would render it impossible for the City to ever exit the Decree based on objective criteria as there will always be examples of individual instances of noncompliance by an officer or a department. The Decree does not require perfection, and that is not a standard that the City ever consented to achieve.

**C. Investigation via *Sua Sponte* Rule to Show Cause**

After the “public status conference” on the Vappie investigation, OCDM sent an email to NOPD directing that the *Court* wanted a list of documents and explanations mostly regarding the assignments of Officer Vappie and the process employed by PIB to investigate him. Counsel for NOPD responded that if this was a directive from the Court, it should be in the form of an order of the Court.<sup>17</sup>

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<sup>17</sup> See email string at Exhibit 2.

The instant *sua sponte* Rule to Show Cause why NOPD should not be held in contempt and sanctioned for the “clear violations” of the Decree demonstrated by the “substantial evidence” presented by OCDM at the “public status conference” was the response received.<sup>18</sup> The City will not challenge the factual assertions of the Rule in this brief (even though the City maintains that, as OCDM itself noted in its initial report, the PIB investigation in question complied with the requirements of the Decree<sup>19</sup>). Instead, the City again objects to the jurisdiction of the Court to unilaterally change the Decree and issue this Rule.

The Court states that “[b]ecause of the assertions made by the City, a determination of whether the City violated the Consent Decree in the course of the Officer Vappie investigation must include an examination of whether, as the City repeatedly asserts, he was treated exactly as any other NOPD officer.”<sup>20</sup> This logic is the root of the instant constitutional challenge.

Even assuming, for the sake of argument, that this single investigation was somehow non-compliant with the Decree (which it was not), the Decree does not grant the Court the power to launch an investigation of reassignments or

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<sup>18</sup> R. Doc. 726, at pp. 6 and 11.

<sup>19</sup> See, e.g., OCDM Report, 6/15/2023, R. Doc. 714, at Attachment E, at pp. 6 and 15 (“Overall, we are satisfied that PIB’s investigation... met the requirements of the Consent Decree... Notwithstanding these shortcomings and opportunities for improvement, however, we reiterate our finding that the PIB investigators did a good job in their investigation of Officer Vappie.”)

<sup>20</sup> Rule to Show Cause, R. Doc. 729, at p. 7.

challenge the specific disciplinary process or outcome. To do so in the name of determining NOPD's broader compliance with the Decree is a dramatic and onerous change to the Decree that exceeds this Court's authority. It allows the Court to use any individual event to deem NOPD non-compliant and in contempt of court. Such subjective power was never envisioned by the City or DOJ in crafting the Decree. Moreover, "the scope of a consent decree must be discerned within its four corners." *Smith v. Sch. Bd. of Concordia Par.*, 906 F.3d 327, 336 (5th Cir. 2018) (cleaned up).

Even if this one officer had received a "better" reassignment than average (if that is even quantifiable) it would not violate any provision of the Decree. And if, for the sake of argument, it did, that deviation would be one data point in an audit that measures institutional level compliance. What is the "pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law"<sup>21</sup> that this single sample subject to special judicial investigation proves?

The instant Rule to Show Cause also seeks information that is unrelated to the PIB investigation or any provision of the Consent Decree. The Court's specific investigation of one officer's reassignments (in a sea of reassignment examples) is completely untethered to any Decree provision or the agreed upon measures of

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<sup>21</sup> Rule to Show Cause, R. Doc. 729, at p. 2.

compliance. The City respectfully requests that the Vappie matter be closed. If the required yearly OCDM's audit finds PIB fails the agreed upon audit testing, that result will be part of PIB's overall audit score. NOPD should, according to the Decree, then be able to compare this audit score against the yearly audit scores from OCDM back to their first audit to show continued and sustained improvement, or not.

PIB's compliance is not to be evaluated by a different method than any other area of the Decree. Why is only *this* investigation deemed sufficient to condemn PIB as non-compliant? There are ten years of reports documenting NOPD's progress *towards* compliance. NOPD currently acknowledges it is approximately 90% compliant with *every single subparagraph* of the Decree, and OCDM claims a lower figure.<sup>22</sup> Yet, somehow, only this specific investigation warrants the use of this unwritten equitable power to sanction the City?

#### **IV. THE RULE TO SHOW CAUSE IS OUTSIDE THE CONSTITUTIONAL FRAMEWORK**

##### **A. Consent Decrees are Interpreted Like Contracts under State Law.**

Consent judgments are “hybrid creatures, part contract and part judicial decree.” *Allen v. Louisiana*, 14 F.4th 366, 371 (5th Cir. 2021) (quoting *Smith v.*

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<sup>22</sup> To be clear, the City strenuously asserts NOPD is in substantial compliance with the Decree, and has additionally met the contractual definition for “full and effective compliance” through “sustained and continuing improvement in constitutional policing.” *See* Consent Decree (R. Doc. 565) at para. 492.

*Sch. Bd. of Concordia Par.*, 906 F.3d 327, 334 (5th Cir. 2018)). A consent judgment “embodies an agreement of the parties” and is “an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree.” *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004) (quoting *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 378 (1992)). Federal courts interpret consent judgments according to principles of contract law from the State in which the dispute arises. *Allen*, 14 F.4th at 371 (citing *Clardy Mfg. Co. v. Marine Midland Bus. Loans Inc.*, 88 F.3d 347, 352 (5th Cir. 1996)).

“Under Louisiana law, courts seek the parties’ common intent starting with the contract’s words, which control if they are clear and lead to no absurdities.” *Allen*, 14 F.4th at 371 (citing La. Civ. Code arts. 2045, 2046). “When a contract resolves a lawsuit, it ‘extends only to those matters the parties intended to settle and the scope of the transaction cannot be extended by implication.’” *Id.* (quoting *Trahan v. Coca Cola Bottling Co. United, Inc.*, 2004-0100, p. 15 (La. 3/2/05), 894 So. 2d 1096, 1107). Importantly, “[a] compromise settles only those differences that the parties clearly intended to settle, including the necessary consequences of what they express.” La. Civ. Code art. 3076. As courts have expressly noted, “[a]lthough a court has the power to modify an injunctive order entered by consent, a court may not impose additional duties upon a defendant party to a consent decree without an adjudication or admission that the defendant violated the plaintiffs’ legal rights reflected in the consent

decree and that modification is essential to remedy the violation.” *Fox v. United States Dep’t of Housing & Urban Dev.*, 680 F. 2d 315, 322 (3<sup>rd</sup> Cir. 1982). No such showing is possible here since the alleged violations by PIB do not violate the legal rights of any party and there is certainly no essential reason to modify the Decree to force the City to prove that it should not be held in contempt of court based on any one alleged instance of noncompliance by any department or any officer.

