

CITY OF NEW ORLEANS

SUSAN HUTSON
INDEPENDENT POLICE MONITOR



August 4, 2015

Deputy Superintendent Arlinda Westbrook
Director, Public Integrity Bureau
New Orleans Police Department
118 North Rocheblave St.
New Orleans, LA 70119

RE: Officer-Involved Shooting; IPM No. 2012-682; ASI No. 2012-10

Dear Deputy Superintendent Westbrook:

This letter is a report on the OIPM's review of the investigation surrounding the shooting death of Wendell Allen by then-Officer Joshua Colclough during the execution of a narcotics search warrant. Overall, the OIPM found the investigation contained a great deal of information about the incident in question. However, the Office of the Independent Police Monitor ("OIPM") has documented numerous substantive issues of concern with respect to the investigation and is forwarding this information for the New Orleans Police Department (NOPD) Public Integrity Bureau's ("PIB") review and evaluation.

BACKGROUND AND OVERVIEW

Recent protests in other cities demonstrate the destructive impact of a police department's failure to rein in the use, especially on unarmed subjects, of police deadly force. The New Orleans Police Department (hereinafter referred to as "the Department" or "the NOPD") must maintain officer safety. However, if communities in New Orleans cannot trust the NOPD to institute *and follow* policies that establish community safety as a priority, then the officers are less safe as a result.

On August 16, 2013, former Officer Joshua Colclough pled guilty to manslaughter and was sentenced to four years confinement in a Department of Corrections facility for shooting and killing Wendell Allen. The NOPD criminal and administrative investigation into Wendell Allen's death is now closed. Thus, the issues raised within this report may not materially affect the administrative or criminal adjudication of this investigation.

The OIPM's thorough analysis of the events that led up to Wendell Allen's death exposes the risks the Department takes when it does not protect against cursory or partially-planned tactics and investigative approaches affected by partiality. This document answers some of the community and the Allen family's concerns and provides an independent assessment of the Department's review of this lethal use of force. It is a positive hallmark that NOPD does not appear to have absolved the rest of the Department from its responsibility by placing all blame on former-Officer Colclough. NOPD's files indicate that, in response to the Wendell Allen shooting, the department has considered changes in policy and training.



The NOPD investigation into the Wendell Allen shooting was two-fold. NOPD Homicide Division, in partnership with the NOPD Force Investigation Team (FIT), conducted the “criminal investigation” which was comprised of several reports, including the NOPD Homicide Division’s supplemental report. FIT is part of the NOPD Public Integrity Bureau (PIB) and attended some of the witness interviews in the Wendell Allen case. The NOPD FIT also conducted and wrote the “administrative shooting investigation,” sometimes referred to as the “administrative report.” The “administrative shooting investigation” is a process that determines whether there is sufficient evidence to sustain involved officers on administrative violations. The administrative shooting investigation identifies areas for correction in policy and training. PIB FIT submits such recommendations to the Use of Force Review Board.

The NOPD FIT was created after the OIPM made a recommendation to the NOPD to create such a unit. The OIPM made this recommendation out of concern that NOPD Homicide investigators showed insufficient impartiality to investigate officer-involved shootings. The OIPM recommended that NOPD provide training for the FIT team to make informed recommendations on use of force. For example, FIT is the appropriate unit to recommend officer trainings that help officers avoid lethal situations, e.g. how to de-escalate civilian contacts before they become deadly. The OIPM also recommended the creation of the NOPD FIT team because it would be able to identify further training advances for the entire Department. At the time of the issuance of this report, NOPD FIT, amongst other responsibilities, oversaw and investigated all NOPD officer involved shootings and in custody deaths.

OBJECTIVES, SCOPE, METHODOLOGY, AND AUTHORITY

The issues identified herein revolve around several key facts:

- The NOPD’s decision to conduct what amounted to a no-knock raid.
- The raid was in a home inhabited by children.
- The NOPD officers either knew or should have known children occupied the house.
- The raid was for a low-level, non-violent drug case.

OBJECTIVES

The objectives of OIPM’s Wendell Allen misconduct investigation review are to:

- Determine the quality, timeliness, and fairness of the misconduct investigation;
- Determine the legality, including compliance with NOPD policy as well as state and federal law, of the use of force incident;
- Identify areas for policy change, training, and/or discipline that will address the harms of this particular event and/or prevent future harms or similar events; and
- Inform NOPD and the public of better police practices related to the shooting event.



METHODOLOGY & SCOPE

OIPM legal staff utilized the OIPM Critical Incident Review Matrix to conduct first and second-level review. The matrix covers sixteen separate areas of the critical incident review process, including but not limited to the following:

- Incident Response and Investigation;
- Involved Officers' Disciplinary and Use of Force History;
- Incident Details;
- Tactical Issues;
- Training Issues;
- Investigation Quality and Completeness;
- Potential Officer Misconduct/Legality of Police Action; and
- Employment History of Involved Officers

The matrix contains 277 questions designed to evaluate whether the investigation properly addressed all of the allegations raised by the complainant and all of the allegations that became apparent during the investigation. The matrix also assesses the future risk level posed by involved officers and the legal implications of the officers' and investigators' actions.

The review included a comprehensive analysis of all interviews, physical evidence, investigative memos, and related policy and case law analysis conducted by the NOPD PIB. The OIPM also met with the Allen family on several occasions and included their questions in the OIPM review. After employing the matrix, the OIPM identified potential investigative strengths and flaws. Then, OIPM researched best practices and identified the recommended changes in policy and training that increase public and officer safety while strengthening community trust in the department.

STANDARD

The standard for this review was compliance with NOPD policy, NOPD training, state constitutional law and federal constitutional law. Additionally, the OIPM sought to determine whether the shooting review and the administrative shooting investigation met the basic standards of a thorough, timely and fair investigation.

SOURCES

The sources of information for OIPM's investigation review included the following:

1. The NOPD investigators interviewed everyone present inside the house at the time of the shooting. There were 31 taped interviews of 22 people. Several of the officers involved, including former Officer Colclough, were interviewed multiple times. Interviewers spoke to witnesses several times in order to follow up on specific questions or information received from other sources.
2. The investigating officers reviewed a video recording that captured the shooting of Wendell Allen and a portion of the search warrant execution.
3. During the investigation, the NOPD conducted a walk-through of the search warrant execution, at the OIPM's request. This walk through was conducted in order to better



understand the location of officers and Allen family members inside the scene at the time of the incident.

4. The OIPM ultimately had access to the scene and the entire investigation, and was able to confer extensively with the NOPD during the course of the investigation to ensure that the OIPM's questions and, most importantly, the Allen family's questions were answered during the investigation.¹

AUTHORITY

Under the Municipal Code of Ordinances, the OIPM is tasked to “ensure New Orleans Police Department accountability, transparency, and responsiveness to the community it serves.”² Completed investigations that are reviewed by the OIPM shall be accompanied by a report in writing to the NOPD stating whether the investigation was considered fair, thorough, timely or insufficient.³ According to the Municipal Code of Ordinances, the OIPM “shall review the investigation of the underlying incident described in such (civil) claims and lawsuits.”⁴ The OIPM's review of these NOPD investigations (where a civil claim or lawsuit has already been filed) will focus on NOPD misconduct and NOPD training, amongst other topics.⁵ The misconduct the OIPM is required to monitor is specifically defined by the NOPD Consent Decree, as “Actions that include but are not limited to the following: Use of excessive force, Abuse of authority such as unlawful searches and seizures, ... and Interference with Constitutional rights.”⁶⁷ The NOPD Consent Decree also specifically requires the OIPM to monitor officer involved shootings for “investigative techniques, unchallenged assumptions or unconscious biases from investigators, case law, discipline, training, department policy, as well as a consideration of tactics employed during the incident and investigative thoroughness (depth and scope).”⁸

Both municipal law and the NOPD Consent Decree require the OIPM to identify the NOPD's “interference with constitutional rights” and to specifically ensure that officer involved shooting investigations comply with case law. This report is not meant to be a substitute for a court opinion. Instead, the OIPM publishes this report to ensure the New Orleans Police Department's accountability, transparency, and responsiveness to the community it serves.

¹ The OIPM was not granted immediate access to the scene, despite attempts to ensure that OIPM personnel were able to monitor the NOPD's initial response to the incident. The Police Monitor was kept out of the scene for over 15 minutes after the scene had been secured and after members of the Superintendent of Police and employees of the NOPD's Public Information Office were granted access to the scene, despite the lack of investigatory functions of these two individuals/groups. The implication of OIPM's inaccess to a scene is the OIPM's failure to provide accountability for the integrity of the crime scene to the public.

² Municipal Code of Ordinances, Article XIII Section 2-1121, Paragraph 3.

³ Municipal Code of Ordinances, Article XIII Section 2-1121, Paragraph 6.

⁴ Municipal Code of Ordinances, Article XIII Section 2-1121, Paragraph 9.

⁵ Id.

⁶ The NOPD-IPM MOU is incorporated into the NOPD Consent Decree. Misconduct is defined on page 9 of the NOPD-IPM MOU.

⁷ Consent Decree Regarding the New Orleans Police Department Case 2:12-cv-01924-SM-JCW, Paragraph 442, NOPD-IPM MOU Page 9.

