



METROPOLITAN CRIME COMMISSION, INC.

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www.metrocrime.org

July 2, 2021

Mr. Jason R. Williams
Orleans Parish District Attorney
619 South White Street
New Orleans, LA 70119

Dear Jason,

I am providing this response to your letter of June 24th in my capacity as Chairman and on behalf of the Metropolitan Crime Commission (MCC) Board of Directors. The MCC Executive Committee has carefully reviewed and considered in detail your letter of concern and the specific allegations regarding Mr. Goyeneche's "consistently partisan practices" with respect to the Orleans Parish District Attorney's (D.A.'s) Office. Our review included interviewing Mr. Goyeneche and reviewing emails, text messages, publicly available documents, and the media stories referenced in your letter.

We have concluded that Mr. Goyeneche's public comments about your agency were consistent with the MCC's mission to promote public safety, advocate for victims, and improve the administration of the criminal justice system by holding public officials accountable for their actions. The media comments of Mr. Goyeneche were professional and in accord with his duties with the MCC. His statements to the media were based on court minute entries, publicly sourced information, and his decades of criminal justice experience, which includes serving as a prosecutor in the Orleans Parish District Attorney's Office.

Your letter of concern set forth specific complaints, which we seek to address.

Paragraph #1: The only objectively verifiable concern contained in this paragraph reads as follows, "...we have attempted on multiple occasions to directly communicate proactively with Mr. Goyeneche." The only proactive communication that the MCC has received from you or your office since you spoke to the MCC Board on January 19, 2021 are media press releases. Mr. Goyeneche has not been contacted by you nor have you responded to Mr. Goyeneche's requests for meetings or returned his calls. Therefore, we find that complaint to be without merit.

Paragraphs #2, 3, & 4: These 3 paragraphs pertain to the tragic and preventable murder of Ms. Portia Pollock. Mr. Bryan Andry has been arrested for her murder. Mr. Goyeneche, in preparation for his interview with Fox 8 on June 13th, obtained a copy of the actual minute entry from the bail reduction hearing conducted by Judge Harris on February 1, 2021 (see attached Exhibit 1). The minute entry does not reflect any objections lodged by prosecutors with respect to the bail reduction granted by Judge Harris in that proceeding.

Mr. Goyeneche's public comments to Fox 8 were based on the incomplete minute entry and the D.A.'s newly written policy of "no longer advocating for bail amounts in Magistrate Court" (see attached Exhibit 2).

The role of the minute clerk within a court is codified in La.R.S. 13:1. Consequences for actions and/or inactions were addressed in *Shields Mott Lund v. P.R. Contractors, Inc.*, No. 2012-1327,

122 So. 3d 554, 558 (La. App. 4th Cir. 3/27/2013), where it was pointed out that “the failure of a minute clerk to accurately and precisely perform his or her duties is misfeasance per se and may under certain circumstances, be malfeasance and/or subject the clerk and court to claims of damages.” When Mr. Goyeneche obtained a copy of the minute entry, he was not informed the produced minute entry was incomplete and would be further supplemented or edited.

After the Fox 8 story aired, a news reporter acquired a transcript of the bond reduction hearing, which confirmed that the D.A.’s Office had in fact objected to the bail reduction that Judge Harris granted for the defendant now charged with murder. Upon reading the story, Mr. Goyeneche obtained a copy of the transcript from the reporter. Once Mr. Goyeneche reviewed the transcript, he called you to personally issue an apology for his Fox 8 statements and explain that he had relied in good faith on the February 1st official minute entry which erroneously omitted the objection lodged by the prosecutor.

You did not return Mr. Goyeneche’s phone call or respond to his text message. Mr. Goyeneche then contacted your office’s First Assistant, Bob White, to issue an explanation and apology, which Mr. White graciously accepted. Mr. Goyeneche then contacted the Times-Picayune/Nola.com reporter Matt Sledge, from whom he received the transcript, to issue an on-the-record apology and explain that he had acted in good faith in relying upon the February 1st official minute entry.

Paragraph #5: Mr. Goyeneche was asked by Fox 8 to respond to your newly announced policy of no longer opposing applications for pardon or parole. The story quoted you as being critical of your predecessor for his alleged policy of “always opposing” applications for parole and pardon. Mr. Goyeneche commented that the prosecutor’s position to oppose parole needs to be made on a case by case basis.