**B. Consent Judgments in Institutional Reform Cases Implicate Sensitive Federalism Concerns.**

When a consent judgment arises from “institutional reform” litigation, federal courts should consider the sensitive federalism concerns at issue because “[s]uch litigation commonly involves areas of core state responsibility.” *Horne*, 557 U.S. at 447; *Hawkins*, 540 U.S. at 441; *Rufo*, 502 U.S. at 381. Consent judgments “bind state and local officials to the policy preferences of their predecessors” and interfere with “their designated legislative and executive powers.” *Horne*, 557 U.S. at 447. Because of this, institutional reform consent decree cases have far greater impact on a wide swath of society than most cases involving disputes between litigants – even governmental litigants.

Many courts and scholars have written about the dangers that consent judgments can pose to federalism and democratic principles. *Frew ex. rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (“If not limited to reasonable and necessary

implementations of federal law, remedies outlined in consent decrees involving state officeholders may improperly deprive future officials of their designated legislative and executive powers.”); Michael W. McConnell, *Why Hold Elections? Using Consent Decrees to Insulate Policies from Political Change*, 1987 U. Chi. Legal F. 295, 297 (1987) (“To the extent that consent decrees insulate today’s policy decisions from review and modification by tomorrow’s political processes, they violate the democratic structure of government”); Douglas Laycock, *Consent Decrees Without Consent: The Rights of Nonconsenting Third Parties*, 1987 U. Chi. Legal F. 103, 128 (1987); *see Allen*, 14 F.4th at 375 (Oldham, J., concurring) (gathering cases and scholarship).

Policing is a core state responsibility, and the Mayor of New Orleans is the duly elected chief executive of the City. Disagreement with the Mayor’s decision, even if invalid, does not empower a federal court (or its appointed monitor) to direct a different course. Disagreement does not even give the Court the more limited power to alter the outcome of a specific disciplinary matter. The Decree gives the Court expanded power, but that *equitable* power is not unbounded. Just as the Court was not empowered to order City and NOPD employees into court for a press event at Loyola Law School, it is not empowered to investigate specific disciplinary matters because they are linked to the Mayor.

**C. A Federal Court Lacks Jurisdiction to Issue Remedies Not Authorized by a Consent Judgment.**

“The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Missouri v. Biden*, 2023 U.S. Dist. LEXIS 46918, at \*27-28 (W.D. La. Mar. 20, 2023) (cleaned up), quoting *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 435, 137 S. Ct. 1645, 198 L. Ed. 2d 64 (2017) “Jurisdiction in an ongoing institutional reform case ‘only goes so far as the correction of the constitutional infirmity.’” *Brunfield v. La. State Bd. of Educ.*, 806 F.3d 289, 298 (5th Cir. 2015) (quoting *United States v. Texas*, 158 F.3d 299, 311 (5th Cir. 1998)); accord *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971) (“[J]udicial powers may be exercised only on the basis of a constitutional violation.”). As the Court noted, its power is limited to that necessary “to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law.” Rule to Show Cause, R. Doc. 729, at p. 2. Nothing about the investigation of the Mayor’s executive protection detail even remotely touches on this core focus. The Court’s interpretation and amendment of the Decree to achieve subjective goals exceeds its jurisdictional limits.

“[R]emedies fashioned by the federal courts to address constitutional infirmities ‘must directly address and relate to the constitutional violation itself.’”

*M. D. by Stukenberg v. Abbott*, 907 F.3d 237, 271 (5th Cir. 2018) (quoting *Milliken v. Bradley*, 433 U.S. 267, 282 (1977)). A federal court may not “order relief beyond what is minimally required to comport with” federal law. *Id.* at 272. Again, there is no link between the instant Rule to Show Cause and the important constitutional policing objectives of the Decree.

Consent judgments are “subject to the rules generally applicable to other judgments and decrees.” *Rufo*, 502 U.S. at 378. And so, like all injunctions, a consent judgment must be “narrowly tailor[ed] ... to remedy the specific action which gives rise to the order.” *M. D. by Stukenberg v. Abbott*, 907 F.3d 237, 272 (5th Cir. 2018) (quoting *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 586 (5th Cir. 2013)); accord Fed. R. Civ. P. 65(d)(1).

Consent judgments in institutional reform cases are dangerously unregulated. Entire populations of citizens are governed by what is often, as the Court described it, a process without rules or statutes or the availability of appellate review. When combined with the assumed power to interpret and amend the Decree, the Court’s equitable power becomes unbounded, except by mandamus.

“District courts enjoy no free ranging ‘ancillary’ jurisdiction to enforce consent decrees,” and are “instead constrained by the terms of the decree and related order.” *Pigford v. Veneman*, 292 F.3d 918, 924 (D.C. Cir. 2002) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994)).

The City did not agree to be bound by a subjective evaluation of compliance based on one or more selectively chosen cases. Under such a methodology, it is conceivable that the City would never exit federal control. Such a material modification of the process for determining compliance with the Decree will ripple through the continued administration of the Decree for years to come and could influence many other institutional reform cases.

“Federalism is a clear restraint on the use of equity power because a structural reform decree eviscerates a State’s discretionary authority over its own program and budgets.” *Id.* (quoting *Missouri v. Jenkins*, 515 U.S. 70, 131 (1995) (Thomas, J., concurring)); see *Morrow v. Harwell*, 768 F.2d 619, 627 (5th Cir. 1985) (“There is no question but that the passive remedy of a declaratory judgment is far less intrusive into state functions than injunctive relief that affirmatively commands specific future behavior under the threat of the court’s contempt powers.”).

## V. CONCLUSION

The Court’s unilateral decision to select and investigate individual instances of conduct and use that investigation as a surrogate for the detailed compliance measurements of the Decree, creates subjective, and thus unlimited, federal control over a sovereign City police department. This violates essential federalism principles. Moreover, selecting one investigation by PIB from the

hundreds that are done annually is a material and adverse change to the Decree that is not allowed under the existing jurisprudence regarding consent decrees.

The City never contemplated or agreed to any such process and the Decree does not authorize it. The City asserts that it, DOJ, OCDM and the Court should each be held to the terms of the Decree. The Court's Rule to Show Cause should be vacated.

*Respectfully submitted*, this 7th day of August 2023.