⁸ Consent Decree Regarding the New Orleans Police Department Case 2:12-cv-01924-SM-JCW, Paragraph 442, NOPD-IPM MOU, Paragraph 51.



The OIPM's findings, analysis, and recommendations follow below.

FACTUAL SUMMARY

SEARCH OF THE ALLEN FAMILY HOME

In 2012, a confidential informant asserted that a suspect was selling narcotics from the Allen family home. NOPD conducted surveillance, during which officers observed the Suspect making hand-to-hand transactions outside that address. Officers then saw the Suspect leaving the scene with two other individuals and a package. The Suspect and the other individuals were arrested in Jefferson Parish during a traffic stop (after being followed by members of NOPD and the Jefferson Parish Sheriff's Office (JPSO)). JPSO noted that, at the scene of the Suspect's arrest, Officer Michael Voltolina interviewed the Suspect about the location of the Allen family home. According to Voltolina, the Suspect advised that children were in the house along with two other individuals and several medium sized dogs. Officer Voltolina asked the Suspect if there were any weapons in the residence. The Suspect advised he did not want to speak to the officer anymore.⁹ An NOPD officer conducting surveillance also observed children present at the home.

JPSO's crime report listed the Suspect's addresses as Address A in New Orleans, LA 70122.¹⁰ Additionally, Detective Daniel Kerr identified the Suspect's other address as Address B in New Orleans, La 70128.¹¹ Despite the affirmative evidence of the Suspect's two residential addresses, NOPD Officer Voltolina filed a search warrant application for the Allen family home (which was not Address A or Address B), referring in the search warrant to the Allen family home as the Suspect's residence.

On March 7, 2012, NOPD Officer Voltolina filed a search warrant application for the Allen family home, and the warrant was signed by Orleans Parish Magistrate Judge Robert Blackburn at about 5:15 PM. Officer Voltolina then led a very short pre-search briefing with NOPD and JPSO officers at the Third District Station.¹²

On March 7, 2012 at about 5:43 PM, members of the Third District Task Force and Third District Narcotics Unit, along with the JPSO's Street Crime Unit, executed the search warrant at the Allen family home. JPSO Officers and some NOPD Officers remained on the periphery while NOPD officers entered the Allen family home. NOPD officers involved in the search warrant execution were Sergeant Sherman Mushatt, Officer Joshua Colclough, Officer Nigel Dags, Officer Eugene Cummings, Officer Michael Voltolina, and Officer Roy Caballero. A video recording of the incident begins seven seconds prior to the door breach and shows officers clearing the downstairs portion of the house and then clearing the second floor. Officers failed to announce their presence before the door breach. Once inside, NOPD made audible announcements of their presence.

⁹ JPSO crime report pg. 12 of 14.

¹⁰ Pg. 2 of 14, JPSO crime report.

¹¹ Pg. 7 of 14, JPSO crime report.

¹² 4650 Paris Avenue.



When Third District Officers Joshua Colclough and Roy Caballero began advancing up the stairs to clear the second floor, they encountered Wendell Allen, a 20-year-old black male, at the top of the stairs. Mr. Allen was shirtless and wearing only pajama bottoms. Officer Colclough shot Wendell Allen once in the chest within seconds of reaching the stairs. The video recording of the incident does not show a consistently clear visual of the shooting, but it does capture consistently clear audio of the shooting. After Officer Colclough shot him, Mr. Allen died in the hallway where he fell. No weapons were found by NOPD on or near Mr. Allen's body. NOPD did not give Mr. Allen any warnings or commands prior to the shooting.

Officers detained two other people who had been upstairs: 19-year-old Adult Witness A, brother of Wendell Allen, and 19-year-old Adult Witness B, an acquaintance. In the room where Adult Witness A was located at the time of the raid, the NOPD seized 138.4 grams—about a third of a pound—of marijuana and one scale. NOPD removed six children from the downstairs part of the house, ranging in age from one (1) to fourteen (14) years of age, including a four-year-old, five-year-old, seven-year-old, and eight-year-old.

INVESTIGATION INTO THE USE OF FORCE

Sergeant Bruce Glaudi of the Homicide Division conducted the criminal investigation of this incident. Sergeants Nicole Barbe of PIB, forensic counselor Daniel Cooley, Lieutenant Gary Marchese, and Officer Daniel Plustache of the Digital Forensics Unit assisted Glaudi. The administrative review of this incident was conducted by PIB Sergeant Andre LeBlanc, Jr. Sergeant Glaudi was considered “the lead investigator for the incident.”¹³

NOPD conducted two sets of simultaneous witness interviews during the criminal investigation. Since Police Monitor Susan Hutson was still monitoring the crime scene, Deputy Police Monitor Simone Levine was aided in monitoring interviews at Police Headquarters by an Office of the Inspector General (“OIG”) investigator during the late hours of March 7, 2012 and into the morning hours of March 8, 2012.

At one point in the late evening of March 7, 2012, the OIG investigator informed Levine that all of the NOPD witness-officers waiting to be interviewed were sitting in the same room with one of their attorneys. Deputy Police Monitor Levine requested that the OIG investigator sit in the room with the NOPD witnesses to reduce potential for witness tampering. Levine then approached PIB Deputy Superintendent, Arlinda Westbrook, who promptly separated the officers by ensuring they sat in different areas of NOPD Headquarters.

After hearing statements from a 5-year-old child about a gun found in the Allen house, NOPD applied for a warrant and conducted a second search of the premises. Independent Police Monitor Susan Hutson was present at the home during this search but did not witness the actual discovery of any weapon. NOPD reported finding a previously unrecovered gun hidden inside a light fixture in one of the upstairs bathrooms. This gun was found to have been possessed by a

¹³ PIB FIT Administrative Shooting Investigation, page 3 of 19.



civilian who in turn claims the firearm disappeared out of his truck. The civilian never reported the gun stolen.

On August 16, 2013, Colclough pled guilty to manslaughter and was sentenced to four years imprisonment for the shooting and killing of Wendell Allen. To date, he is still incarcerated.

Sgt. Glaudi was the lead investigator on the Wendell Allen homicide. The NOPD held a Use of Force Review Board (“UFRB”) on August 12, 2014 where Sgt. Glaudi presented his investigation. PIB’s Force Investigation Team also made several tactical planning and warrant service recommendations in connection with its Administrative Shooting Investigation of the incident on July 19, 2014.

In March 2013, the family of Wendell Allen filed a civil rights suit against Officer Colclough, the City of New Orleans, the Mayor of New Orleans, the NOPD Superintendent and several unnamed NOPD officers. The civil suit is pending in front of Federal District Court Judge, the Honorable Jay Zainey at the time of the issuance of this report.

OIPM FINDINGS AND RECOMMENDATIONS

FINDING 1: NOPD INVESTIGATORS INTERPRETED AND SEARCHED ONLY FOR EVIDENCE IN WAYS THAT CONFIRMED THEIR PRECONCEPTIONS OR PREEXISTING BELIEFS. NOPD INVESTIGATORS SOUGHT AND INTERPRETED EVIDENCE THAT SUPPORTED THE PROPOSITION THAT OFFICER CONDUCT DID NOT VIOLATE DEPARTMENT POLICY.

In reviewing NOPD’s investigation of Wendell Allen’s homicide, the OIPM found that key video evidence was not initially collected; a witness’ statement was omitted from Homicide’s final supplemental report; video of the incident, gunshot residue-test results, and witnesses’ statements were misinterpreted; allegations were misstated during a witness interview; and the investigation stopped short of necessary follow-up.

A. NOPD’S INITIAL FAILURE AND RELUCTANCE TO COLLECT KEY VIDEO EVIDENCE OF THE INCIDENT

In his first interview with Sgt. Glaudi on the Wendell Allen shooting, one of the officers who had been part of the search warrant team stated that he did not know if he picked it up or not, but that he had a recording. Later, that officer said he had turned on the recording device as they arrived at the Allen family home.

The videotape of the incident showed seven seconds prior to the door breach, officers cleared the downstairs portion of the house and the subsequently cleared the second floor. Though the audio indicated officers announced their presence once they had *already* entered the residence, the videotape did not show any NOPD announcements before the door breach. The video recording



contained no audible NOPD warnings or commands to Wendell Allen before the shooting. The videotape contained the sound of a single gunshot, but it did not contain a visual recording of the shooting. Orleans District Attorney Cannizzarro later publically stated that this videotape would have been key evidence in a trial and showed, “It was clear there was no justification for the shooting.”¹⁴

Sgt. Glaudi, lead homicide investigator, initially denied the existence of the video recording and refused to investigate its existence. Deputy Police Monitor Levine listened while the officers were interviewed. Immediately after the officer’s interview, Levine pointed out to Sgt. Glaudi that the officer had told Sgt. Glaudi he had a video of the incident. Sgt. Glaudi refused to call the officer back in, insisting to Levine that the officer said he had a recording device with him during the interview with Sgt. Glaudi, not at the scene of the shooting. When Levine asked Sgt. Glaudi to review the interview video footage to clarify the officer’s statement, Glaudi refused. Levine then requested intervention from PIB and the Chief of Police.

