



**SUMMARY REPORT TO THE CITY OF
MILWAUKEE FIRE AND POLICE COMMISSION
ON THE INDEPENDENT INVESTIGATION OF
FPC20041 AND FPC 20042**



**JUNE 21, 2020
SUBMITTED BY MEL S. JOHNSON**

SUMMARY REPORT TO THE CITY OF MILWAUKEE FIRE AND POLICE
COMMISSION ON THE INDEPENDENT INVESTIGATION OF FPC20041 AND FPC 20042

I. INTRODUCTION

The undersigned was hired by the Fire and Police Commission (FPC) to investigate FPC 20041 and FPC 20042. As discussed during the March 19, 2020 FPC meeting, it was expected that the investigation would encompass several issues arising from a Milwaukee Police Department (MPD) investigation of sexual assault allegations against Kalan Haywood, Sr.

That investigation has been completed with the assistance of Scott Schuster, a retired FBI Special Agent. This summary report attempts to describe the information obtained in a logical and comprehensible way. It will begin with a brief summary of events meant to remind readers of what generally happened here. That will be followed by four sections discussing specific questions arising in this matter. Each of those sections will state the question under consideration, summarize the evidence pertaining to that question, and suggest an answer to that question based on the evidence.

An effort has been made to complete the investigation as promptly as possible. The FPC voted to hire the undersigned at the end of the March 19, 2020 meeting. Resolution of a few minor issues and delays for the City Attorney's Office resulting from difficulties caused by the coronavirus pandemic prevented completion and signing of the contract with the undersigned until April 22, 2020. From that point forward, an attempt was made to investigate efficiently but delays arose in finding mutually agreeable dates and places for witness interviews, from delays in receiving records requested from MPD, and due to unsuccessful attempts to obtain information from the Milwaukee Journal-Sentinel (MJS).

Certain limits on investigators' ability to obtain information were also significant. Investigators lacked subpoena power which could compel private entities to provide information. Similarly, there was no authority to obtain evidence through search warrants.

This investigation included a series of steps. Seventeen witnesses were interviewed. (Copies of reports of interviews with those witnesses are enclosed in alphabetical order.) Records were obtained from MPD, FPC, the City Attorney's Office, and the Milwaukee Police Foundation (MPF). (Copies of pertinent records are enclosed.) An attempt was made to obtain a recording from the Milwaukee Journal-Sentinel but the newspaper refused to provide that recording on the ground that the recording was provided by a confidential source and giving up the recording could tend to reveal that source, in alleged violation of the First Amendment.

II. SUMMARY OF EVENTS

This report will discuss various factual issues. However, the basic framework of what happened in this matter is not disputed.

In late July of 2019, a complaint of sexual assault was made to the Sensitive Crimes Division (SCD) of MPD, which has its offices located in the Sojourner Family Peace Center in Milwaukee. The alleged perpetrator is Kalan Haywood, Sr. who is a real estate developer in

Milwaukee. The case was assigned to an SCD officer who consulted with an assigned Assistant District Attorney (ADA) and commenced an investigation.

Approximately one to two weeks later, higher ranked officers within the MPD Command Staff became aware of the case. Calls were made and emails sent to the captain of SCD inquiring about the status of the investigation.

The investigating officer was not present at SCD on August 13, 2019 so was not aware that the SCD captain and a sergeant had directed a detective in SCD to interview Haywood as soon as possible. The detective contacted Haywood and arranged to interview him that day in the early afternoon at Sojourner.

Before Haywood arrived for the interview, Attorney Steven DeVougas, who is also the Chairman of FPC, arrived at Sojourner to briefly discuss the case with the detective. DeVougas remained present during the ensuing interview of Haywood that day in an interview room at Sojourner. MPD investigation of Haywood has continued after his interview.

An audio and video recording of Haywood's interview was made by the detective. Some time within the second week of December, 2019, a copy of the recording was given to the Milwaukee Journal Sentinel and articles subsequently appeared in that newspaper about details of the Haywood interview.

In late 2019, MPD Chief Alfonso Morales was serving out the four year term of retired Chief Edward Flynn which was to expire on January 7, 2020. The FPC was considering whether Chief Morales should be reappointed to his own four year term. The FPC had planned to vote on that reappointment by the end of 2019 but Chairman DeVougas publicly stated that the vote would be postponed in order to assemble more information regarding Morales. However, other FPC commissioners insisted on a special FPC meeting to resolve the reappointment issue. That special meeting was held on December 18, 2019 and Morales was appointed to his own four year term.

III. DID MR. HAYWOOD RECEIVE UNDULY FAVORABLE TREATMENT BY MPD WITH REGARD TO THE TIMING AND PLACE OF HIS AUGUST 13, 2019 INTERVIEW?

Mr. Haywood, a suspect in a sexual assault investigation, was interviewed about the allegations before the assigned MPD investigator and the assigned prosecutor thought it was wise to do so. Furthermore, the interview was held in an interview room in the Sojourner Family Peace Center, instead of a police station. Questions have been raised about whether the time and place of the interview were unduly favorable to Haywood.