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New Orleans Police Department***

**CERTIFICATE OF SERVICE**

I certify that on August 7, 2023, I served a copy of the above and foregoing pleading via Notice of Electronic filing using this Court's CM/ECF system to counsel of record participating in the CM/ECF system.

/s/ Charles F. Zimmer II  
Charles F. Zimmer II

**STATEMENT OF NOTICE**

A draft of this pleadings was shared with the New Orleans City Council on this date. Approval to file was not obtained before the filing deadline.

/s/ Charles F. Zimmer II  
Charles F. Zimmer II

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

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**V.**

**CITY OF NEW ORLEANS,**

**Defendant.**

**CIVIL ACTION NO.  
2:12-CV-01924**

**SECTION E  
JUDGE SUSIE MORGAN  
DIVISION 2  
MAG. DONNA PHILLIPS CURRAULT**

**THE UNITED STATES' MEMORANDUM OF LAW IN OPPOSITION TO THE CITY  
OF NEW ORLEANS' OBJECTIONS TO THE COURT'S RULE TO SHOW CAUSE**

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## **I. INTRODUCTION**

Plaintiff United States of America (United States) opposes the Defendant City of New Orleans' (City) objections to this Court's July 21, 2023, Rule to Show Cause (Rule). The Rule orders the City to appear in Court "to show cause why it should not be found to have violated (1) the eight provisions of the Consent Decree with respect to the conduct of PIB investigations, as set forth above, and (2) the provisions of the Consent Decree regarding timeliness of investigations, imposition of discipline, and notification of complainants." Doc. 729 at 11 (footnote omitted). The Rule also ordered the City to produce documents and submit a pre-hearing memorandum addressing the potential violations of the Decree as laid out in the Rule. *Id.* at 12. The Court made clear that it would consider these submissions, along with any live testimony that the City wishes to present, before making its contempt determination. *Id.* at 11.

On August 7, 2023, the City filed its objections to the Rule, arguing that the Court exceeded the bounds of its authority in issuing the Rule and that the Rule impermissibly seeks information from the City in order to investigate a single incident of misconduct. Doc. 734. The City's objections are misplaced and should be rejected because: (1) this Court has the inherent authority to enforce its own orders; and (2) the City's assertion that the Rule constitutes an unauthorized investigation is an unsupported mischaracterization.

## **II. BACKGROUND**

In 2011, following an extensive investigation of the New Orleans Police Department (NOPD), the United States found reasonable cause to believe that NOPD engaged in a pattern or practice of conduct that deprived people of rights protected by the Constitution and federal law, including excessive force; unlawful stops, searches, and arrests; and discriminatory policing. *See* Doc. 1-1; 34 U.S.C. § 12601. The United States also found that NOPD's legal violations were

caused in part by widespread deficiencies in the accountability systems within NOPD and the City, including misconduct investigations and discipline. Doc. 1-1. Following the investigation, the United States filed a complaint incorporating the findings from its investigation, and the United States and the City jointly filed a proposed Consent Decree regarding the NOPD, which was entered as an order of the Court in 2013. Docs. 159-1, 160. On October 2, 2018, the United States and the City jointly filed an Amended and Restated Consent Decree, reflecting a series of agreed upon modifications to the original Decree. *See* Doc. 565.

#### **A. The Consent Decree’s Accountability Requirements**

In the Consent Decree, the City committed to a number of requirements designed to ensure that NOPD engages in policing consistent with the Constitution and federal law, including using force in a safe and lawful manner; conducting lawful stops, searches, and arrests; and engaging in bias-free policing. CD Sections III–IX. The Decree also seeks to ensure a durable remedy by addressing the root causes of NOPD’s unlawful conduct, including by requiring NOPD to establish effective accountability systems. Indeed, the Decree requires NOPD to ensure that “all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair and consistent.” CD Section XVII (Misconduct Complaint Intake, Investigation, and Adjudication). It sets forth in detail the specific processes and practices NOPD must implement within that disciplinary system when investigating officers for potential misconduct.

The Consent Decree requires NOPD and the City to “accept all misconduct complaints, including anonymous and third-party complaints, for review” and to ensure that all “allegations . . . are fully and fairly investigated.” CD ¶ 390, Section XVII. In doing so, NOPD must “consider all relevant evidence, including circumstantial, direct, and physical evidence, as

appropriate, and make credibility determinations based upon that evidence.” CD ¶ 413.

NOPD’s investigative findings “must be based upon the preponderance of the evidence” and investigators must “explicitly identify and recommend [a specific] disposition[] for each allegation of misconduct in an administrative investigation.” CD ¶¶ 414, 415. When imposing discipline based on its investigative findings, NOPD must “ensure that discipline for sustained allegations of misconduct [is] based on the nature of the allegation . . . rather than the identity of the officer or his or her status within NOPD or the broader community.” CD ¶ 421.

The Consent Decree also provides required timeframes for each step of the disciplinary process. Consent Decree Paragraph 398 gives NOPD “three business days from the receipt of a misconduct complaint” to determine how NOPD will investigate the complaint administratively, if it will be referred to an outside agency, and whether to also investigate it criminally.

Paragraph 403 requires all administrative investigations to be completed within “90 days of the receipt of the complaint, including assignment, investigation, review and final approval, unless granted an extension as provided for under state law or Civil Service exemption, in which case the investigation shall be completed within 120 days.” The Consent Decree also allows administrative investigations to be tolled “as necessary to conduct a concurrent criminal investigation,” though it requires NOPD and the City “to consult with the DA to develop and implement protocols to ensure that the criminal and administrative investigations can be conducted in parallel as appropriate . . . .” CD ¶¶ 403, 411.

When NOPD sustains an allegation of misconduct against an officer, it has “30 days to determine and impose the appropriate discipline, except in documented extenuating circumstances, in which case discipline shall be imposed within 60 days.” CD ¶ 403. NOPD also must notify the complainant of the “outcome of the investigation, in writing, within 10

business days of the completion of the investigation, including regarding whether any disciplinary or non-disciplinary action was taken.” CD ¶ 420.

The Consent Decree includes various other requirements related to NOPD’s misconduct investigations, including training requirements, classification protocols, criminal referrals, and the maintenance of investigation reports and related documentation. *See, e.g.*, CD ¶ 382, 399, 409, 411, 419. The Decree also requires the City and NOPD to develop and implement procedures to ensure that discipline is fair and consistent. CD ¶ 421. These procedures should include any reassignment during a misconduct investigation or at its conclusion. Each of these requirements is intended to help NOPD achieve its ultimate obligation to ensure that “all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair and consistent.” CD Section XVII.