Following intervention from NOPD Chief Serpas and NOPD Deputy Chief Westbrook, Glaudi was compelled to call the officer back. Glaudi only did so a total of seven days after the original interview. Toward the end of his second interview, Glaudi asked the officer, “When I reviewed your first statement that you gave on March 7th, you state about, towards the end of the statement, something to the fact as you pull out your recorder, I don’t know if it caught it or not but I recorded this. And were you referring to the statement given or the actual search warrant incident?”¹⁵ The officer confirmed that he had recorded the search warrant execution incident and that he had initially mentioned the recording device during his first interview with Glaudi.¹⁶

B. NOPD’S PREJUDICIAL MISCHARACTERIZATION OF THE INVESTIGATION TO A WITNESS

The OIPM finds that Sgt. Glaudi incorrectly and prejudicially characterized the investigation during the interview of Officer-witness Caballero. Sgt. Glaudi informed Officer Caballero in the latter’s interview, that Glaudi was conducting the interview in conjunction with *the attempted murder of police officers* instead of in conjunction with an officer-involved shooting.¹⁷ Glaudi’s choice to preface his interview in this way may have improperly prejudiced the interview and given the officer a false impression that he was giving evidence against a civilian defendant. There is not enough evidence to determine if Glaudi intentionally sought to bias the shooting review by framing it as an attempted homicide of an officer. If his choice was inadvertent, it highlights Sgt. Glaudi’s unintentional bias. Regardless of Glaudi’s intent, the harm he did to the officer-witness’s testimony is irreversible. At no point in the investigation, either internally within the Department or externally in the news media, was there ever an allegation that the Wendell Allen shooting was an attempted homicide of a police officer.

¹⁴ WVUE Fox 8, “[\[redacted\]](#),” accessed May 2015.

¹⁵ Second taped statement of P/O [\[redacted\]](#) in C-10616-12, March 14, 2012.

¹⁶ Id.

¹⁷ See, Second taped statement of P/O Roy Caballero in C-10616-12.



C. NOPD'S FAILURE TO ADDRESS INCONSISTENCIES BETWEEN VIDEO
EVIDENCE AND POLICE TESTIMONY

Sgt. Glaudi's reports never addressed the many inconsistencies between police officer statements and the video evidence. Several police officers claimed to notify the Allen family that the NOPD was outside their residence and about to execute a search warrant. Video evidence does not support that claim. Similarly, Officer Caballero claimed to warn or command Wendell Allen to get down on the ground before Officer Colclough shot him. Again, the video evidence does not support that claim.

The video captured by the Officer on the day of the search warrant execution begins seven seconds before the door breach and lasts until after Wendell Allen is shot. While the video does not have a physically clear vision of the shooting, the volume and sound of the video is clear and unobstructed. While police do announce themselves AFTER they breach the door and AFTER they enter the Allen home, the video evidence contains no officer's announcement of police presence BEFORE breaching the door of the Allen residence. The video evidence also contains no warnings or commands to Wendell Allen to "get down" BEFORE he is shot, as was required by NOPD policy.¹⁸ The only police commands heard are AFTER Wendell Allen is shot and the police are upstairs in the bedroom. It is only AFTER shooting Wendell Allen, after the officers walk past Wendell Allen's body and see the other individuals in the house that the police command "get on the ground, get on the ground, shots fired" are heard on the video.

Below is listed a minute-by minute breakdown of the Wendell Allen shooting video. Note that all police announcements on the video are heard AFTER the sound of the Allen family door being hit by the NOPD battering ram. Note that all police commands "to get on the ground" are heard after the gunshot is heard, when officers are apprehending civilian witnesses upstairs in the bedrooms:

- Minute 3:47:45 on the video timer: there is a visual of a man in a black shirt and a visual of the outside of the house, establishing the officers were still outside of the Allen family home.
- Minute 3:47:50 on the video timer: the visual of the outside of the house is gone, there is the sound of the NOPD battering ram on the Allen family door.
- Minute 3:47:51 on the video timer: there is the sound of the Allen's family door being breached and giving way.
- Minute 3:47:51-3:47:52 on the video timer: the screen is dark, in the beginning of the frame there is the sound of the Allen family door giving way.
- Minute 3:47:53 on the video timer: the visual of a second man in front of the officer shooting the video, wearing a beige shirt with a police vest; the sound of officers saying, "POLICE! POLICE!" is audible.
- Minute 3:47:54 on the video timer: no image initially but loud sounds of officers saying, "Police! Police! At the end of the frame, there is a visual of the inside of the house.

¹⁸ NOPD Operations Manual, effective June 7, 1992, Revised: 11/23/2003, Use of Force, Chapter 1.2, Paragraph 2(a).



- Minute 3:48:13 on the video timer: the officer shooting the video says, “Upstairs?” Another officer outside the frame replied, “Yeah.”
- Minute 3:48:15 on the video timer: there is a visual of a staircase with people at the steps; there is the sound of a single gunshot.
- Minute 3:48:20 on the video timer: someone says, “Get on the ground.”
- Minute 3:48:24 on the video timer: someone is saying either “stand down,” “stay on the ground,” or “man down.” There are multiple voices screaming.
- Minute 3:48:28-3:48:32 on the video timer: police say, “Shots fired. Get on the ground! Get on the ground! Hands up in the air! Get on the ground!”

However, neither NOPD homicide in its shooting review nor PIB in its administrative report addressed or documented the inconsistency between officer statements and video/audio evidence. In fact, Sgt. Glaudi appears to have incorrectly concluded that the video confirmed officer statements. Sgt. Glaudi’s report did not detail how he drew the conclusion that officer statements and video evidence corresponded. Nor, does Sgt. Glaudi note any concerns that video/audio evidence may not corroborate officer statements. Sgt. Glaudi writes in his supplemental report, “Multiple statements taken from police officers present during the search warrant revealed the officers clearly and loudly announced their police presence before and after they entered the residence. A video recording device confiscated from one of the officers present during the search warrant confirmed the fact the police officers clearly announced their presence continually throughout the residence.”

According to NOPD policy, an NOPD officer being untruthful in their electronic communications was and is a dismissible offense.¹⁹ NOPD did not mention this clear inconsistency between recorded police testimony and video evidence in any of their reports. NOPD did not take any action regarding apparently false statements by NOPD officers during an official departmental investigation. In fact, NOPD Homicide claims that some of the inconsistencies did not exist.

D. NOPD’S OMISSION AND MISCHARACTERIZATION OF THE 14-YEAR-OLD WITNESS’ TESTIMONY

The PIB administrative report summarized the interviews of four of the five children whom NOPD interviewed. PIB did not provide a reason for omitting the interview of the eldest child, the 14-Year-Old Witness, from the PIB administrative report. The 14-Year-Old Witness’ interview was longer and more comprehensive than those of the other children, due likely to the 14-Year-Old Witness’s comparative age.

The 14-Year-Old Witness’ statement also provided evidence that NOPD officers gave false testimony. Unlike the PIB administrative report, homicide investigator Sgt. Glaudi did write about the 14-Year-Old Witness’s interview in the shooting review but misconstrued her words.

¹⁹ PR1021.4.3 2:(3) TRUTHFULNESS



Glaudi wrote that the 14-Year-Old Witness said, “The police forced their way into the house *while* screaming ‘Police, Police, Police.’” According to Glaudi, the 14-Year-Old Witness said they then made all the children go outside and took them to a police station. According to Glaudi, 14-Year-Old Witness stated she additionally heard a gunshot while in the residence.²⁰ However, the video recording of The 14-Year-Old Witness’s interview reveals that the 14-Year-Old Witness said, “*they bust in the door and say* ‘Police, Police, Police’ and then they went upstairs and they came and *pointed a gun* and me and ██████ got up and they told us to go outside and they told the children to go outside. And that’s when I heard a gunshot.”²¹

The differences are subtle but important: Glaudi’s supplemental report stated that the 14-Year-Old Witness said the officers announced “while” entering, when in fact, the 14-Year-Old Witness said the officers entered *and* said “Police, Police, Police.” The 14-Year-Old Witness never said that the police said “police, police, police” *while* entering; in fact, her statement gives the impression that the police announced their presence after they entered the house -which is consistent with video evidence. However, Sgt. Glaudi never asked the 14-Year-Old Witness any follow-up questions to clarify the discrepancy. Additionally, Glaudi’s supplemental report omitted that the 14-Year-Old Witness said the officers pointed a gun at the 14-Year-Old Witness and another child in the bedroom.

The 14-Year-Old Witness’s account is corroborated by the video of the incident and demonstrates that the NOPD failed to announce their presence OUTSIDE of the Allen house before entering. Instead, both the video and the 14-Year-Old Witness’s testimony establish that the officers only announced their presence after they had breached the Allen residence door.

E. NOPD’S MISCHARACTERIZATION OF THE 8-YEAR-OLD WITNESS’ TESTIMONY

Sgt. Glaudi also used misleading language, describing the 8-Year-Old Witness’ statement as bolstering the false claim that officers warned or gave commands to Wendell Allen before shooting him. Sgt. Glaudi wrote in his supplemental report that the 8-Year-Old Witness said, “He heard the police go upstairs and heard, ‘put your hands up,’ and then heard one shot.” OIPM finds that it is unclear from the recording of the 8-Year-Old Witness’ interview whether police officers were upstairs or downstairs in the home at the time that police said, “put your hands up.” At no point, contrary to Glaudi’s supplemental report, did the 8-Year-Old Witness ever say, “he heard the police go upstairs.”