EVIDENCE:

Allegations of sexual assault by Haywood were brought to MPD on July 23, 2019. The investigator from SCD was Officer Zachary Thoms. He had met with the assigned ADA, Abbey DeSiato, and they had planned to take various steps to try to assemble evidence before interviewing Haywood. (At that time, Ms. DeSiato was married to Nick DeSiato, the Chief of Staff to MPD Chief Morales. Since then, they have been divorced and she has resumed using

her maiden name, Marzick. The enclosed report of her interview is under the name Marzick.) Those contemplated investigative steps were being taken in August, 2019.

However, on or about August 13, Captain James Corbett the head of SCD directed that a detective from SCD, Steve Wells, conduct an interview of Haywood as soon as possible. Wells did that on August 13 and set it up to take place in an interview room used by SCD in the Sojourner Family Peace Center, instead of a police station.

Both Thoms and Marzick stated that they had a plan to take certain investigative steps before interviewing Haywood. They described that as a normal approach to a sexual assault case, at least one in which the suspect was not in custody, like Haywood. They felt that there were advantages to waiting to assemble evidence before any suspect interview. They could ask more intelligent questions of the suspect. They would be better able to tell if the suspect was being truthful. If the suspect was unaware of the allegations, he would likely not take steps to hide evidence or otherwise obstruct the investigation. In this particular case, the complainant did not want Haywood to know about her allegations until necessary because she thought he was a prominent citizen with influential friends who she feared could somehow influence the outcome of the case. Officer Thoms felt that interviewing Haywood this early benefitted Haywood.

The complainant, identified here as Jane Doe, states that she consistently told Thoms, and the assigned ADA, that she did not want her name to come out, certainly to Haywood, until it was necessary. They told Doe that Haywood would not know her name until the end of the investigation.

Captain Corbett defended his decision to go ahead with the interview when SCD did. He espoused a general sense of urgency with the cases assigned to SCD. SCD is overloaded with cases and he feels they have no time to wait. In retrospect, he stands behind his decision to go forward with the interview, especially because the alleged assault happened several years before and was alleged to be a one-time incident.

Corbett stated that, in the days leading up to the interview, he received two calls about the case from members of MPD's command staff. Lieutenant Erik Gulbrandson, who is Chief Morales' Administrative Lieutenant, called and asked about the status of the Haywood case. Gulbrandson did not suggest the timing of Haywood's interview. Gulbrandson agrees that he made the call Corbett describes.

Between Gulbrandson's call and the August 13 interview, Morales called Corbett. Corbett states that Morales also inquired about the status of the case and wanted to keep the case moving. It was the only time that Corbett ever recalled getting a call from Morales about a case.

Morales agreed that he had called Corbett about Haywood. However, he denied that he intended to influence the investigation in any way. He said that his focus was on learning whether Haywood was aware that he was under investigation. That is because Morales wanted to know if he could talk with Haywood about whether Haywood should be on the board of the Milwaukee Police Foundation (MPF), discussed in more detail below.

Corbett did not state how Gulbrandson and Morales were aware of the Haywood investigation but Gulbrandson explained that Nick DeSiato had been generally informed by his wife, ADA Abbey DeSiato, that there was a case open on sexual assault allegations against Haywood. Abbey agreed that she may have told her husband about a new case involving

allegations about Haywood, without providing him with any details. Nick shared that information with Gulbrandson, who says he briefed Morales on it.

When asked about how he knew about the Haywood case, Morales also said he learned about it from Nick DeSiato. DeSiato said he had learned about it through the DA's Office. Morales was not sure but DeSiato may have mentioned his wife, who was the assigned ADA.

Corbett stated that his decision to do the interview as soon as possible was not caused by the two calls he received. However, he believed that the chief agreed with him on that decision.

Corbett apparently involved SCD Sergeant Theresa Janick in the matter because, on August 13, 2019, Janick sent Det. Wells an email telling him to call her about an important matter involving Kalan Haywood.

ADA DeSiato was on vacation from August 7-12, 2019 but received a call from Corbett during her vacation informing her that SCD intended to interview Haywood at Sojourner. She strongly objected to doing the interview right away for the reasons expressed above but Corbett did not feel a need to agree with her so told her that he intended to go ahead with his plans.

ADA Erin Karshen took over the case for the DA's Office not long after the August 13 interview when ADA DeSiato moved to another unit. She agrees with DeSiato's objection to doing Haywood's interview right away. The DA's Office did not want the interview to happen when it did.

Abbey DeSiato (now Marzick) says that she told Corbett that he would have to contact the complainant to tell her of the plans for the interview. Jane Doe, the alleged victim, recalls that she talked to the ADA who told her of Corbett's decision. At the ADA's suggestion, the women called Corbett in a conference call. Doe told him that she was horrified by an early interview of Haywood since she was afraid for her physical safety if Haywood knew. However, Corbett told her that her name would not be brought up in the interview. (As revealed by the recording of the interview, Haywood was told the name of the complainant during the interview. Her name has been redacted from the enclosed transcript of that interview.)

As established by an email he sent to Haywood's alleged victim, Thoms was on vacation from August 6-13. So, as Thoms stated, he was not consulted about the interview and was not even aware that it was happening, even though he was the assigned investigator and knew the case better than anyone. Janick had suggested that Wells try to call Thoms about the case but that apparently never happened.

For his part, Wells admits that he had no prior involvement in or knowledge of the Haywood case. When he was assigned to do the interview and it was scheduled for that same day, he had to quickly read some reports in Thoms' file to learn what the case was about.