After reviewing the January 27th Fox 8 interview containing statements by both you and Mr. Goyeneche, we have concluded that his statements were reasonable and appropriate.

Paragraph #6: We have reviewed the Fox 8 February 24th story referenced in your letter of concern, claiming that Mr. Goyeneche stated that the D.A.’s Office posed a conflict of interest through its hiring decisions and was violating the law by placing some juvenile offenders in intervention programs. Mr. Goyeneche twice indicated a “potential” conflict of interest could arise from a defense attorney now prosecuting or supervising the prosecution of cases in that same court. You and your spokesperson acknowledged this scenario could occur and that a plan was in place to address the issue should it arise.

Mr. Goyeneche was quoted as stating that juvenile participation in intervention programs is, “...the responsibility of a judge when it comes to sentencing, not the prosecutor’s office and not the defense.” Mr. Goyeneche’s comments were strictly limited to sentencing being the responsibility of the judge. Mr. Goyeneche and the MCC continue to embrace and support the use of diversion for non-violent offenders. We find nothing objectionable or factually incorrect pertaining to Mr. Goyeneche’s public comments in this interview.

The Executive Committee has concluded that Mr. Goyeneche’s comments in the Bryan Andry case were offered in good faith based on the court’s official minute entry. We find that Mr. Goyeneche conducted himself professionally and with integrity with respect to this matter and all concerns raised in your letter. Our review determines that his unwavering commitment to the mission of the MCC remains unchanged during your administration, and he will continue to speak on behalf of the MCC with the full confidence, support, and trust of the MCC’s Board of Directors.

The MCC and Mr. Goyeneche desire you to be successful in your tenure as District Attorney. Your letter professes that the D.A.'s Office seeks to increase safety and deliver justice in New Orleans. These aspirational goals are laudatory and consistent with the desires of the MCC and Mr. Goyeneche. Given the extraordinary spike in violent crime and detriment to our city if these problems are not curtailed, it is clear the D.A.'s Office and the entire criminal justice system face considerable challenges. The MCC will continue to objectively watch, assess and comment on the actions of public officials and related issues that affect public safety.

The penultimate paragraph of your letter indicates a willingness to engage in a, "constructive, respectful, and honest relationship," with the MCC. Please be assured that we share that same sentiment. In the future, we encourage you to work directly with Mr. Goyeneche and the MCC in pursuit of improving the criminal justice system and public safety for all citizens and crime victims.

Respectfully submitted for and on behalf of the MCC Board of Directors,



Greg Rusovich
Chairman

Enclosures

CRIMINAL DISTRICT COURT OF ORLEANS PARISH, LOUISIANA

Page 1

SECTION "L" Judge: THE HONORABLE ANGEL HARRIS
Minute Clerk: DAROLYN MARTIN
Court Reporter: PINKEY FERDINAND
Assist. D.A.: ERIC CUSIMANO
OIDP Attorney: MEGHAN GARVEY

Date: MONDAY, February 01, 2021

Case Number: 548-795

State of Louisiana

versus

BRYAN M ANDRY

Violation: RS 14 95.1

RS 14 64.3

THE DEFENDANT, BRYAN M ANDRY, APPEARED BEFORE THE COURT FOR HEARING ON MOTIONS WITH COUNSEL, LINDSAY MARKEL.

THE COURT GRANTED THE DEFENSE REQUEST FOR BOND REDUCTION ON THE FOLLOWING CHARGES:

-RS 14:95.1 - \$25,000.00

-RS 2 CTS. 14:64.3 -\$50,000.00 (EACH COUNT \$25,000.00)

AS A CONDITION OF BOND THE DEFENDANT TO ENTER A DRUG REHABILITATION PROGRAM.

THE DEFENDANT UPON RELEASE TO BE PLACED ON AN ANKLE MONITOR.

PRE-TRIAL HEARING IN THIS MATTER IS SET FOR 02/10/21.

SEND NOTICES.

SEND NOTICE TO DEFENSE COUNSEL.

PLACE THE DEFENDANT ON THE JAIL LIST.