The PIB administrative report repeated Sgt. Glaudi’s mischaracterization of the 8-Year-Old Witness’s statement. The repetition of this misleading information appears to introduce the possibility that police gave Wendell Allen a warning on the stairs before shooting him, when any such warning is absent from the video recording of the incident. Neither NOPD report mentioned this inconsistency.

²⁰ Glaudi Supplemental Report, pg. 39 of 102 [emphasis added].

²¹ ██████ interview at 07:13 [emphasis added].



F. NOPD'S OVERRELIANCE ON THE 5-YEAR-OLD WITNESS' TESTIMONY DESPITE THE PHYSICAL IMPLAUSABILITY OF SUCH TESTIMONY

NOPD officers used the 5-Year-Old Witness' interview statements as grounds for NOPD's application for a second search warrant for the Allen family home. The 5-Year-Old told investigators that, during the course of the warrant service, "all the kids who were in the kitchen ran upstairs," where she saw an adult in the house hiding a gun, then she went back downstairs.

Video shows that there were approximately seven seconds between the NOPD's arrival at the door and the door breach, and all the children were discovered downstairs. None of the officers reported seeing any children upstairs or on the stairs. The physical evidence contradicts this part of the young, traumatized child's statement. Additionally, the 5-Year-Old repeatedly asked if she could end the interview and the interviewer did not respect her right to do so.

Although Sgt. Glaudi notes that, "some of her speech was mumbled and erratic as where [sic] her actions,"²² Glaudi does not discuss the improbability that the 5-Year-Old Witness saw the Adult Witness hide a gun upstairs after the police entered the residence. Since, within seconds of the police entering the home, officers found the 5-Year-Old Witness downstairs, sitting at a kitchen table with other children, it is unlikely that she was upstairs and able to see the alleged gun.

G. NOPD'S FAILURE TO MENTION THE FINAL RESULTS OF THE GUNSHOT RESIDUE TESTS

The NOPD also received key gunshot residue test result - evidence that demonstrated the lack of any connection between Wendell Allen, the two adult witnesses found upstairs at the time of Wendell Allen's shooting and the gun found in the Allen residence. While this evidence was in the crime lab report NOPD received, the NOPD omitted this piece of key evidence from any official reports NOPD wrote.

When interrogating the two adult witnesses found upstairs at the time of Wendell Allen's shooting, the NOPD investigating officers repeatedly asked the two adult witnesses about the "positive" gunshot residue tests performed on their hands. An initial gunshot residue test conducted on the two adult witnesses found upstairs at the time of Wendell Allen's shooting came back positive. However, the final scientific analysis shows all gunshot residue tests (including Wendell Allen's) were indeterminate.

Sgt. Glaudi repeatedly reports in his 102-page supplemental report that the gunshot residue test came back positive²³ but fails to ever mention that the final results of the gunshot residue test were indeterminate.

It is unclear why the NOPD Homicide Division focused on a weapon later discovered in the home when it was clear that the homicide victim, Wendell Allen, was un-armed at the time he was killed. NOPD's preoccupation with the weapon appears to be an effort to present some later

²² *Id.* at p. 44.

²³ Page 32, 33, 50 and 53 of the NOPD Supplemental Report.



justification for the use of deadly force against Wendell Allen. Once the weapon could not be directly associated with any witness present in the house at the time of the shooting, the NOPD opted not to include any of this exonerating evidence in their reports.

H. NOPD'S HOSTILITY TOWARD WENDELL ALLEN'S BROTHER WHO WAS A KEY FACTUAL WITNESS TO THE SHOOTING

The OIPM finds that NOPD investigators treated Wendell Allen's brother as a dangerous suspect rather than a witness to the homicide of his brother. Despite the investigating officer's knowledge of Wendell's death, the officer refused to inform Allen's brother of Wendell's death. NOPD officers treated him with little consideration, when he was so understandably upset about the events of that evening. The investigating officer's tone also became aggressive when repeatedly asking Wendell Allen's brother whether he went out into the hallway during the incident and when he asked about the possibility of a firearm hidden in the house. Wendell Allen's brother's interview happened very early in the investigation. At the outset of the investigation, Sgt. Glaudi focused on somehow establishing that officers were in danger when there was no evidence, even at the outset when Wendell Allen's brother's interview took place, that any civilian in the house was armed.

I. SGT. GLAUDI CONCLUDES THE SEARCH WARRANT IS WELL-PLANNED DESPITE ABUNDANT EVIDENCE TO THE CONTRARY

In his supplemental report, Sgt. Glaudi concluded that the search warrant and its execution were well-planned.²⁴ Sgt. Glaudi's conclusion was contradicted by overwhelming evidence to the contrary. Due to lack of any documentation or recordings of the pre-search briefing, the OIPM does not know how long any pre-search briefing, would have lasted. It is also unknown whether the officers ever discussed the likelihood that non-suspect witnesses would be present in the Allen residence.

It is clear, however, that any briefing would have been very short. The warrant to search the Allen residence was signed at Tulane and Broad at 5:15 PM on March 7, 2012. The initiation of the search at the Allen family home occurred at 5:43 PM the same day. According to an online maps search,²⁵ driving from Tulane and Broad to the Third District Station, and then to the Allen family home, would have taken approximately 19 minutes without traffic.²⁶ This rough time estimate allows approximately ten minutes for all other activities, including the briefing, the set-up at the Third District Station, and movement in and out of vehicles.

The PIB administrative report also confirmed that the search warrant execution was not well-planned. The PIB administrative report states, "Planning is essential to the successful execution

²⁴ "Additionally, Detective Sergeant Glaudi concluded, based on multiple statements taken from New Orleans police officers and Jefferson Parish Sheriff's Office detectives, the narcotics investigation and subsequent search warrant at the Allen Family home was thorough and well-planned." (Page 91, NOPD Supplemental Report).

²⁵ Google Maps search conducted May 14, 2015.

²⁶ This time estimate presumably gathers satellite data to determine average traffic conditions.



of a search warrant. Prior to the warrant service, Sergeant Mushatt and Officer Voltolina should have conducted a detailed briefing of the officers with whom they were to serve the aforementioned warrant..." The Use of Force Review Board, as is elaborated upon below, came to similar conclusions on the poor planning of the search warrant.

Additionally, there were problems with the warrant itself, problems that were missed or undisclosed by NOPD Homicide and the PIB FIT unit. The JPSO's crime report listed the Suspect's address as Address A in New Orleans, La 70128.²⁷ Additionally, Detective Daniel Kerr identified the Suspect's other address as Address B in New Orleans, La 70122.²⁸ While the NOPD had evidence that the Suspect had sold drugs outside the Allen family home, officers never documented a logical connection between seeing the Suspect selling marijuana outside the home and the Suspect being a resident of the Allen family home. Officers never interviewed the adult owners of the Allen home to determine if the Suspect was a resident. Despite the affirmative evidence of the Suspect's two residential addresses, NOPD Officer Voltolina filed a search warrant application for the Allen family home, referring to the address at the Allen family home as the Suspect's residence. The NOPD submitted a search warrant that included false information.

RECOMMENDATION 1: PIB INVESTIGATORS, HOMICIDE INVESTIGATORS, AND SUPERVISORS SHOULD BE TRAINED IN THE CONCEPT OF "CONFIRMATION BIAS"

NOPD should train PIB investigators, homicide investigators and supervisors in the concept of "confirmation bias." Confirmation bias is the tendency to search for or interpret information in a way that confirms one's preconceptions or pre-existing beliefs.²⁹ Adequate investigation technique requires that investigators follow-up and report when officers' statements are contradicted by other pieces of evidence. Supervisors should ensure their investigators follow-up on inconsistencies. If an officer makes a materially false statement, PIB and Homicide investigators must investigate the officer on appropriate administrative violations. More generally, investigators must ensure their own neutrality when investigating officer-involved shootings. Training investigators on confirmation bias; training officers to resolve inconsistencies; and training supervising investigators to ensure appropriate follow-up on false officer statements will help the NOPD produce less biased and more thoroughly investigated officer-involved shooting reviews.

FINDING 2: THE WENDELL ALLEN USE OF FORCE REVIEW BOARD WAS NOT IN FULL COMPLIANCE WITH THE NOPD CONSENT DECREE.

The NOPD Use of Force Review Board (UFRB) must comply with the consent decree requirements that created it. The Wendell Allen UFRB complied with certain consent decree policies but failed to observe others.

²⁷ Pg. 2 of 14, JPSO crime report.

²⁸ Pg. 7 of 14, JPSO crime report.

²⁹ Mary Nicol Bowman, Full Disclosure: Cognitive Science, Informants, and Search Warrant Scrutiny, 47 Akron L. Rev. 431, 435 (2014).