However, both Corbett and Wells stated it was not unusual within SCD to assign a detective who was not involved in a case to do an interview in that case, sometimes with little notice. Wells did not think that Haywood received any special treatment. When questioned about the timing of the interview, Chief Morales stated that he understood the rationale for objecting to doing the interview right away but also agreed with Corbett that there is a sense of urgency present in every criminal investigation.

Shifting attention to the place of the interview, it was held in an interview room adjacent to SCD's offices at Sojourner. Sojourner is a facility which provides residence as well as other services to women and children who are victims of domestic abuse, including sexual assault.

The law enforcement personnel involved in this case knew that it was generally frowned upon to do interviews of sexual assault suspects at Sojourner. Marzick and Karshen were aware of that as well. Wells told Haywood about that at pages 16-17 of the transcript of the interview. Thoms stated that that was not common. Wells estimated that SCD did perhaps one suspect interview a year at Sojourner. This was the only suspect interview at Sojourner that Corbett was aware of. Officer James Henry of SCD was also unaware of any such interviews being done there.

However, both Thoms and Wells stated that it was not necessarily a bad idea to do an interview at Sojourner of a suspect who was not in custody. It was convenient to SCD's offices where they had materials about the case which they might wish to refer to during the interview.

In this particular case, it was especially convenient to use Sojourner's interview room. Wells was already there and when Wells called Haywood to schedule the interview, Haywood said he was in his office in the Masonic Building right across the street from Sojourner. Wells recollected that Corbett suggested meeting at Sojourner but, at page 17 of the interview transcript, Haywood and his attorney, Steven DeVougas, stated that Wells suggested it.

However, Sojourner and MPD had a Memorandum of Understanding (MOU) signed by Carmen Pitre, Executive Director of Sojourner, and Edward Flynn, former MPD Chief, which stated in section 4.b.i. that MPD may not interview or detain suspects at Sojourner.

Pitre stated that no one had asked for an exception to that rule for the interview of Haywood. She feels quite strongly that it is important not to mix victims, children, and suspects in the same facility. Victims and their children cannot be afraid to come to Sojourner for fear that they may run into suspects, perhaps in their own assaults. Also, suspects can constitute a physical danger to Sojourner's already abused clientele.

Specific to this case, Jane Doe was unhappy that Haywood had been brought into Sojourner for the interview considering that that was a building she had entered several times to meet with Thoms.

A problem seems to be that none of the SCD personnel working at Sojourner were aware of the MOU before the Haywood interview. That includes Thoms, Wells, Corbett, and Henry, as well as Gulbrandson. In fact, Chief Morales was also unaware of the MOU his predecessor had signed. So, no one involved knowingly violated the MOU since none of them even seemed to know that it existed.

SUGGESTED RESOLUTION

As far as the timing of the Haywood interview goes, a strong argument could be made for the proposition that the Haywood interview should not have been done as early as it was. That argument would be based on the concerns expressed by Thoms and Marzick. The argument would be strengthened by the fact that Thoms, the person who knew most about the investigation, was not consulted or even aware that the interview was going to happen and by

the fact that Wells was told to conduct the interview with very little opportunity to prepare, making it hard for him to do a thorough job.

However, the fact that someone could disagree with the decision to do the interview this soon does not mean that the decision was necessarily misconduct. Although it is obvious that those calls must have made it clear to Corbett that the chief thought that Haywood's case was an important one that deserved his attention, there is no evidence that Gulbrandson or Morales did anything improper in their contacts with Corbett. Calls from the chief or members of his staff certainly would tend to give the case priority in Corbett's mind but it was their prerogative to ask for the status of any police investigation. Corbett's decision to go ahead, if based on his desire to expedite investigations for his overburdened division, is not necessarily unreasonable.

As for the place of the interview, it was quite unusual to do a suspect interview at Sojourner and the policy reasons for that are obvious. A facility in the business of protecting victims of abuse, including sexual abuse, has a strong interest in keeping sexual assault suspects out of the building.

That is why the MOU was signed. However, it seems that there was a definite failure within MPD to communicate that rule to its personnel considering that none of the MPD personnel interviewed, up to and including the chief, were even aware of the MOU and what it required. Such communication should not be that difficult and should be improved.

To answer the questions posed at the beginning of this section, it would appear that Haywood may have benefitted from the relatively early scheduling of his interview based on the considerations identified by Marzick and Thoms. However, that timing seems based on a good faith disagreement as to what was best, not upon any provable misconduct. It does not appear that Haywood received any significant benefit from the place of the interview. While the interview room at Sojourner may have been more pleasant than one at a police station, there is no evidence that the place impeded Wells' ability to conduct the interview effectively. In fact, it would be possible to suggest that a less oppressive environment for the interview might relax the suspect and make him more talkative.

IV. IF HAYWOOD DID RECEIVE UNDULY FAVORABLE TREATMENT WAS IT TO CURRY FAVOR WITH DEVOUGAS (AND/OR HAYWOOD), PERHAPS IN ORDER TO FACILITATE MORALES' REAPPOINTMENT AS POLICE CHIEF?

If Haywood did receive unduly favorable treatment in regard to his interview, it would always be a legitimate question to ask why. That general question becomes more significant in view of the involvement of Chief Morales and members of his command staff.