#### **B. The Consent Decree’s Monitoring Provisions**

The Consent Decree also contains provisions about monitoring, technical assistance, and compliance. Along with the Lead Monitor and the Deputy Monitor, the Office of the Consent Decree Monitor includes a team of law enforcement experts (collectively referred to as “the Monitor” or “OCDM”). The Consent Decree provides that the Monitor will “assess and report whether the requirements of this Agreement have been implemented” and will “conduct compliance reviews or audits as necessary to determine whether the City and NOPD have implemented and continue to comply with the material requirements of this Agreement.” CD ¶¶ 444, 447. The Monitor is also entitled to “make recommendations to the Parties regarding measures necessary to ensure timely, full, and effective implementation of this Agreement and its underlying objectives.” CD ¶ 455.

In addition to the global compliance reviews and audits the Monitor must conduct, the Consent Decree requires the Monitor to conduct individual reviews of specific types of conduct. Consent Decree Paragraph 454 requires the Monitor to “review each serious use of force investigation and each serious misconduct complaint investigation and recommend for further investigation any use of force or misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence.” To facilitate its reviews, the Consent Decree entitles the Monitor to have “access to all necessary individuals, facilities, and documents, which shall include access to Agreement related trainings, meetings, and reviews, such as critical incident reviews, use of force review boards, and disciplinary hearings.” CD ¶ 470.

The Consent Decree also imposes obligations on the City and NOPD to facilitate the Monitor’s reviews. Paragraph 454 requires the City and NOPD to “provide each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft), to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review.” This is not the Monitor’s only involvement in individual incidents. NOPD is also required to “notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, in-custody death, or arrest of any officer.” CD ¶ 470. Paragraphs 471 and 472 further provide that the City and NOPD must ensure that the Monitor has timely, full, and direct access to all City and NOPD staff, documents, data, facilities, and critical incident crime scenes that the

Monitor “reasonably deems necessary” to carry out its duties. These Consent Decree provisions recognize that high profile incidents are directly relevant to NOPD’s compliance with the Decree, in part because such incidents “stress test” the NOPD’s systems and may be particularly susceptible to the pressure to avoid making public information that would reflect poorly on NOPD or the City.

### **C. The Monitor’s Public Integrity Bureau Audits and Findings**

In November 2022, consistent with its obligations to conduct “compliance reviews or audits,” the Monitor conducted an audit of PIB’s administrative investigations. The Monitor reported on the findings of this audit in its 2022 Annual Report on NOPD. Doc. 674-1 at 50. The Monitor explained that the “central focus of the 2022 audit was to determine whether administrative investigations are being completed within timelines prescribed by the Consent Decree and NOPD policy.” *Id.* The Monitor’s review “revealed that an excessive number of investigations were not completed within prescribed timelines and NOPD had no justification for this noncompliance. The paragraphs related to compliance with timelines and with properly documenting disciplinary cases and decisions saw the highest rates of non-compliance.” *Id.* The City filed a response to the Monitor’s 2022 Annual Report, but the response did not include any discussion of the Monitor’s PIB audit or its findings.<sup>1</sup> *See* Doc. 675.

Earlier this year, the Monitor conducted a series of additional PIB-related audits and reviews. These reviews “focused specifically on those paragraphs not audited in a number of years as well as those paragraphs found not in compliance during [the November 2022] audit.” Doc. 694 at 21. The Monitor reported the findings of these audits and reviews in its May 3,

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<sup>1</sup> On March 8, 2023, the City submitted a deficient document objecting to certain parts of the Monitor’s 2022 Annual report. Doc. 675. The Court ordered the City to file a corrected document by March 16, 2023. *See* Mar. 9, 2023 Minute Order. The City failed to do so.

2023, Special Report on PIB. Doc. 694. The Monitor audited 26 of the 52 paragraphs in the Misconduct section of the Decree (Paragraphs 375-426) and concluded that nine out of the 26 audited paragraphs were “not compliant.” Doc. 694 at 21-22. Among the noncompliant paragraphs were Paragraphs 403 and 420, regarding the timeliness of investigations, imposition of discipline, and notification to complainants of the outcome of investigations.<sup>2</sup> *Id.* With regard to Paragraph 403, the Monitor found NOPD’s compliance rates for the timeliness of investigation “to range from 76% to 95%,” and the compliance rates for the timeliness of the imposition of discipline to be “less than 20%.” *Id.* at 30. With regard to Paragraph 420, the Monitor reported that “in 24% of the cases we reviewed, the complainant was not informed of the result of the investigation within 10 days of the conclusion of the investigation.” *Id.* at 32. The City filed a response to the Monitor’s Special Report on PIB, in which it conceded violating paragraphs 403 and 420, stating that the violations “are being addressed and have been addressed and the non-compliant nature reflects the audited period only and not our current compliance.”<sup>3</sup> Doc. 697 at 6.

#### **D. The Monitor’s Role and Findings in the Officer Vappie Investigation**

On November 9, 2022, while the Monitor’s PIB audit was ongoing, local news media in New Orleans published allegations that Officer Jeffrey Vappie, a NOPD member assigned to the Mayor’s executive protection detail, may have inappropriately recorded his work hours and travel expenses.<sup>4</sup> The news accounts suggested that Officer Vappie may have also been engaged

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<sup>2</sup> In addition to Consent Decree Paragraphs 403 and 420, the Monitor deemed Consent Decree Paragraphs 377, 379, 381, 382, 383, 423, and 424 to be “not compliant.” Doc. 694 at 21-22.

<sup>3</sup> The City’s response disputed the Monitor’s findings with regard to CD Paragraphs 381, 382, 383, and 424, but conceded the violations for CD Paragraphs 377, 379, 403, 420, and 423.

<sup>4</sup> See Doc. 714 at 1; see also Zurik, Lee, “ZURIK: NOPD investigating officer frequently inside Cantrell’s city-owned apartment,” Fox 8 Live, Nov. 9, 2022, available at <https://www.fox8live.com/2022/11/10/zurik-nopd-investigating-officer-frequently-inside-cantrells-city-owned-apartment/>; Outside the Office Series, available at <https://www.fox8live.com/news/investigate/lee-zurik/outside-the-office/>.

in a personal relationship while on duty.<sup>5</sup> PIB opened an investigation into Officer Vappie the same day these reports were published. Shortly after opening the investigation, PIB received another complaint alleging that the executive protection detail was involved in “payroll fraud.”<sup>6</sup> As these events unfolded, the Monitor declined a request from City Council to investigate the allegations against Officer Vappie, but it informed the parties that it would be closely assessing the ongoing investigation to ensure compliance with the Consent Decree. *See* Docs. 714-1, 714-2. The Monitor has closely assessed other investigations in the past to ensure compliance with the Consent Decree. Ex. 1 (Jones Dep. 9:1-14).