The UFRB is designed to “review all serious uses of force and other FIT investigations ...and ... conduct timely, comprehensive, and reliable reviews.”³⁰ According to the Consent Decree, the UFRB should determine, among other things, whether:

- “The force violated NOPD policy. If the force violated NOPD policy the UFRB shall refer it to PIB for disciplinary action;”
- “[T]he incident raises policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate unit within NOPD to ensure they are resolved;” and
- To “direct District supervisors to take and document non-disciplinary corrective action to enable or encourage an officer to improve his or her performance . . .”³¹

The UFRB did not follow the consent decree requirement to determine whether “the force violated NOPD policy.”³² Although Officer Colclough pled guilty to criminal manslaughter charges, this fact alone did not remove the consent decree requirement to determine whether the force violated NOPD policy. The UFRB should have detailed the manner in which Colclough violated the use of force policy so the NOPD could use it as a teaching example. Officer’s Colclough was in direct violation of the NOPD Use of Force Policy in place at the time of the shooting when Officer Colclough failed to use “verbal persuasion,” warn, or command Wendell Allen to get down on the ground before he shot him.³³ It also would have been beneficial for the UFRB to have initiated training or policy changes as a result of Officer Colclough’s likely use of force policy violation.

The UFRB did follow the consent decree requirement to discuss whether “the incident raises policy, training, equipment, or tactical concerns.” The Department went into detail on training improvements regarding search warrants (and their execution), narcotics, and surveillance. The UFRB mentioned that in-service training needed to incorporate these training changes. The UFRB also recommended that all new officers who come into a narcotics division receive this training. Then-Field Operations Bureau (FOB) Deputy Superintendent Darryl Albert also went into detail during the UFRB about the training that, as a result of the Wendell Allen shooting, had already been initiated. The OIPM was greatly impressed by the UFRB’s emphasis on future training and the training that the NOPD maintains to have already implemented.

The UFRB failed to follow the third UFRB consent decree requirement to “direct District supervisors to take and document non-disciplinary corrective action to enable or encourage an officer to improve his or her performance.”³⁴ The role of direct District supervisors, or supervisors in general, was not mentioned by the UFRB.

³⁰ Consent Decree Regarding the New Orleans Police Department Case 2:12-cv-01924-SM-JCW, Paragraph 108.

³¹ Ibid.

³² Id.

³³ NOPD Operations Manual, effective June 7, 1992, Revised: 11/23/2003, Use of Force, Chapter 1.2, Paragraph 2(a).

³⁴ Consent Decree Regarding the New Orleans Police Department Case 2:12-cv-01924-SM-JCW, Paragraph 108.



Although not explicitly required of the UFRB by the Consent Decree, Captain Waguespack of the UFRB pondered the validity of an execution of a high-risk warrant in a low-threat marijuana case. The OIPM commends the NOPD for making this observation and contemplating the risk level in its actions. The UFRB followed up on this observation by referring to the need for greater training in all the districts to determine when the execution of a high-risk warrant is necessary.

RECOMMENDATION 2: NOPD’S USE OF FORCE REVIEW BOARD SHOULD BE FULLY IMPLEMENTED IMMEDIATELY TO CONFORM WITH ALL CONSENT DECREE REQUIREMENTS.

In its first UFRB, the NOPD followed some requirements mandated by the NOPD consent decree but failed to follow other requirements. The OIPM recommends that any future NOPD UFRBs implement all NOPD consent decree requirements.

FINDING 3: NOPD’S ADMINISTRATIVE REPORT INAPPROPRIATELY SOUGHT TO DISCIPLINE THE OFFICER WHO HAD THE PERSONAL BODY WORN CAMERA

The NOPD determined that, out of all the officers involved in the search of the Allen home, the officer who wore the personal body worn camera committed the sole violation of NOPD policy. The only grounds for this officer’s NOPD policy violation was for using his own personal video recording device. The OIPM disagrees with this finding and finds that the officer’s actions did not violate NOPD policy.

PIB’s FIT identified the following policy violation by this officer:

“Policy Violation (the personal recording device)—The officer’s actions were a violation of departmental rules, and his reluctance to notify his supervisor and the lead investigator demonstrates his knowledge of the violation. Disciplinary action against the officer is warranted.”³⁵ The FIT unit cites Chapter 43.3 of the NOPD Operations Manual as its basis for recommending disciplinary action: “all mechanical surveillance equipment that is used by city employees shall be owned by, leased by or loaned to the City of New Orleans.”³⁶

However, Chapter 43.3 does not appear to apply to this specific incident involving this officer’s personal video device, because the Chapter is limited to the use of Department-owned surveillance equipment. To this effect, the policy states:

“This Chapter shall serve as a system of controls for the use of Department owned surveillance equipment. It is the intent of this regulation to prevent damage to, or loss of surveillance equipment and to regulate use to prevent unauthorized use. Equipment may be accessible through the Narcotics Division, Vice Crimes Section, or the Intelligence Division. When

³⁵ FIT Administrative Shooting Investigation Review, p. 19 of 19.

³⁶ Revised December 10, 2006.



obtaining surveillance equipment from the above units [emphasis added], the below guidelines shall apply.”³⁷

As this officer did not obtain his personal recording device from the Narcotics Division, Vice Crimes Section, Intelligence Division, or from NOPD at all, his use of the crucial video recording device in this incident is not a policy violation.

Contrary to the FIT unit’s findings, this officer was *not* reluctant to notify investigators about his recording device. Sgt. Glaudi failed to respond to the officer’s offer of the information made *immediately* after the officer sat down with Glaudi in his first interview. Sgt. Glaudi refused, upon Deputy Police Monitor Levine’s recommendation, to request the officer submit to a second interview and refused to review the officer’s interview recording. Glaudi only re-interviewed the officer after Superintendent Serpas and Deputy Superintendent Westbrook, upon the OIPM’s request, compelled him to do so.

In May 2014, the Department began requiring the use of body-worn cameras. It is crucial that there be a cultural shift amongst officers so that these cameras are used consistently. It teaches the wrong lesson when the Department claims to recognize the value of body-worn cameras and simultaneously suggests disciplinary action against an officer, whose actions did not violate the letter of the policy, for preemptively recognizing the value of a body-worn camera. The contradiction may have undermined the objectives behind NOPD’s body-worn camera policy, “To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of video and audio recordings.”³⁸

Rather than encouraging sanctions, the officer should have been supported and commended for having done his duty to the Department and not burying evidence, despite the pressure he may have potentially faced to do otherwise.

As the OIPM has noted during the UFRB hearing associated with this case, the officer may very well have been protecting *himself* when he chose to record the incident with a *personal* recording device. Such footage can protect officers from specious complaints. Recommending disciplinary action against the officer has a chilling effect on other officers who understand the value of video evidence in community-police interactions.

**RECOMENDATION 3: THE NOPD SHOULD PROVIDE THE OIPM WITH ANY
ADMINISTRATIVE INVESTIGATION FILED AGAINST THE OFFICER FOR
POSSESSING A PERSONAL BODY WORN CAMERA.**

³⁷ NOPD Operations Manual (revised 12/10/06), Chapter 43.3 [emphasis added].

³⁸ Policy 447.1 goes on to state in part, “The New Orleans Police Department is committed to the belief that video/audio documentation of a department member’s daily encounters is an important and valuable resource for law enforcement...[and] accomplish the following objectives: (a) to document statements and events during the course of an incident; (d) to preserve visual and audio information for use in current and future investigations; ((f) to enhance the public trust by preserving factual representations of officer-citizen interactions in the form of video and audio recordings.



The NOPD should provide the OIPM with any administrative investigation filed against the officer for possessing or using a personal video body worn camera. The NOPD indicated it would discipline the officer for possessing a personal body worn camera. However, the OIPM has not received any administrative policy investigation. The OIPM would like to exercise its right to review this case.

FINDING 4: PIB'S ADMINISTRATIVE INVESTIGATION FAILED TO INVESTIGATE INVOLVED OFFICERS FOR MISCONDUCT

The video evidence from the day Officer Colclough shot and killed Wendell Allen shows officers made no warnings to Wendell before they shot him and officers made no police announcement before they breached the Allen family home.

Three officers falsely claimed that they announced their presence BEFORE they breached the door. Officer Caballero stated, "We called police before we hit the door."³⁹ Officer Nigel Daggs claimed we were "knocking on the door, announcing ourselves."⁴⁰ Officer Eugene Cummings claimed, "We knocked, police search warrant, hit the ram."⁴¹ However, Officer Colclough denied announcing his presence before entering the house.⁴² Additionally, other officers (JP Dep. Patrick Evans, Sgt. John Pacaccio) were unable to say if they announced their presence before or after the breach of the door. In his interview, Officer Michael Voltolina mentioned nothing about a police announcement before or after the breach of the door.

Only Officer Roy Caballero falsely claimed to have warned Wendell Allen before Colclough shot him. No other police officer claims to have made or heard a warning to Wendell Allen before he was shot. Officer Nigel Daggs stated that he did not "recall verbal warnings before shot fired."⁴³ Even Officer Josh Colclough "[did] not recall giving the Suspect instructions before shooting him." However, on numerous occasions Caballero claimed the police warned Wendell Allen that they were police, and Wendell should get on the floor.⁴⁴ At the time of the Allen shooting, NOPD's policy regarding honesty and truthfulness was the following:

NOPD Rule 2, Paragraph 3, states:

"Employees are required to be honest and truthful at all times, in their spoken, written, or electronic communications. Truthfulness shall apply when an employee makes a materially false statement with the intent to deceive. A statement is material when, irrespective of its

³⁹ Caballero 1st interview, minute 4:35.