ADA Marzick says that when she objected to going ahead with an early interview of Haywood, Capt. Corbett told her it wasn't his decision, which would imply that some higher figure was directing this approach. Corbett denies saying that to Marzick but discloses that he received calls from both Erik Gulbrandson, the chief's Administrative Lieutenant, and Morales himself inquiring about the status of the case and encouraging Corbett to keep the Haywood investigation moving. Gulbrandson and Morales admit calling Corbett but deny that they tried to affect the investigation, including influencing the timing of interviewing Haywood. MPD records reveal that on August 12, 2019, one day before the Haywood interview, Corbett received an

email about Haywood's knowledge of the investigation from MPD Inspector Gordon, the head of the Criminal Investigation Bureau (CIB) and Corbett's immediate superior.

At the time, Morales was finishing out the term of retired Chief Edward Flynn which was scheduled to expire on January 7, 2020. Before that date, FPC was expected to determine if Morales would be reappointed for his own 4 year term as chief.

Haywood's attorney, Steven DeVougas, who appeared with Haywood at his interview, is Chairman of the FPC. That situation suggests the possible question of whether MPD extended favorable treatment to Haywood in order to curry favor with DeVougas to improve the chances of Chief Morales being reappointed.

EVIDENCE

The evidence indicates that neither Haywood nor DeVougas were aware of the allegations against Haywood before the August 13, 2019 interview. The day before, Gordon wrote an email to Corbett stating that Assistant Chief Ray Banks wanted to know if Haywood was aware of the allegations since Banks and the chief needed to talk with Haywood about another matter. Corbett replied that Haywood was unaware and the DA didn't want him to know.

Wells stated that when he called Haywood on August 13 to set up the interview for later that day, Haywood acted like he was unaware of the complaint. Likewise, before the interview, DeVougas came over to Sojourner to talk with Wells and asked Wells questions about the case before calling Haywood to come over for the interview. That is borne out by the transcript of the interview. On page 2, DeVougas says that he told Haywood what Wells told him about the allegations but they didn't know who the proponent was.

If Haywood and DeVougas were not aware of the allegations before Haywood was interviewed they would have had no basis to try to pressure anyone within MPD to extend favorable treatment to Haywood. That lack of pressure makes it unlikely that anyone within MPD would have buckled to outside pressure to somehow help Haywood.

Both Gulbrandson and Morales called Corbett about the Haywood case and Gordon emailed him about it. However, there is no evidence that any of them mentioned that DeVougas was Haywood's attorney. If those members of the command staff did not know of DeVougas' involvement prior to Haywood's interview, there is no reason to believe that they affected the interview in order to please DeVougas.

A better explanation for their intervention is suggested by the evidence regarding the Milwaukee Police Foundation (MPF). One of Gulbrandson's responsibilities is to be the MPD liaison to the foundation. In their statements to investigators, Gulbrandson and Morales described the nature of MPF and its relationship to MPD.

They helped to create MPF as a private organization for outside entities to raise needed funds to address MPD's financial needs. They began working with others on it in early 2019. It was registered as a corporation in April, 2019 and bylaws were adopted the following July. MPF became operational in fall of 2019 but was still gearing up to be able to contribute significantly to MPD.

Atty. Jack Enea, the registered agent for MPF, stated that Haywood was never on the board of MPF and, to his knowledge, had no association with the organization. However, that

does not seem to be entirely accurate. Gulbrandson described Haywood's attempt to be part of that organization. Gulbrandson did not know Haywood but Asst. Chief Banks, who did, suggested to Gulbrandson and Morales that Haywood might be a good candidate for the MPF board and Gulbrandson talked with Haywood about it. Haywood appeared at the July 17, 2019 board meeting, where the bylaws were adopted, as a potential board member. He was invited to join the board at that time.

Griselda Aldrete, Executive Director of FPC, was aware that Chief Morales was involved in helping to start MPF. Morales told Aldrete that Haywood was a board member. While Morales stated that the situation was a little unclear because the organization was in its formative stages, he agreed that the intention of all involved was that Haywood would become a board member.

The next MPF board meeting was scheduled for 5:30 p.m. on August 13, 2019. Gulbrandson states that he called Corbett to learn about Haywood's case because he knew that Haywood was becoming an MPF board member and Gulbrandson didn't want MPF to be embarrassed as it might be if a board member was charged with sexual assault. Gulbrandson also stated that Morales was interested in that possible impact on MPF but wanted to wait for SCD to complete its investigation.

Wells states that he was told by someone, he thinks Corbett, on August 13 that there was a meeting that night of an independent organization that was involved in distributing money to MPD. Wells was not sure of the details.

Corbett recalled that Morales, in his call to Corbett shortly before the interview asking Corbett to keep Haywood's case moving, spoke of Haywood applying to be on the MPF board. So, while Wells and Corbett are a little vague on the details, it is apparent that Morales expressed some concern to Corbett about MPF and how Haywood's case might affect it and that Corbett at least generally passed that concern on to Wells, who he directed to do the interview that day.