As described above, NOPD is required to provide the Monitor with certain investigations “before closing the investigation or communicating the recommended disposition to the subject of the investigation or review.” CD ¶ 454. Those include investigations of “serious misconduct,” which includes “criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft.” *Id.* After receiving the investigation from NOPD, the Consent Decree requires the Monitor to review it, recommend further investigation if it determines the investigation is incomplete or the findings are not adequately supported, and provide written instructions for completing the investigation appropriately within the timeframes mandated by state law. *Id.*

Under Louisiana law, “public payroll fraud” is a criminal offense. *See* La. R.S. 14:138; *see also* Ex. 2 (Allen Dep. 59:8-19); Ex. 3 (Sanchez Dep. 115:4-8). As the Monitor noted, it

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<sup>5</sup> *See* Outside the Office Series, available at <https://www.fox8live.com/news/investigate/lee-zurik/outside-the-office/>

<sup>6</sup> *See* Doc. 714 at 5 (excerpting an email from Dr. Skip Gallagher in which he alleges that “payroll fraud is alive and well and extends into the upper ranks of the NOPD as well as the Mayor’s own security detail.”). The Monitor provided this email to NOPD on December 8, 2022 (*see id.*), though the issue was previously included in public news reporting and the Monitor’s meetings with NOPD.

involves “untruthfulness/false statements” and is considered a “type of theft.” Doc. 714 at 6 and n. 8 (citing *State v. Fruge*, 251 La. 283 (1967)). Accordingly, throughout the Vappie investigation, the Monitor asserted its rights under Consent Decree Paragraph 454 and requested access to PIB’s investigation report on Officer Vappie. Doc. 714 at 3. The Monitor further justified its request by citing to Paragraphs 470 and 472, the general access provisions of the Consent Decree described above. *See* Doc. 714 at 8-11. NOPD asserted that the allegations against Officer Vappie did not constitute “serious misconduct” as defined by Consent Decree Paragraph 454, and, therefore, refused to provide the Monitor with access to the investigative report before closing the investigation. *Id.* at 11.

On April 3, 2023, after the close of the investigation, NOPD provided the Vappie investigative report to the Monitor.<sup>7</sup> *Id.* at 2. On April 7, 2023, pursuant to Consent Decree Paragraph 454, the Monitor provided the City and NOPD a written assessment of the investigation. *See* Doc. 714-5. NOPD responded to that assessment on April 24, 2023. *See* Doc. 714-6. On June 15, 2023, the Monitor issued a Special Report on PIB’s handling of the investigation into Officer Vappie (after providing the Parties the opportunity to review and comment on the report).<sup>8</sup> Doc. 714.

In the report, the Monitor found NOPD’s April 24, 2023 response to be “wholly inadequate in that it (a) ignored the requirements of Consent Decree paragraph 454, (b) mischaracterized the scope of the investigation regarding payroll fraud, and (c) ignored almost all of the Monitoring Team’s substantive recommendations.” Doc. 714 at 2. The Monitor also

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<sup>7</sup> Even though NOPD did not provide the requested materials to the Monitor, the City leaked recordings of some interviews to local media. *See* Doc. 714, at n.9.

<sup>8</sup> The Monitor also included an initial assessment of the Vappie investigation in its May 3, 2023, Special Report on PIB, noting that the discipline phase of the investigation was not yet complete, and thus it could not yet share its full assessment and recommendations. *See* Doc. 694 at 16.

found that PIB violated several provisions of the Consent Decree as well as NOPD policy. Specifically, the Monitor found that: (1) the allegations against Officer Vappie amounted to “serious misconduct,” and thus NOPD violated Consent Decree Paragraph 454 in refusing to provide the Monitor with the open investigation when requested; (2) NOPD violated Consent Decree Paragraphs 470 and 472 when it refused to provide the Monitor with access to investigative documents; (3) PIB failed to properly apply the preponderance of evidence standard and make all required credibility determinations as required by Consent Decree Paragraph 414 and NOPD Policy 52.1.2; (4) NOPD ignored circumstantial evidence that it was required to consider pursuant to Consent Decree Paragraph 413 and NOPD Policy 52.1.2; (5) NOPD failed to adequately respond to shortcomings in the investigation that the Monitor identified and for which Consent Decree Paragraph 454 mandated a written response; (6) NOPD’s handling of the interview recordings that were ultimately leaked to the press violated Consent Decree Paragraphs 409 and 419; and (7) NOPD’s closure of its investigation without looking into the actions/inactions of Officer Vappie’s chain of command prejudiced its ability to hold Vappie’s supervisors accountable as required by Consent Decree Paragraph 306.<sup>9</sup> Doc. 714. NOPD filed a response to the Monitor’s Special Report on the Vappie Investigation, largely disputing the Monitor’s findings and asserting that NOPD properly followed all misconduct policies, procedures, and practices. Doc. 718.

On June 21, 2023, the Court conducted a status conference where the Monitor presented its previously reported findings concerning the Vappie investigation, and at which the Court permitted the Parties to present their responses to those findings. Doc. 726. During the status

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<sup>9</sup> The Monitor also reported that NOPD likely violated Consent Decree Paragraphs 390 and 399. *See* Doc. 714 at n. 6,7.

conference, the City's counsel made representations to the Court on the handling of the Vappie investigation, including assertions that the matter comported with the usual handling of administrative investigations and officer reassignments. *Id.* Following the status conference, on June 30, 2023, the Court, through the Monitor, requested that the City provide documentary support for the assertions that the City made to the Court in its filed responses and during the status conference. Doc. 734-2. As outlined above, the Consent Decree provides the Monitor with access to City and NOPD personnel, facilities, documents, and data, which would include the documents requested on June 30, 2023. *See* CD ¶¶ 470-472. Despite the Monitor's broad access rights, the City refused to respond to the Monitor's request and asked that the Court enter an order requiring production of the solicited information. Doc. 734-2.