⁴⁰ Daggs 2nd interview, minute 2:40.

⁴¹ Cummings 1st interview, minute 23:22.

⁴² Colclough interview, minute 8:40.

⁴³ Daggs 2nd interview, minute 7:03.

⁴⁴ Caballero 1st interview, minute 4:15; scene re-enactment; 2nd interview.



admissibility under the rules of evidence, it could have affected the course or outcome of an investigation or an official proceeding.”⁴⁵

The pressure against officers is enormous when their testimony could cause the dismissal or criminal liability of a fellow officer. The Christopher Commission, formed to review the Los Angeles Police Department in the early '90s after the beating of Rodney King, found that "perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers' unwritten `code of silence'....[the principle that] an officer does not provide adverse information against a fellow officer."⁴⁶ The commission concluded:

“[P]olice officers are given special powers, unique in our society, to use force, even deadly force, in the furtherance of their duties. Along with that power, however, must come the responsibility of loyalty first to the public the officers serve. That requires that the code of silence not be used as a shield to hide misconduct.”⁴⁷

The City of New York, in 1994, also appointed a commission to look into police corruption. It was called the Mollen Commission. One New York Police Officer who testified in front of the Mollen Commission in the 1990s, admitted that he never feared another officer would turn him in because there was a "Blue Wall of Silence.” “Cops don't tell on cops.... [I]f a cop decided to tell on me, his career's ruined....[H]e's going to be labeled as a rat." Other officers who testified concurred, including one who kept his identity hidden during the Mollen Commission hearings precisely because of the code, and who stated that officers first learn of the code in the Police Academy, with instructors telling them never to be a rat.⁴⁸ He explained, "[S]ee, we're all blue...we have to protect each other no matter what."⁴⁹

It is unfortunate that the NOPD did not investigate Officers Roy Caballero, Nigel Daggs and Eugene Cummings for apparent contradictions between their statements and the hard evidence available in the case. The pressure against Caballero, Daggs, and Cummings to testify in a manner that would have corroborated themselves and their fellow officers, including Officer Joshua Colclough, would have been formidable. However, the NOPD's failure to investigate hurts the Department's relationship with the community; the Department's reputation for objectively investigating its own officers; and the courage of other officers such as Officer Michael Voltolina and Officer Joshua Colclough who did testify truthfully and consistent with the video evidence.

⁴⁵ NOPD Operations Manual (revised 12/10/06), Rule 2, Paragraph 3.

⁴⁶ Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, WWW.HRW.ORG, (Jun. 1998).

⁴⁷ *Ibid.*

⁴⁸ *Id.*

⁴⁹ *Id.*



RECOMMENDATION 4: PIB SHOULD INITIATE AN ADMINISTRATIVE INVESTIGATION OF CABALLERO, CUMMINGS AND DAGGS FOR HAVING MADE FALSE STATEMENTS CONTRADICTORY TO THE AVAILABLE VIDEO EVIDENCE

The OIPM recommends that PIB initiate an internal administrative investigation, if permissible under the Louisiana Police Officer's Bill of Rights, against Officers Roy Caballero, Eugene Cummings and Nigel Daggs for having made "materially false statements with the intent to deceive."⁵⁰ While it cannot be conclusively determined without an investigation that such officers intentionally made false statements, the NOPD is at fault for not initiating the proper investigation into the officer's inconsistent and contradictory statements.

FINDING 5: SGT. GLAUDI OMITTED FACTS AND INCLUDED FALSE INFORMATION IN HIS SUPPLEMENTAL REPORT ON THE WENDELL ALLEN SHOOTING. SGT. GLAUDI REFUSED TO SEARCH FOR KEY PIECES OF EVIDENCE IN THE WENDELL ALLEN CASE.

Sgt. Glaudi omitted facts and included false information in his final supplemental report. He refused to search for key pieces of evidence in the Wendell Allen case. Sgt. Glaudi wrote in his supplemental report, "Multiple statements taken from police officers present during the search warrant revealed the officers clearly and loudly announced their police presence before and after they entered the residence. A video recording device confiscated from one of the officers present during the search warrant confirmed the fact the police officers clearly announced their presence continually throughout the residence."⁵¹

Additionally, Sgt. Glaudi misconstrued, omitted, or did not investigate certain material facts in his final supplemental report including: the 14-Year-Old Witness' statement; the 8-Year-Old Witness' statement; the 5-Year-Old Witness' statement; the failure of police to warn on the video; and the final gunshot residue test. The omission, misconstruction, or failure to investigate these material facts allowed Glaudi to make determinations that were affirmatively supportive of officers' statements and demonstrative of a threat to officers that did not exist in this situation. In fact, Glaudi concludes, despite all the evidence to the contrary and despite all the NOPD conclusions in the UFRB and PIB administrative report, that the search warrant was well-planned.

Sgt. Glaudi also failed to thoroughly collect or search for the video that an officer had in his possession and that Deputy Police Monitor Levine informed Sgt. Glaudi was in existence. Sgt. Glaudi's immediate reaction to Deputy Levine's request to ask the officer for the video evidence was to deny the video's existence. When Deputy Levine asked Glaudi to review his own video recording of the officer's first interview, where the officer informed Glaudi of his video, Glaudi

⁵⁰ NOPD Operation Guide, Rule 2, Paragraph 3, Revised: 09/01/2010.

⁵¹ Page 102 of the NOPD Supplemental Report.



also refused to do so. Instead, it took the Superintendent of the NOPD and the Deputy Chief of PIB ordering Glaudi, for Glaudi to affirmatively follow his duty to “thoroughly search for, collect, preserve and identify evidence in an... investigative situation.”⁵² Sgt. Glaudi’s actions and lack thereof are likely violations of the following NOPD policies:

NOPD Rule 6, Paragraph 2, False or Inaccurate Reports states:

“An employee shall not knowingly make, or cause or allow to be made, a false or inaccurate oral or written record or report of an official nature, or intentionally withhold material matter from such a report or statement.”⁵³

NOPD Rule 4, Paragraph 4, Neglect of Duty, subparagraph (c) states in part:

“The following acts or omissions to act, although not exhaustive, are considered neglect of duty.”

8. Failing to thoroughly search for collect, preserve, and identify evidence in an arrest or investigative situation.”⁵⁴

RECOMMENDATION 5: THE OIPM RECOMMENDS A PIB INQUIRY BE INITIATED INTO WHETHER SGT. GLAUDI VIOLATED DEPARTMENTAL POLICY.

The OIPM recommends that NOPD initiate an internal administrative investigation, against Sergeant Bruce Glaudi to determine whether he made, “a false or inaccurate ... report of an official nature, or intentionally withhold [sic] material matter from such a report...”⁵⁵ NOPD’s Public Integrity Bureau should also investigate Sergeant Bruce Glaudi to determine whether he failed “to thoroughly search for collect, preserve, and identify evidence in an ... investigative situation.”

FINDING 6: NOPD SUPERVISORS DID NOT PROPERLY ENSURE THE SECURITY OF WITNESSES INCLUDING CHILDREN KNOWN TO BE PRESENT AT THE ALLEN HOME AND DID NOT PROPERLY ENSURE THAT THE SEARCH WARRANT WAS LAWFULLY PLANNED AND EXECUTED.

At the scene of the Suspect’s arrest, Officer Voltolina interviewed the Suspect about the Allen Family home. According to Voltolina, the Suspect advised that children were in the house along with two other individuals and several medium sized dogs. Officer Voltolina asked the Suspect if

⁵² NOPD Operations Manual, Rule 4, Paragraph 4, Revised 05/24/2007.

⁵³ NOPD Operations Manual, Rule 6, Paragraph 2, Revised 05/24/2007.

⁵⁴ NOPD Operations Manual, Rule 4, Paragraph 4, Revised 05/24/2007.

⁵⁵ NOPD Rule 6:2 False or Inaccurate Reports.



there were any weapons in the residence. The Suspect advised he did not want to speak to the officer anymore.”⁵⁶

Based on the Suspect’s statements to Officer Voltolina and NOPD surveillance of the Allen Family home, the NOPD knew or should have known multiple children and animals were at the scene. None of the individuals was identified as suspects in the narcotics search warrant application. The only suspect identified in Officer Voltolina’s search warrant application was arrested prior to the search of the Allen Family home

Due to a lack of any documentation or recordings of the pre-search briefing, the OIPM does not know whether the presence of these witnesses was discussed. It is clear, however, that if the involved officers held a briefing, it happened within a very short window of time. The only time officers would have been able to hold a briefing was between the time the warrant was signed at Tulane and Broad at 5:15 PM and the initiation of the search at the Allen Family home at 5:43 PM. According to an online maps search,⁵⁷ driving from Tulane and Broad to the Third District Station, and then to the Allen Family home, takes approximately 19 minutes without traffic.⁵⁸ The OIPM estimates that officers had approximately ten minutes for all other activities, including the briefing, set-up at the Third District Station, and movement in and out of police vehicles.