While Morales stated that he did not think he mentioned MPF to Corbett, he must have. Corbett was generally aware that there was a concern about Haywood because he was applying to be on the board of a Police Foundation. He passed that general concern on to Wells. They couldn't have made that up. It seems clear that Morales, in telling Corbett that he was concerned about whether Haywood knew of the investigation because he needed to know if he could talk to Haywood about it as it affected his ability to be on the MPF board, must have told or at least implied to Corbett that he needed to know that quickly because it affected MPF business, as Corbett generally understood.

At Corbett's direction, Wells went ahead with the interview of Haywood on August 13. It ended at about 2:30 p.m. That speedy response further indicates that MPF was the reason to interview Haywood quickly when it might not have otherwise been prudent to do so.

According to Gulbrandson, Morales told him that late that afternoon, shortly before the 5:30 p.m. MPF meeting, Haywood met with Morales and Banks. (Gordon had emailed Corbett the day before saying that Banks told Gordon that he and the chief had another matter to discuss with Haywood.) Gulbrandson was told by Morales that, in the meeting with Morales and Banks, Haywood withdrew from consideration for the MPF board.

Morales had a somewhat different version but basically corroborates the meeting and its result. Morales is not sure of the date or if the meeting was the same day as the interview or the August MPF meeting. But, he recalls meeting with Haywood after his interview. Also present were Banks, who set up the meeting, and DeVougas, who came with Haywood. It was not explained why DeVougas was there but he said very little. Morales states that he asked Haywood to step away from the MPF board due to the bad optics of having a board member charged or even investigated for sexual assault. Morales recalls that Haywood understood and agreed without any argument.

The precision of that timing as described by Gulbrandson, which Morales doesn't really contradict (interview over by about 2:30, meeting with Morales in the late afternoon before the MPF meeting, MPF meeting at 5:30) further corroborates that the need for speed was based on concerns about Haywood and the MPF board, not any desire to curry favor with DeVougas.

It is also relevant to note that DeVougas did not go out of his way to help Morales get his four year reappointment. In the first place, Morales states that his relationship with DeVougas was deteriorating throughout 2019, for reasons that had nothing to do with Haywood's case. The men had a running disagreement about whether Morales should fire a certain officer or officers involved in an incident with Milwaukee Bucks player Sterling Brown. Morales states that DeVougas referred to the officers as sacrificial lambs. After that disagreement simmered for awhile, the situation deteriorated to the point where Morales says that DeVougas told him that he could gain reappointment if he fired an Officer Collins, who was involved in the Brown incident as well as an incident in which MPD had a car towed without discovering that there was a baby in the back seat of the car. Morales did not change his position so gave no indication that he was trying to please DeVougas in order to gain reappointment. If the point was to curry favor with DeVougas, Morales says he could have done that more simply by firing Collins.

Aldrete, supported by emails exchanged between FPC members and FPC records, describes the events leading up to the reappointment and DeVougas' involvement in those events.

On August 21, 2019, Aldrete, DeVougas, and other FPC staff met to discuss the reappointment process that would be used for Chief Morales. That process was publicly revealed by the FPC on October 3, 2019. It included a vote on reappointment by the end of 2019 which made sense since Morales was serving out the term of retired Chief Flynn which would expire on January 7, 2020.

Morales states that he also met with DeVougas about the reappointment process in August, 2019. Haywood was also there, apparently at DeVougas' invitation. Haywood did most of the talking, although Morales felt that most of what Haywood said was irrelevant.

In December of 2019, DeVougas expressed an intention to slow the process down. On December 13, DeVougas publicly stated that he wanted more information from MPD so was in no rush to vote on the reappointment by the end of the year. He went on to say that if January 7, 2020 passed without a vote, Morales could continue as a holdover chief.

On December 16, DeVougas publicly stated that there would be no vote on Morales by the FPC that week because there were still too many unanswered questions on issues with which DeVougas was concerned. As Chairman of the FPC, DeVougas had the authority to determine which issues would be on the agenda for regular FPC meetings.

However, under FPC rules, any two FPC members can call for and get a special FPC meeting and, on December 17, after the Milwaukee Journal Sentinel published an article about the August 13 Haywood interview based on a leaked recording, FPC Commissioners Soler and Robakowski called for a special meeting to vote on the chief consistent with the earlier announced schedule. This move was not supported by DeVougas.

That special meeting was held on December 18, 2019. Chief Morales was reappointed by a vote of 4 to 2, with one abstention. Chairman DeVougas was one of the two "no" votes.

SUGGESTED RESOLUTION

Based on the evidence summarized in this section, there is little or no reason to conclude that, even if the Haywood interview was handled in a way that benefitted Haywood and hurt the case against him, that was done for an improper reason, including a purpose of currying favor with DeVougas to facilitate Morales' reappointment as police chief.

The evidence indicates that neither Haywood nor DeVougas was even aware of the sexual assault allegations or MPD's investigation before Wells talked with each of them shortly before Haywood's interview, and after command staff calls or email to Corbett. If so, they could not have pressured anyone in MPD for special consideration. Without such pressure, there seems little or no likelihood that anyone in MPD would have just volunteered it.

When Gulbrandson, Morales, and Gordon communicated with Corbett none of them said anything which indicated that they knew DeVougas would represent Haywood in this matter. Gulbrandson and Morales deny such knowledge. With that in mind, the notion that any of these individuals would have tried to use influence to help Haywood and thereby gain favor with DeVougas is without support in the evidence.