On July 21, 2023, the Court entered a Rule to Show Cause. Doc. 729. The Rule ordered the City to produce documents that supported the City's assertions regarding the routine practices and procedures of PIB. *Id.* at 8-10, 12. The Rule also set a show cause hearing and ordered pre-hearing briefing, providing the City an opportunity to explain why it should not be found to have violated the Consent Decree given the Monitor's Special Reports on PIB and the Officer Vappie investigation and the City's admissions and representations made in response to those reports. *Id.* at 11. In response to the Rule, the City first filed a Petition for Writ of Mandamus on July 31, 2023, Doc. 733, and then filed objections to the Rule on August 7, 2023. Doc. 734.

### **III. LEGAL STANDARD**

District courts "have wide discretion to enforce decrees and to implement remedies for decree violations." *United States v. Alcoa, Inc.*, 533 F.3d 278, 286 (5th Cir. 2008). "Consent decrees are judgments despite their contractual nature, and district courts may fashion remedies

to ‘enforce prior judgments.’” *Id.* at 288 (citing *United States v. Swift Co.*, 286 U.S. 106, 115 (1932) (“We reject the argument . . . that a decree entered upon consent is to be treated as a contract and not as a judicial act.”) and quoting *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 577 (5th Cir. 2005)). “These remedies need not match those requested by a party or originally provided by the court’s earlier judgment.” *Alcoa, Inc.*, 533 F.3d at 288 (footnote and citation omitted).<sup>10</sup>

District courts “also have inherent powers necessary to achieve the orderly and expeditious disposition of their docket, which includes the authority to punish for contempt in order to maintain obedience to court orders and the authority to impose reasonable and appropriate sanctions on errant lawyers practicing before the court.” *Shaw v. Ciox Health LLC*, No. CV 19-14778, 2021 WL 5140615, at \*2 (E.D. La. Nov. 4, 2021). Indeed, the “most prominent of [the court’s inherent powers] is the contempt sanction, ‘which a judge must have and exercise in protecting the due and orderly administration of justice and in maintaining the authority and dignity of the court . . . .’” *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764 (1980) (quoting *Cooke v. United States*, 267 U.S. 517, 539 (1925)). Court have consistently recognized that the “power of courts to punish for contempts is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law.” *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 450 (1911); *see also Shillitani v. United States*, 384 U.S. 364, 370 (1966) (“[t]here can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt”); *In*

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<sup>10</sup> The Fifth Circuit has noted that “consent decrees have elements of both contracts and judicial decrees. A consent decree embodies an agreement of the parties and is also an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.” *Alcoa*, 533 F.3d at 288 (quoting *United States v. City of Jackson, Miss.*, 359 F.3d 727, 732 (5th Cir. 2004)).

*re Stone*, 986 F.2d 898, 902 (5th Cir. 1993) (“the contempt sanction long has been recognized as among the most important of [the court’s inherent] powers.”) (internal citations omitted).

Judicial sanctions may be imposed in civil contempt proceedings “to coerce the defendant into compliance with the court’s order . . . .” *Am. Airlines, Inc. v. Allied Pilots Ass’n*, 228 F.3d 574, 585 (5th Cir. 2000) (citation omitted). Civil contempt requires “clear and convincing evidence that (1) a court order was in effect, (2) the order required specified conduct by the respondent, and (3) the respondent failed to comply with the court’s order.” *Id.* at 581 (citation omitted). “The contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court’s order.” *Id.* (citation omitted). Due process requirements necessary for the imposition of civil contempt sanctions require adequate “notice and an opportunity to be heard.” *Id.* at 583-84. Indeed, “[s]imple notice is all that is required.” *Id.* at 584 (holding that defendants received due process because they received “adequate notice to inform them of the nature of the charges and to enable them to prepare a defense” in advance of the court’s ordered show cause hearing).

#### **IV. DISCUSSION**

##### **A. The Rule to Show Cause Falls Well within This Court’s Inherent Authority to Enforce Its Own Orders.**

The Consent Decree is an order of the Court. Doc. 565. The Court has “wide discretion” to enforce its orders, including by holding the City in contempt for failing to comply with the Decree’s provisions. *Alcoa, Inc.*, 533 F.3d at 286-87 (quoting *Cook v. Ochsner Found. Hosp.*, 559 F.2d 270, 272 (5th Cir. 1977) (“Courts have, and must have, the inherent authority to enforce their judicial orders and decrees in cases of civil contempt. Discretion . . . must be left to a court in the enforcement of its decrees”). The Rule, which orders the City to produce

documents and appear to show cause as to why it should not be found to have violated the Consent Decree, falls squarely within the Court's inherent authority.

As the Rule explains, the Monitor alerted the Court to the City's potential violations of the Consent Decree through reports it filed earlier this year. *See, e.g.*, Doc. 694 (auditing NOPD's compliance with the Misconduct Section of the Consent Decree and outlining the City's noncompliance with nine paragraphs in the Section); Doc. 714 (detailing the Monitor's assessment that NOPD failed to comply with at least eight paragraphs of the Consent Decree during the investigation into Officer Vappie). The Court, upon learning of these potential violations, can exercise its "wide discretion to enforce decrees" in the form of an order to show cause so that it can determine whether the City is following the Consent Decree or whether they are in contempt. *Alcoa, Inc.*, 533 F. 3d at 286; *see also Shillitani*, 384 U.S. at 370 ("[t]here can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt.") (citations omitted). And this is precisely what the Court did in its Rule: upon receiving notice of potential violations, it has afforded the City the opportunity to be heard before it reaches a conclusion on whether the City is in contempt. The Rule is not an order finding contempt or imposing sanctions on the City; instead, it affords the City due process and gives it the opportunity to present evidence of compliance. *See Am. Airlines, Inc.*, 228 F. 3d at 583-584.

The City repeatedly asserts that the Rule requires it "to show why it should not be held in contempt of court based on a single investigation by PIB [involving Officer Vappie]." Doc. 734 at 12; *see also Id.* at 4, 13, 14. Contrary to the City's contentions, the Court's focus in the Rule is broader than Officer Vappie's investigation and includes provisions of the Consent Decree that are essential to a functional accountability system that prevents misconduct involving

constitutional violations. Indeed, the Rule makes clear that it is based on the very audits and reviews the City concedes the Monitor is entitled and required to conduct, not a single investigation. *See* Doc. 729 at 4-6, 10-11; *cf.* Doc. 734 at 5-6 (explaining the Monitor’s role under the Consent Decree and noting that the “Monitor shall conduct compliance reviews or audits as necessary to determine whether the City and NOPD have implemented and continue to comply with the material requirements of this Agreement.”).