The involved officers do not appear to have coordinated with EMS before the execution of the search warrant. In his second statement to Sgt. Glaudi, Officer Voltolina said the EMS unit was standing by on Filmore St., but a review of the radio traffic shows an EMS unit arriving from “Chef and Louisa.” There is also no indication that the LA-SPCA was notified prior to the search initiation, despite NOPD’s knowledge that multiple dogs were present at the search location.

The video recording shows that NOPD officers breached the door and entered the residence with no announcements and with firearms raised. Yet there was no indication in any of the officers’ statements (or in any other evidence) that they expected any of the inhabitants to be armed. The video of the incident also shows that Wendell Allen was not warned to get down prior to being shot dead contrary to NOPD policy in effect at the time.⁵⁹ One witness’ testimony that officers pointed a firearm at two children was confirmed by video evidence. It is unclear whether NOPD did not train officers and supervisors on search warrant service or if officers were aware of their responsibilities and simply chose to ignore them. Based on officers’ insurances that they announced themselves before entering, the officers may have known that they were not justified in serving a “no-knock” warrant and that such tactics were not justified in this situation.

The children were first taken to the Third District Police Station, then to the Child Abuse Unit at NOPD Headquarters, and finally to the Child Advocacy Center at 1101 Calhoun St.⁶⁰ The children’s parents were given contradictory information on the whereabouts of their children.

⁵⁶ JPSO crime report, p. 12 of 14.

⁵⁷ Google Maps search conducted May 14, 2015.

⁵⁸ This time estimate presumably gathers satellite data to determine average traffic conditions.

⁵⁹ NOPD Operations Manual, effective June 7, 1992, Revised: 11/23/2003, Use of Force, Chapter 1.2, Paragraph 2(a).

⁶⁰ Glaudi Supplemental Report, p. 36 of 102.



Their parents rushed to one location, only to find their children were not at the first location and to be informed by NOPD that the children were at another location.⁶¹ The Department of Children and Family Services was not notified of the children's whereabouts until 10:08 PM, nearly 4.5 hours after the execution of the search warrant.⁶²

The children were interviewed, without their parents' or guardians' presence or permission; until at least 11:46 PM.⁶³ Sgt. Glaudi's supplemental report does not explain how or from whom NOPD received permission to interview the children. The NOPD later advised the OIPM that the Department did not need permission to interview the children, because NOPD was not directly interviewing the children. NOPD said that trained child specialists conducted the interviews and relayed questions offered by NOPD detectives via earphone contact throughout the interviews. The OIPM was later informed by NOPD that an aunt was at the Child Advocacy Center and had granted permission for the children to be interviewed. Parents of the children maintain that NOPD never requested nor received permission from anyone in the family to interview their children.⁶⁴

It is unclear which supervisor had the responsibility to supervise the search warrant execution. Sergeant Sherman Mushatt was the only ranking officer on the Third District Task Force and Third District Narcotics Unit who executed the search warrant on the Allen house. However, neither Sgt. Glaudi nor PIB FIT identified or investigated the supervisor responsible for the execution of the search warrant.

RECOMMENDATION 6: NOPD SUPERVISORS SHOULD ENSURE THAT SEARCH WARRANTS ARE ADEQUATELY PLANNED

A written plan submitted to a supervisor should precede any execution of a search warrant. The plan should include a priority of securing witnesses present. The supervisor should be required to remind officers that they must execute a search warrant with proper announcements of police arrival and warnings prior to the use of force.

NOPD officers should be required and trained to allow for adequate time and consideration of the priorities and objectives of a search before its execution.

FINDING 7: THE PIB ADMINISTRATIVE REPORT INCLUDED EXTENSIVE TRAINING RECOMMENDATIONS BUT SINCE THE RECOMMENDATIONS HAVE BEEN MADE, THE NOPD NEVER CONFIRMED ANY NEW TRAINING OR UPDATED POLICY WAS PUT IN PLACE.

⁶¹ OIPM meeting with the family March 15, 2012.

⁶² Glaudi Supplemental Report, p. 41 of 102.

⁶³ *Id.* at 51.

⁶⁴ OIPM meeting with the family March 15, 2012.



The OIPM agrees with and commends the PIB's FIT unit for suggesting the following Tactical Planning and Warrant Service recommendations:⁶⁵

- Tactical Planning I (the pre-warrant briefing) – “Detailed training regarding the preparation for, and service of, search warrants should continue to be provided for all members of the New Orleans Police Department. As of the writing of this document, this training is conducted as part of the mandatory in-service training program, but could also be an eight-hour or sixteen-hour stand-alone seminar. The NOPD’s Special Operations Division currently uses a written risk assessment rubric by which the potential threat level is measured based on a number of factors obtained prior to the service. This invaluable assessment tool should be completed prior to every warrant service, not just those conducted by the Special Operations Division, and it should be made part of the department’s written policy regarding search warrant service.”⁶⁶
- Tactical Planning II (coordination of entry strategy) – “As stated in the previous section, training regarding the preparation for, and service of, search warrants should continue to be provided for all members of the New Orleans Police Department. The notification of all officers involved about the presence of uninvolved family and/or children, the identification of at least two separate evacuation points, and the method of entry and level of force required in the face of such information should be made part of the department’s policy regarding search warrant service.”⁶⁷
- Tactical Planning III (EMS) – “Prior to the service of a search warrant, officers must request the presence of an Emergency Medical Services unit at a safe, yet close, location. The service of said warrant shall not commence until confirmation of the EMS unit’s arrival has been made. This action should be made a part of the department’s written policy regarding search warrants.”⁶⁸
- Tactical Planning IV (no plan for safe detention/removal of animals was discussed) – “Prior to the service of a search warrant, officers should request the presence of a representative from the Louisiana Society for the Prevention of Cruelty to Animals, commonly referred to as LA-SPCA, in a standby capacity at a nearby location. This action should be made part of the department’s written policy regarding search warrants.”⁶⁹
- Warrant Service (communication) – “During the pre-warrant briefing, the supervisor must ensure that all of the officers involved in the service are able to communicate with each other and with the dispatcher assigned to the district in which the warrant will be served. This is included in the training received by every officer during the mandated in-

⁶⁵ See, NOPD Inter-Office Correspondence from PIB Force Investigation Team, re: Administrative Shooting Investigation 2012-10, dated July 19, 2014.

⁶⁶ FIT Administrative Shooting Investigation Review, p. 16 of 19.

⁶⁷ *Id.* at pp. 16-17.

⁶⁸ *Id.* at p. 17.

⁶⁹ *Id.* at p. 18.



service training, and should be made part of the department's written policy regarding search warrant service."⁷⁰

The OIPM commends PIB for suggesting the above recommendations in the PIB administrative report. They are detailed, deliberate, and insightful. However, the OIPM has never heard nor been made aware of any of these recommendations being instituted or further developed in either training or NOPD internal policy.

In addition to supervisor approval, the NOPD should develop a mechanism, to ensure the proper serving and execution of a search warrant. Such a mechanism should also seek to decrease the risk associated with officers drawing and exhibiting their weapons during the execution of a search warrant.

**RECOMMENDATION 7: THE NOPD SHOULD REPORT ON ITS PROGRESS IN
INSTITUTING TACTICAL PLANNING RECOMMENDATIONS.**

The OIPM requests a written response as to how NOPD has implemented the PIB administrative training recommendations since July 19, 2014 (the date they were sent to then Superintendent Ronal Serpas).

**RECOMMENDATION 8: REGULAR INTERNAL ASSESSMENTS SHOULD BE MADE TO
ENSURE PROPER TACTICS ARE USED IN THE EXECUTION OF NOPD SEARCH
WARRANTS.**

Going forward, PIB should regularly assess whether search warrants are being properly served and whether or not supervisors are ensuring consistent and lawful service. Such an assessment can be made from a random sample; but PIB or NOPD Compliance should conduct the assessment regularly to ensure NOPD supervisors and officers are implementing reforms. PIB or NOPD Compliance Bureau should pay particular attention to instances involving children. Policy requires that parents and guardians be timely and accurately informed of their children's whereabouts following NOPD removal from a crime scene.⁷¹ PIB or Compliance Bureau should audit warrant service files for compliance with this policy.

⁷⁰ Id.

⁷¹ 324.4.3 CUSTODY OF JUVENILE OFFENDERS Juvenile offenders should be held in non-secure custody while at the New Orleans Police Department unless another form of custody is authorized by this policy or is necessary due to exigent circumstances. (a) Juvenile offenders may be taken into custody under the following circumstances (Ch. C. 812): 1. When the juvenile is the subject of an order of the court. 2. When an officer has probable cause to believe that a juvenile qualifies as a juvenile offender. (b) An officer who takes a juvenile offender into custody shall immediately submit a sworn written statement justifying the custody to the juvenile court. (c) An officer who takes a juvenile offender into custody shall promptly prepare a report of the custody and submit the report to the District Attorney or the officer designated by the court to receive such reports.

324.5 ADVISEMENTS In any case where a juvenile is taken into temporary custody, the officer should advise the juvenile of his/her constitutional rights to ensure the admissibility of any statements only in the presence of a parent, guardian or attorney. The officer taking the juvenile into custody should also **take immediate steps to advise the juvenile's parents, guardian or attorney** that the juvenile is in custody and the location of the juvenile (Ch. C. 813; Ch. C. 814).