DAROLYN MARTIN, Minute Clerk

619 South White Street
New Orleans, LA 70119



(504) 822-2414
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JASON ROGERS WILLIAMS
ORLEANS PARISH DISTRICT ATTORNEY

April 6, 2021

Shaun D. Ferguson
Superintendent
New Orleans Police Department
715 South Broad Street
New Orleans, LA 70119

Re: Letter from Chief Ferguson on March 25, 2021

Dear Chief Ferguson:

I pray that this correspondence finds you and all of our officers safe.

I enjoyed a great working partnership with the New Orleans Police Department as the former City Council President, and am extremely excited to build on that partnership to increase safety and justice in New Orleans as District Attorney. As we discussed in our meeting on January 28, collaboration between our two agencies is critical to protecting our families and restoring trust in the community for all of the work done by law enforcement.

Every day, our agencies communicate and work together on investigations and prosecutions. Our senior leadership continues to communicate with each other on cases, inter-agency cooperation, and new initiatives – for example, the Serial Crimes initiative that we both recently committed to developing in order to prioritize the prevention and prosecution of non-fatal shootings, homicides, unsolved homicides, armed robberies, car burglaries, and carjackings.

Below are my responses to the issues you raised in your letter.

(1) NOPD Notification of Acceptances and Refusals

The Orleans Parish District Attorney's Office (OPDA) remains committed to open communication with you and your officers on charges that have been accepted or refused by our Screening Division. Your letter noted that during previous administrations, the OPDA Screening Division would provide "buck slips" to officers notifying them of the outcomes of cases in which they were involved. My administration has continued that practice, with buck slips and Screening Action Forms still being made available for pickup on the 2nd floor of our building by A-Case Officers. Your officers visit our office daily to submit case reports and to retrieve these buck slips, as has been the case for many years.

In addition to notifications through manual pick up of buck slips, since COVID-19, electronic reports of Screening Action Forms are emailed to NOPD Captain Kim Williams, NOPD Captain Nick Gernon, Orleans Parish Sheriff's Office, and Orleans Public Defender's Office.

There are five codes that OPDA uses to identify refusals that are based on law enforcement deficiencies:

- 350- NO PROBABLE CAUSE FOR ARREST
- 351- UNLAWFUL SEARCH NO WARRANT
- 352- UNLAWFUL SEARCH WITH WARRANT
- 431- INCOMPLETE POLICE INVESTIGATION
- 433- LAW ENFORCEMENT ISSUES

When an Assistant District Attorney (ADA) screener refuses a case because of a law enforcement issue, they are required to use the above codes exclusively.

Upon refusal of a case due to a law enforcement issue, the screener emails Captain Kim Williams in your Compliance Division, as instructed by Deputy Chief Otha Sandifer; the screener also alerts the A-Case officer, the arresting officer, the arresting officer's rank, the District Commander, and the designated Department of Justice official via email with pertinent information regarding the refusal. This process continues to take place.

Of course, I and my Administration, including individual ADA screeners, will remain available to you to discuss specific cases if further explanation is needed.

As you and most police are aware, an officer needs probable cause to make an arrest, whereas prosecutors need evidence to prove guilt beyond a reasonable doubt to secure a conviction. These two different legal thresholds will undeniably lead to some cases being refused, but refusals in these instances do not signify that officers or prosecutors are doing poor work. As committed in our first two meetings, we must communicate the areas for improved evidence-gathering to our respective staffs to ensure that those instances serve as timely teachable moments.

As we also discussed, I would be glad to make OPDA personnel available to you for in-service training on legal issues that affect our ability to bring more officer arrests to court. As one example, I am attaching to this letter a presentation about the *State v. Christopher Alexander* case that was delivered to the NOPD Homicide Unit on March 12, 2020 by Assistant District Attorney Andre Gaudin explaining how to avoid blown confessions. As you know, prosecutors can only use confessions in court when those confessions are rendered within the confines of the Constitution. I believe that more consistent presentations like this one could assist officers in making sure that the hard work that they put into cases is not for naught because of avoidable deficiencies in compliance with relevant legal and constitutional bars.

(2) Charge Conferences

Currently, OPDA holds one charge conference each week (rotating between our Homicide and SVU Units), and a third (Gun Crimes Unit) will resume shortly. These meetings have taken place regularly even while the courts were closed, albeit via Zoom. Furthermore, once courts are back open, we will once again be holding charge conferences three times per week, with each unit meeting every week.