Further, the City’s objections entirely ignore the parts of the Court’s order requiring the City to demonstrate why it should not be found to have violated the Consent Decree provisions “regarding timeliness of investigations, imposition of discipline, and notification of complainants.” Doc. 729 at 11. The Court explains in its Rule that the Monitor’s audits of PIB’s misconduct investigations revealed that the City and NOPD have failed to meet the timeliness requirements governed by Consent Decree Paragraphs 403 and 420.<sup>11</sup> Doc. 729 at 10. These audit findings were based on the Monitor’s review of multiple PIB investigations. The City has not contested its violations of the Consent Decree’s timeliness requirements, but instead asserted that the violations “are being addressed and have been addressed and the non-compliant nature reflects the audited period only and not our current compliance.” Doc. 697 at 6.<sup>12</sup> To date, the City has not tendered any evidence to the Court showing that it has remedied the violations. As a result, the Court, using its “inherent powers to enforce compliance with [its] lawful order[]”, has now given the City an opportunity to present evidence of compliance. *Shillitani*, 384 U.S. at

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<sup>11</sup> *See* Doc. 674 (Monitor’s 2022 Annual Report on NOPD) at 51 (“Our audit revealed that an excessive number of investigations were not completed within prescribed timelines and NOPD had no justification for this noncompliance”); Doc. 694 (Monitor’s Special Report on PIB) at 21-22 listing paragraphs 403 (Timely investigations/timely discipline) and 420 (Communication with complainant) as “Not Compliant” (emphasis in original).

<sup>12</sup> In its Objections, the City suggests that the Court has already found “clear violations” of the Decree related to the Vappie investigation, but that is incorrect. *See* Doc. 734 at 17. The “clear violations” the Court references in its Rule refer to the City’s timeliness violations which the City has not contested. *See* Doc.729 at 10-11.

370. While the City contends that the Rule is predicated on a “single incident,” the plain language of the Rule shows that it is focused on systemic failures in NOPD’s accountability system, not any individual investigation.

The City’s objections also ignore other language in the Rule, which demonstrates that it is designed to probe the routine practices and overall functioning of PIB and whether it complies with the Consent Decree. For example, the Rule directs the City to, *inter alia*: (1) provide any policy, directive, or standard operating procedure that authorizes the City’s representations that NOPD “does not fully investigate or document all factual allegations of misconduct if the lead investigator makes an early determination that the allegation lacks merit” (which relates to Consent Decree Paragraph 399); and (2) provide any policy, directive, or standard operating procedure that authorizes the City’s representations that it is a “routine practice of PIB not to fully analyze and give dispositions to all allegations” (which relates to Consent Decree Paragraph 415). Doc. 729 at 8. The Rule also probes other parts of NOPD’s disciplinary system by ordering the City to provide policies, standard operating procedures, or other documentation regarding officer reassignments during misconduct investigations. Doc. 729 at 8-10.

Further, the Rule clearly lays out that it is seeking information about NOPD’s policies and standard operating procedures based on *the City’s own representations* about NOPD’s disciplinary system.<sup>13</sup> Clearly, the Rule’s focus is to evaluate systemic compliance with the City’s obligations under the Consent Decree to establish a disciplinary system that is “fair and consistent.” CD ¶¶ 421, 424. The fact that the City made these representations while discussing

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<sup>13</sup> The Rule summarizes the City’s representations about PIB’s general policies and procedures, which the City previously made in various filings and status conferences, including those focused on the Vappie investigation. *See* Doc. 729 at 8-10.

the Vappie investigation with the Court does not transform the Court's inquiry about NOPD's policies and practices into an investigation of a single incident.

Even assuming, *arguendo*, that the Rule is solely focused on the investigation into Officer Vappie, the City's objection still fails. First, individual incidents may provide evidence of a systemic problem or a broader pattern of violations. For example, individual incidents may reveal that a policy, practice, or standard operating procedure violates a provision of the Consent Decree. Courts are well within their authority to probe individual incidents to determine the nature and scope of the noncompliance.

Second, a single incident may demonstrate a violation of the Consent Decree if the violation is purposeful. A purposeful violation would show that the systems set up by the Consent Decree are subject to manipulation, undermining a fair and consistent disciplinary system. In other words, the City cannot choose to violate the Consent Decree's misconduct provisions in a particular incident and then insulate that incident from the Court's review on the basis that the Court may only review "global evaluations of patterns and practices." Doc. 734 at 6. Shielding targeted, purposeful violations of the Consent Decree from scrutiny would essentially allow the City and NOPD to pick the cases for which it chooses to follow the Consent Decree—such manipulation is exactly the type of conduct the Consent Decree prohibits. Indeed, the Consent Decree imposes on NOPD an obligation to ensure its disciplinary system is "fair and consistent." CD Section XVII; CD ¶¶ 421, 424. The ability to purposefully violate the Consent Decree and shield such violation from the Court's review because it is only a single incident would ultimately render meaningless the remedies laid out in the Consent Decree. The Court is well within its authority to assess whether a single incident constitutes a purposeful violation of the Consent Decree, undermining its goals.

Here, the City's representations show that it may have violated the Consent Decree in one of two ways: (1) either NOPD has established policies, procedures, and practices that are contrary to its Consent Decree obligations; or (2) NOPD has chosen to deviate from established policies, procedures practices that are consistent with the Consent Decree because of the Vappie investigation's high-profile nature, reflecting breakdowns in NOPD's disciplinary system. The Court may exercise its inherent powers "to protect the efficient and orderly administration of justice" and determine whether the City has violated the Consent Decree in the Vappie investigation and whether those violations reflect systemic breakdowns in NOPD's accountability systems. *In re Stone*, 986 F.2d at 902 (citations omitted). Even if the Court ultimately determines that the City did not violate the Consent Decree, there is no question that the Court has the authority to conduct an inquiry into the City's compliance with the Decree based on the Monitor's reports and the City's representations in its filings and during the June 21, 2023 status conference.

The City also objects to the Rule by characterizing it as a threat to federalism and an exercise of unbounded authority because "there is no link between the instant Rule to Show Cause and the important constitutional policing objectives of the Decree." Doc. 734 at 20. The City is incorrect. First, "several courts have held that federalism concerns do not prevent a federal court from enforcing a consent decree to which state officials have consented." *Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 861, n. 20 (9th Cir. 1992). Here, the City voluntarily "struck a deal with the government and bound itself to an enforceable judicial order" and thus its generalized federalism concerns "do not automatically trump the powers of federal courts to enforce . . . a consent decree." *City of Jackson, Miss.*, 359 F.3d at 732; *Labor/Cnty. Strategy Ctr. v. Los Angeles Cnty. Metro. Transp. Auth.*, 263 F.3d 1041, 1050 (9th Cir. 2001)

(quoting *Stone*, 968 F.2d at 861)). As a result, the Rule, which represents merely an inquiry into potential violations brought to the Court's attention, is a proper exercise of the Court's "wide discretion to enforce decrees." *Alcoa, Inc.*, 533 F. 3d at 286.