A much more likely reason for Gulbrandson and Morales' expressions of concern about Haywood is their desire to promptly resolve whether there was a meritorious case against Haywood before he proceeded as an MPF board member. If Haywood was charged with a sexual crime shortly after joining MPF's board that would be an embarrassment for MPF, a private organization Gulbrandson and Morales hoped would be helpful to MPD. If so, their concern for MPF can be reasonably construed as in the interest of MPD.

Any remaining doubt about whether Haywood received special treatment in order to gain DeVougas' help for Morales' reappointment, is seemingly wiped away by the fact that if that was the plan it certainly didn't work. DeVougas did not help Morales get reappointed and in fact made that process more difficult, trying to slow walk the process and ultimately voting against Morales.

V. WAS IT APPROPRIATE AND ETHICAL UNDER THE CITY'S CODE OF ETHICS FOR DEVOUGAS TO APPEAR AT THE INTERVIEW OF HAYWOOD AS HIS ATTORNEY WHEN DEVOUGAS WAS CHAIRMAN OF FPC?

On August 13, 2019, Atty. Steven DeVougas appeared with Kalan Haywood, Sr., as his attorney, for Haywood's interview with Det. Wells of MPD on criminal sexual assault allegations. At the time, DeVougas was (and still is) Chairman of FPC which oversees MPD and all of its

officers. This situation has raised questions over whether DeVougas acted with a conflict of interest or attempted to misuse his public position in representing Haywood in an MPD criminal investigation.

EVIDENCE

Complaints raising possible improprieties by DeVougas in this situation were filed by Milwaukee Alderman Donovan with the state's Office of Lawyer Regulation (OLR) and the City Attorney's Office. OLR looks into possible violations of Wisconsin's ethical rules for lawyers, found in Supreme Court Rule 20. OLR stated that it would not conduct an investigation of the alderman's allegation.

The allegation was that DeVougas acted despite a conflict of interest. For Wisconsin lawyers conflicts of interest are covered in SCR 20:1.7. Specific to this situation, the most pertinent rule is 1.7(a)(2) which states that a lawyer has a conflict of interest if there is a significant risk that the representation of any client will be materially limited by the lawyer's responsibilities to a third person or by a personal interest of the lawyer. The undersigned investigator consulted with the Ethics Counsel for the Wisconsin State Bar as well as the Chair of the State Bar's Professional Ethics Committee. They agreed that Rule 1.7(a)(2) would not apply to DeVougas' conduct here as the rule is meant to protect the client's interests and the client here was Haywood whose interests were not harmed and may have been served by DeVougas' presence at the interview.

In a June 10, 2020 letter from DeVougas' attorney, Jacob Manian, which is enclosed with this report, Mr. Manian cites a January 6, 2020 memorandum from the City Attorney's Office informing Alderman Donovan that DeVougas had not violated any FPC rules in this situation. However, as stated in the memo, the basis for that conclusion is that the FPC rules do not address commissioner conflicts of interest or contain standards of conduct for commissioners. So, it appears that there is no FPC rule DeVougas could have violated by appearing with Haywood at the interview.

However, as discussed below, the City's Code of Ethics would seem to apply and DeVougas may well have violated rules within that code.

Now, turning to the evidence of what happened here, in public statements in response to allegations of misconduct, DeVougas contended he was not at the interview to represent Haywood but was there as counsel for the Haywood Group, a real estate development company, to see if the investigation of Haywood somehow affected the business' interests. DeVougas' position seems to be that there could be no conflict of interest or other misconduct here because he did not attend the interview to represent Haywood personally.

DeVougas has not made any statement during this investigation. Undersigned investigator made contact with DeVougas on May 21, 2020 and made an appointment to interview him on May 28 as part of this investigation. A few days before May 28, DeVougas cancelled that appointment stating that he had a child care conflict. After that, several unsuccessful attempts were made to reschedule with DeVougas.

On June 1, undersigned investigator was contacted by Atty. Jacob Manian who stated he was representing DeVougas with regard to this investigation. Various calls and emails were

exchanged with Manian to try to reschedule the interview with DeVougas. Mr. Manian stated that he and his client needed some time to assemble records before the interview.

That interview never occurred. On June 10, Atty. Manian sent an email stating that DeVougas was "declining to participate in an interview concerning this matter". Attached to that email was a two page letter from Manian purporting to explain the basis for that refusal to be interviewed. A copy of that letter is enclosed with reports of interviews of other witnesses, as the closest thing to a statement from DeVougas obtained during this investigation.

In that letter, Manian made the following assertions on DeVougas' behalf:

- DeVougas came to the interview as an outside general counsel for the Haywood Group to learn what the investigation was about so he could advise his client concerning its business interests.
- DeVougas told the detective that during the interview.
- Following the interview, DeVougas, who does not practice criminal law, withdrew from the criminal investigation and Haywood retained criminal counsel.
- OLR and the City Attorney's Office have cleared DeVougas of any wrongdoing.
- DeVougas cannot answer questions in this investigation because he would be violating the attorney-client privilege and because the criminal investigation of Haywood is still pending with the DA's Office.

Unfortunately for Mr. DeVougas, those assertions are false in view of the evidence and/or irrelevant. To begin with, the assertion that he was there as corporate counsel only is transparently false. Haywood was to be interviewed about allegations that he had committed a sexual assault. That was an obviously personal matter having no apparent relationship to any company with which Haywood was associated.