OPDA views the participation of NOPD officers in charge conferences as invaluable. Officers have been, and continue to be, actively participating in charge conferences, with detectives actually presenting the cases at these meetings. As our agencies previously agreed: for each case being discussed at a particular conference, the arresting officer, detective, detective's rank, District Commander, and Compliance are all notified and provided an agenda via email at least five days in advance of the conference. Just in the

last few weeks, charge conferences were held on March 24 (SVU), March 31 (Homicide), and April 7 (SVU). Attached as examples are the notification emails (with attachments) sent out by Screening ADAs for those three conferences.

I look forward to continued engagement from NOPD officers in this process.

(3) Grand Jury Policy/Protocols

As with charge conferences, OPDA's policies and protocols for Grand Juries as it relates to NOPD participation have largely remained the same between the prior Administration and the new one. Moreover, the Grand Jury has been meeting with regularity over the first few months of my Administration. We can assure you that at least one law enforcement officer has testified in each case. However, we cannot disclose the precise number of cases that have been brought, or the identities of the officers that have testified, due to the confidential nature of Grand Jury proceedings.

(4) Charges Eligible for Diversion

The prior District Attorney never implemented written guidelines for the types of cases that it made eligible for diversion. While my Administration fully intends to develop written guidelines for diversion eligibility, I can state unequivocally that charges will still be evaluated on a case-by-case basis going forward, allowing for discretion. Once our guidelines for diversion eligibility are finalized, we will be sure to share them with NOPD.

(5) Extradition Refusals

Respectfully, and with the understanding that OPDA has been in the practice of extraditions for many years, my administration is of the view that extraditions should be solely the province of NOPD or other law enforcement agencies. Though our investigators typically have a law enforcement background, they are retired from the force. Meanwhile, NOPD is absolutely more adept at dealing with the city's most dangerous criminals, and specifically trained to do so. We certainly need NOPD's specialized skill set on extraditions.

(6) Protocols for Firearms Charges

Although OPDA does not have any unique policies related to the refusal of firearms charges, we will seize every opportunity to take guns off the streets. However, we understand that the return of firearms is properly within the ambit of Orleans Parish Criminal District Court and NOPD's Central Evidence & Property.

(7) New Policies

My Administration is currently undertaking the substantial project of thoroughly updating OPDA's policy manual. Below is a highlight of some policy changes that are now in effect.

- OPDA will no longer advocate for bail amounts in Magistrate Court.
- OPDA will no longer oppose applications for pardon and parole, as we believe that that determination is properly made by corrections officials and ultimately the Louisiana Board of Pardons & Parole.
- OPDA will no longer accept cases until we receive all relevant case file information from the arresting agency. The prior administration prematurely accepted cases and transferred them to the Trials Division while still awaiting the complete file.
- OPDA will no longer accept stand-alone marijuana possession and/or paraphernalia charges. We understand that it is the NOPD's policy to issue a summons in lieu of arrest on stand-alone marijuana charges.

- OPDA will no longer pursue multiple bills as part of pleas or after trial.
- OPDA will no longer pursue 305(b) or 857 transfers, unless approved by the DA.
- OPDA will no longer institute post-plea diversions.
- OPDA will no longer move for probation revocations on account of technical violations.

Independent of the above matters outlined in your March 25 correspondence, I would like to discuss the following items more thoroughly at our meeting tomorrow:

Serial Crimes Initiative

Our teams have been working together on a draft Memorandum of Understanding that would establish a new partnership between our agencies as well as federal and state law enforcement agencies. We have made progress on the potential agreement and the data analytics needed to guide this work.

Report Submissions to OPDA Juvenile Division

I believe that detention hearings for arrested youth are being unnecessarily delayed in part due to the time it takes for our Juvenile Division to receive needed documentation from arresting officers. Our Juvenile Chief has communicated this challenge, but given the sensitive nature of juvenile offenses and the rate at which they are taking place in the city, I want to personally flag this matter with you in hopes that we can work together to resolve it so that there is no delay on juvenile crime matters.

PIB Sustained Complaints List

It is our understanding that PIB is required to relay to OPDA on a quarterly basis its list of officers with sustained complaints regarding their veracity or failure to adhere to the law. We have apparently not received such a report in several years. As we have discussed in previous meetings, it is my hope that regular reporting can be re-established as quickly as possible.

Sincerely,



Jason R. Williams
Orleans Parish District Attorney