Second, while no direct link is necessary given the express terms of the Consent Decree, the City's assertion that there is "no link" between the Rule and constitutional policing also runs counter to how the City, the Monitor, and the United States have previously characterized PIB and the Misconduct Section of the Consent Decree. The City itself has admitted that PIB is an entity at "the heart of NOPD's *ability to prevent misconduct*, build trust among its officers, and build community trust." Doc. 697 at 1 (emphasis added); *see also* Doc. 726 at 63:17-20. The Monitor has also commented on the connection between the Misconduct Section of the Consent Decree and constitutional policing: "It is worth remembering that the items outlined in the PIB section of the Consent Decree are critical to the functioning of a constitutional and trusted law enforcement agency." Doc. 694 at 2. And, in its 2011 findings report, the United States recognized that an "effective system for investigating complaints of officer misconduct can prevent constitutional violations and transform a community's perception of its police department." Doc. 1-1 at 79. The opening language of the Consent Decree itself states that the Parties "enter into this agreement [] with the goal of ensuring that police services are delivered to the people of New Orleans in a manner that complies with the Constitution and laws of the United States. . . .To achieve these goals, NOPD agrees to fundamentally change the way it polices throughout the New Orleans Community. This Agreement thus requires the City and the Department to implement new policies, training, and practices throughout the Department, including in the areas of: . . . misconduct-complaint intake, investigation, and adjudication." Doc. 565 at 6.

Given that the City agreed to the Consent Decree, as well as the importance of a functioning accountability system that identifies and remedies constitutional violations, the Court's order probing NOPD's practices and procedures relating to PIB is not a threat to federalism or an exercise of unbounded power. On the contrary, it is a reasonable step to enforce the Decree. *See Alcoa, Inc.*, 533 F.3d at 286 (district courts "have wide discretion to enforce decrees and to implement remedies for decree violations"); *see also CBS Broad. Inc. v. FilmOn.com, Inc.*, 814 F.3d 91, 101 (2d Cir. 2016) ("A court's interest in protecting the integrity of [a consent] decree justifies any reasonable action taken by the court to secure compliance") (alteration in original; citation and quotation marks omitted).

In sum, the Rule reflects the Court's proper exercise of its inherent authority and discretion to enforce its lawful order, here the Consent Decree.

**B. The City's Assertions that the Rule to Show Cause Is an Unauthorized Investigation by the Court is an Unsupported Mischaracterization.**

The City conflates the due process that the Court affords the City and its counsel with an unauthorized investigation by the Court. Before the imposition of civil contempt sanctions, due process requires the Court to give a party adequate "notice and an opportunity to be heard." *Am. Airlines, Inc.*, 228 F. 3d at 583. Here, the Court, consistent with due process, outlined the various areas of potentially deficient conduct that the Court would be evaluating and provided the City an opportunity to present evidence, including live testimony, at a hearing to show cause. The Court also ordered the production of documents and submission of pre-hearing briefing, which the City can further use to explain its conduct. The Court provided 14 days for the briefing and document production and set the hearing for 34 days after the issuing the Rule. The

Court's Rule makes clear that any finding of contempt or sanctions would occur after "notice and hearing."<sup>14</sup> Doc. 729 at 11.

Contrary to the City's assertions, the Court's providing the City this notice and opportunity to explain the potential violations of the Consent Decree does not constitute a "unilateral decision to select and investigate individual instances of conduct . . . ." Doc. 734 at 21. Instead, the Rule constitutes a reasonable exercise of the Court's inherent power to enforce its orders. *Shillitani*, 384 U.S. at 370 ("there can be no question that court have inherent power to enforce compliance with their lawful orders through civil contempt"); *see also Am. Airlines, Inc.*, 228 F. 3d at 584 (finding that defendants received due process because they received "adequate notice to inform them of the nature of the charges and to enable them to prepare a defense" in advance of the court's ordered show cause hearing).

The City also argues that the Rule shows that the Court is somehow usurping the Monitor's authority to evaluate NOPD's conduct and investigate potential violations of the Consent Decree. *See* Doc. 734 at 10 (arguing that the Court views "itself as the monitor" even though the Decree does not empower the Court with "any investigative, managerial, or public reporting" rights). The City's argument ignores the fact that the Monitor has already exercised its authority under the Consent Decree by conducting audits and issuing reports to the Court on these precise issues, alerting the Court to the City's potential violations of the Consent Decree. *See, e.g.*, Docs. 674-1, 694, 714.<sup>15</sup> The Court is not usurping the Monitor's authority when it

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<sup>14</sup> The Court also provides the City an opportunity to avoid contempt before even having to respond. *See* Doc. 729 at n. 44 ("To the extent the City concedes it has violated any of these provisions of the Consent Decree, the City will not be subject to sanction so long as it has remedied the violations and produces the policies, training, and operational procedures put in place to ensure that future violations will not occur.").

<sup>15</sup> The United States also informed the Court that it agreed with the Monitor's findings of NOPD's noncompliance and outlined a series of open items that the City and NOPD needed to address stemming from the Monitor's reviews. *See* Doc. 715 at 6-7.

takes action to address possible violations of the Consent Decree upon notice from the Monitor. The City's argument also ignores the Court's inherent authority to enforce its own order, regardless of the Monitor's action. While the Monitor certainly has the authority to evaluate NOPD's compliance with the Consent Decree,<sup>16</sup> that authority does not divest the Court of its own inherent authority to enforce its own order, including by issuing an order to show cause that requires the City to produce evidence of compliance. *See Alcoa, Inc.*, 533 F.3d at 288 ("district courts may fashion remedies to enforce prior judgments.") (citations and quotations omitted).

## V. CONCLUSION

For the foregoing reasons, the Court should deny the City's objections.

Respectfully submitted,

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<sup>16</sup> *See, e.g.*, CD ¶¶ 444, 447, 454.

**Certificate of Service**

I hereby certify that on August 11, 2023, I filed the foregoing through the Court's CM/ECF system, which will serve a true and correct copy of the filing on all counsel of record in this matter.

/s/ S. Mehveen Riaz