Det. Wells, who conducted the Haywood interview, states that, after he called Haywood to schedule the interview at Sojourner, DeVougas came over to Sojourner. The enclosed Sojourner visitor record verifies that DeVougas arrived at 12:41 p.m. Wells went to speak to DeVougas who identified himself as Haywood's attorney. DeVougas said he had questions about the case he wanted Wells to answer before he called Haywood to come over for the interview.

Throughout that brief conversation and the interview itself, Wells had no doubt that DeVougas was acting as Haywood's attorney. Other experienced officers, Capt. Corbett, Lt. Gulbrandson, and Chief Morales, who all watched the recording of the interview, agreed that it was apparent that DeVougas was present as counsel for Haywood. Wells felt that DeVougas was there to protect Haywood from a tough interview. Contrary to the assertion in Manian's letter, DeVougas never told Wells that he was there as corporate counsel. The transcript of the interview, a copy of which is enclosed, contains no such statement by DeVougas.

If DeVougas had said he was there as corporate counsel, not Haywood's criminal attorney, Wells, Corbett, and Morales agree that DeVougas would not have been allowed to stay in the interview. The police only allow suspects and their criminal attorneys to be present at criminal interviews.

A review of the transcripts makes it clear that DeVougas was there acting as Haywood's criminal attorney throughout. Enclosed is a transcript of a brief conversation that was recorded between Haywood and DeVougas before Wells arrived to begin the interview. (This portion of

the recording was difficult to transcribe as DeVougas and Haywood spoke in low voices but investigators have attempted to transcribe that conversation as well as possible.) On page 4 of that transcript, DeVougas told Haywood that Wells had asked him if he did criminal work but DeVougas replied that he does it all.

The enclosed transcript of the interview itself is filled with examples of DeVougas acting as Haywood's criminal counsel. At page 2, he stated, as defense counsel might, that he had notified Haywood of the allegations and that Haywood was there voluntarily. At pages 3, 73, and 78, DeVougas identified himself as Haywood's lawyer. At page 26, Haywood told Wells that DeVougas was going to get mad because Haywood was talking too much. On at least 22 occasions in the transcript, DeVougas interrupted the interview with comments or questions as criminal counsel might be expected to do (See pages 7, 10, 15, 26, 30, 31, 44, 45, 46, 49-50, 54, 70, 73, 74, 75, 76, 78, 80-81, 83, 85). At page 73, DeVougas questions how police will handle Haywood's phone which they want to examine. He says, "It's me being a lawyer". Five pages later, DeVougas says, "I'm trying to be a defensive lawyer."

In a brief exchange at pages 2 and 3 of the interview transcript, Wells told DeVougas that he knows that DeVougas is with the FPC. DeVougas reminds Wells that he is the Chairman. They agreed that the situation was odd or very weird. Wells felt like he was interviewing the chief. DeVougas replied that, "It just happened that I'm his lawyer."

Wells and all other officers who were asked about this (Thoms, Corbett, Gulbrandson, and Morales) agreed that it was awkward and inappropriate for DeVougas to show up at a criminal interview as a criminal suspect's attorney when he was chairman of a commission that oversees MPD and the futures of all of its officers. Corbett added the phrase "possibly intimidating".

Through his counsel's letter, DeVougas adds that, following the Haywood interview, DeVougas, who does not practice criminal law, "withdrew from any further involvement with the investigation and Mr. Haywood retained a criminal defense attorney." This contention concedes that DeVougas was at the interview as Haywood's criminal lawyer. If DeVougas was not at the interview as Haywood's attorney, there was nothing for him to withdraw from.

Late in Mr. Manian's letter, he implies that DeVougas is constrained from answering questions in this investigation by the attorney-client privilege which applies to his communications with the principal of the Haywood Group. That is well beside the point here as this investigation has nothing to do with the Haywood Group and no question about the Haywood Group would even be asked.

Counsel's letter goes on to state, "... the fact that the investigation concerning Mr. Haywood remains pending with the District Attorney underscores that it would not be appropriate- indeed may be unethical- for Attorney DeVougas to speak further on this subject." Mr. Manian does not even try to explain how that would be unethical and the undersigned investigator has no idea of any basis for that assertion. Furthermore, DeVougas would not be asked about the merits of the Haywood criminal investigation because it is DeVougas' conduct being investigated here, not Haywood's.

SUGGESTED RESOLUTION

While serving as Chairman of the FPC, which oversees MPD and all of its officers in matters of hiring, firing, promotion, demotion, and discipline, Mr. DeVougas attended a criminal interview representing a criminal suspect. This created an awkward and difficult situation for the detective involved, making it more difficult for him to do his job, because he was put in the position of interviewing the client of his ultimate boss with the boss present.

That action by DeVougas seems to have violated at least two provisions of the Code of Ethics for officials of the City of Milwaukee, found in Chapter 303 of the city code. Section 303-5(5) states: "MISUSE OF POSITION. No official or other city employee may use or attempt to use his or her position to influence or gain unlawful benefits, advantages or privileges for himself or herself or others." DeVougas' attending the interview of a criminal suspect, while representing that suspect, when the interview is being conducted by a detective who knows defense counsel is the chair of the FPC, clearly seems to be an attempt to use that position to influence or gain an advantage for his client that Haywood was not legally entitled to, in the form of a less aggressive and probing interview.