RECOMMENDATION 9: THE NOPD SHOULD OVERHAUL ITS SEARCH WARRANT POLICIES TO ENSURE THAT PIB'S SUGGESTED TACTICS ARE REFLECTED IN POLICY.

The NOPD should ensure that all tactical recommendations made by the PIB administrative report on Wendell Allen are reflected in the proper policy. Specifically, the OIPM encourages the NOPD to overhaul its policies regarding the drawing and exhibiting weapons during the course of a search warrant, lest a similar tragedy occur again.

RECOMMENDATION 10: THE NOPD SHOULD CREATE AND REQUIRE OFFICERS TO USE EXPLICIT CHECKLISTS IN ITS SURVEILLANCE PROCEDURES AND SEARCH WARRANT SERVICE

The NOPD FIT Unit encouraged the entire Department to use the Special Operations Division's "Risk Assessment" rubric. The Use of Force Review Board has embraced that recommendation. The Department should consider requiring that a checklist of safety, communication, use of force, and other important topics be discussed at each briefing session and that confirmation be required that the checklist was used. The OIPM requests Departmental confirmation that a checklist is in use in the districts and that any checklist used covers the necessary topics listed above. Officers should be required to document briefing sessions using a consistent template that should be included in the incident file.

Neither NOPD Homicide nor the PIB FIT team investigated or documented which NOPD officer failed to ensure that an ambulance was standing by before officers served the search warrant. The FIT Administrative Review specifically recommended notification of LA-SPCA and EMS prior to search warrant service. The OIPM requests the addition of any other social service agencies NOPD or civilians frequently need at search warrant sites. Notification of EMS, LA-SPCA and any other social service agency should also be required on any checklist.

FINDING 8: THE NOPD VIOLATED THE CONSTITUTIONAL RIGHTS OF THE CHILDREN FOUND IN THE ALLEN HOUSE BY FAILING TO GET THE REQUISITE PERMISSION FROM THE PROPER GUARDIANS

NOPD removed the six children from the downstairs part of the Allen house. These children ranged in age from one (1) years old to fourteen (14) years old. There were also a four-year old, a five-year old, a seven-year old, and an eight-year old. The children's parents did not initially know where their children had been taken after the shooting occurred. In fact, parents were given contradictory information on the location of their children causing parents to rush to one location, only to find their children were not at the first location, only then to be informed by NOPD that the children were at another location.⁷²

The children were first taken to the Third District Police Station, then to the Child Abuse Unit at NOPD Headquarters, and finally to the Child Advocacy Center at 1101 Calhoun Street.⁷³ The

⁷² OIPM meeting with the family, March 15, 2012.

⁷³ NOPD supplemental report, pg. 36 of 102.



Department of Children and Family Services was not notified at all until 10:08 PM.⁷⁴ NOPD interviewed the children until at least 11:46 P.M.,⁷⁵ but the supplemental report does not explain how NOPD got permission to interview the children, or from whom they received permission. Reports do not mention any parents or guardians present with any of the children during their interviews.

Trained child specialists conducted the forensic interviews. However, these child specialists maintained earphone contact with NOPD detectives throughout the interviews (and relayed questions offered to them from the detectives). The day after the interviews, the OIPM was informed by NOPD that an aunt was at the Child Advocacy Center and had granted permission for the children to be interviewed. The OIPM was also informed by the NOPD that the NOPD did not need permission to interview the children, because the children were not being interviewed directly by the NOPD; trained child specialists conducted the interviews. Parents of the children maintain that permission to interview their children was neither asked for nor granted by anyone in the family.

The children were unlawfully seized within the meaning of both the federal constitution's Fourth Amendment and the Louisiana constitution's right to privacy. The Fourth Amendment of the U.S. Constitution provides that, "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the . . . persons or things to be seized."⁷⁶ Similarly, the Louisiana Constitution provides that, "Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the . . . persons or things to be seized, and the lawful purpose or reason for the search."⁷⁷

The United States Supreme Court has found that a person is "seized" within the meaning of the Fourth Amendment when "a reasonable person would have believed that he was not free to leave."⁷⁸ "Under Louisiana's slightly broader definition of the term, a seizure may also occur when the police come upon an individual with such force that, regardless of the individual's attempts to flee or elude the encounter, an actual stop of the individual is virtually certain to occur."⁷⁹

At the point that the NOPD removed the children from the home and then took them to the Third District Police Station, then to the Child Abuse Unit at NOPD Headquarters, and finally to the Child Advocacy Center, it is clear that a reasonable child in the children's place would not have believed that he was free to leave. The search warrant of the Allen Family home did not include any authorization to seize the six children present in the home. There is no indication in any

⁷⁴ NOPD supplemental report, pg. 41 of 102.

⁷⁵ NOPD supplemental report pg. 51 of 102.

⁷⁶ U.S. Const. art. III.

⁷⁷ LA Const. § 5

⁷⁸ *U.S. v. Mendenhall*, 446 U.S. 544, 554 (1980).

⁷⁹ *State v. Smith*, 28 So.3d 1162, 1165 (La. 4th Cir. 2009) [internal quotations omitted].



NOPD report of the incident that officers had probable cause to believe that these children were suspected of committing any crimes, and no exigent circumstances appear to have been present.

Most importantly, the warrant exception of consent is absent under these circumstances. The United States Supreme Court has recognized a parent's fundamental right and liberty interest to the companionship, care, custody, and management of his child under the Due Process Clause of the Fourteenth Amendment.⁸⁰

In response to the OIPM's questions about whether the NOPD obtained prior parental consent to interview the children, the NOPD asserted that it did not need permission to interview the children, because the children were interviewed not directly by the NOPD, but by trained child specialists who relayed questions from the NOPD through earphone contact. The Supreme Court of Louisiana has held that Fifth Amendment *Miranda* rights attach when either law enforcement officers or persons acting as agents of law enforcement interrogate an individual.⁸¹ The Court identified the following factors in determining whether the interrogators were "agents of law enforcement": "whether the investigator discussed the case with police prior to the interview, whether the interview was conducted at the police's request, and whether the primary purpose of the investigator's visit was to elicit a confession while in cahoots with law enforcement. In short, police may not circumvent *Miranda* by using OCS investigators (or anyone else) as stand-ins to conduct interrogations in their stead."⁸² At the point that the children were seized from their home and interrogated, their rights to counsel and the requirement to have their parents notified already attached. These rights cannot be skirted when the interrogators were working in conjunction with the NOPD through constant earphone contact.

RECOMMENDATION 11: THE NOPD SHOULD COMPLY WITH FEDERAL AND STATE
CONSTITUTIONAL LAW THAT PROTECTS CHILDREN AGAINST UNLAWFUL
INTERROGATIONS

If it removes children from the scene of an incident, the NOPD should notify parents and legal guardians of their children's whereabouts in a timely and accurate manner. Children have the same, if not more, constitutional protections as adults while in custody. Due to their parents' constitutional right of care, custody, and management over their children, juveniles are doubly protected. The NOPD should request consent from parents and guardians to interview their children, particularly if the parents and guardians are not permitted in the room during their children's interviews. These Fifth and Fourteenth Amendment protections cannot be curtailed, regardless of the identity of the interrogator, if that interrogator was acting as an agent of law enforcement.

⁸⁰ See, *Troxel v. Granville*, 530 U.S. 57, 66 (2000). See also, *State v. Bates*, 927 So.2d 417, 421 (La. App. 1 Cir. 11/4/05).

⁸¹ See, *State v. Bernard*, 31 So.3d 1025 (La. 3/16/10).

⁸² *Ibid.*



REQUESTED ACTIONS

1. In accordance with the NOPD/OIPM MOU, the OIPM provided this report to Public Integrity Bureau 30 days before publication. The OIPM requested that PIB respond, in writing, with any actions taken to implement OIPM recommendations or disputes with OIPM findings.
2. The OIPM requests detailed information on what changes have actually been put into effect and how the effects of these changes have been measured since Wendell Allen's death on March 7, 2012.
 - a. Specifically, the OIPM requests an NOPD response on which recommended reforms made by the July 19, 2014 PIB Administrative Shooting Investigation have gone into effect and which recommended reforms have not yet been instituted.
 - b. The OIPM requests this NOPD status response within a month of the publication of this report.

CONCLUSION

The OIPM commends NOPD's compliance with the OIPM's prior recommendation to create the PIB FIT team to investigate all NOPD officer involved shootings and major uses of force. The OIPM also agrees with the changes in training recommended by PIB, both written in its administrative report and voiced by the UFRB.

In order for NOPD to earn the trust of its community, the tragic officer-involved shooting death of Wendell Allen must be a catalyst for real, structural, institutional-level change within the NOPD. Aggressive and violent raids for non-violent marijuana offences undermine community trust in the police and seriously damage the NOPD's credibility--especially when they potentially harm children or unarmed individuals. They are also unlikely to be worth the risk to officers' lives, civilians' lives and personal property, or City liability.

Should you have any questions regarding this matter, please do not hesitate to contact me at 504-681-3275.

Sincerely,



Susan Hutson
Independent Police Monitor