Section 303-5(7)(a) states: "REPRESENTATION FOR COMPENSATION. a. No official or other city employee may represent a person for compensation before a department or any employee thereof, except..." for situations which do not apply here. Normally, when a person retains legal counsel the person pays that counsel. Assuming that Haywood paid DeVougas for his time and advice on August 13, 2019 and DeVougas was not donating his time, he violated that rule by representing a person for compensation before the city's police department.

Any violation of the city code by DeVougas is aggravated by at least two factors. First, DeVougas has been consistently untruthful about his role in the Haywood interview. In statements published in the Milwaukee Journal Sentinel, as well as the June 10, 2020 letter from his counsel, DeVougas has repeatedly contended that he had no conflict of interest because he was not at the August 13 interview to represent Haywood but was only there as counsel for the Haywood Group, a company involved in real estate development.

As detailed above, that contention is simply false. The interviewing detective, Steve Wells, a veteran of many interviews in his 23 years with MPD, had no doubt that DeVougas was there representing Haywood. When Wells said he was uncomfortable with that, DeVougas did not say then or at any other time in the interview that he was there at a sexual assault interview not to represent Haywood but to protect the interests of a real estate company. If DeVougas had said he was there representing that company, he would not have been allowed to remain in the interview. Review of the transcript of the interview unequivocally supports Wells' conclusion about DeVougas' purpose.

Second, DeVougas has refused to be interviewed in this investigation when MPD officers who are supervised by the FPC, and its chair, were required to cooperate with this investigation and truthfully answer questions. Section B. of General Order 2019-22 covers FPC investigations. Subsection 1 states that in FPC investigations that department members will fully and truthfully respond to all inquiries from the executive director of the FPC or her designee. This investigation involved interviews of various MPD officers. It is fair to note that many of them were not necessarily comfortable with being interviewed about the matters under investigation.

However, all of them complied with subsection 1 by answering all questions. It is ironic and disingenuous for the chairman of the commission to refuse to do the same in an investigation authorized by his own commission.

As described above, the City Attorney's Office concluded that there was no FPC rule that DeVougas could have violated in this situation since FPC rules do not address commissioner conflicts of interest or contain standards of conduct for commissioners. It would seem wise for the FPC to address those flaws in its own rules.

VI. WHO WAS RESPONSIBLE FOR LEAKING A COPY OF THE RECORDING OF THE HAYWOOD INTERVIEW TO THE MILWAUKEE JOURNAL SENTINEL?

A copy of the MPD recording of the August 13, 2019 interview of Kalan Haywood, Sr. was leaked to the Milwaukee Journal Sentinel (MJS). It happened on or before December 16, 2019 because MJS first published on December 17 that it had the recording. The date of the leak is important because, as discussed below, MPD maintains a record showing who within the department accessed or downloaded any saved recording. That record, known as an evidence audit trail (EAT), includes a record of several accesses of the Haywood interview recording after December 17. As these occurred after the leak, there is no need to discuss these in any detail. If the reader wants more information about those accesses, they are discussed in the reports of interviews of Off. Monique Anderson, Asst. Chief Regina Howard, and Sgt. Doug Wiorek.

The EAT, a copy of which is enclosed, also notes post-leak accesses by Det. Matt Goldberg, Diana Perez, Atty. Robert Copley, and Sgt. Doug Wiorek. The first three were not interviewed because they had reasons to access the recording that are not evidence in this investigation. Goldberg is a detective with MPD's Internal Affairs Division (IAD) who only accessed the recording to conduct IAD's investigation of the leak, which was dropped in deference to this FPC investigation. Perez is an employee of FPC who accessed the record to provide a copy of the EAT to investigators hired by FPC. Copley works for MPD's Open Records Office. He accessed the record to assemble information to respond to investigators' request for records. Wiorek only accessed the recording to help explain MPD's recording retention and accessing system when he was interviewed.

The leak of the recording was a serious matter. It was contrary to MPD rules and proper police procedures. As mentioned by Off. Thoms and amplified by Jane Doe, the complainant in the Haywood case, the leak was profoundly disquieting to her. She felt retraumatized and it caused her to fear that her name would be publicly revealed before it had to be. It caused her to lose trust in MPD.

EVIDENCE

At Sojourner, SCD had a system to record interviews held in an interview room in that building. That was used to record Haywood's interview. All SCD personnel interviewed as well as Carmen Pitre, the director of Sojourner, agreed that the recording system was controlled by SCD alone and no other personnel in the building had the ability to record interviews or access recordings.

Wells and Thoms who had each worked in SCD at Sojourner for years, agreed on how interview recordings were initially handled. The officer who had started the recording stopped it which had the effect of automatically loading the recording into MPD's system for storing recordings. That took a few minutes but once that happened, it was normal for the investigating officer to make four recordings: one for the SCD file and kept in that file on the investigator's desk; one extra for the investigator to have available in case the computer storage system crashed (that copy was normally stored at the investigator's desk); and two which were taken to the DA's Office (one for the prosecutor and one to give the defense in discovery if charges were filed).

ADA Karshen agrees that Wells provided two copies of the recording to the DA's Office, consistent with normal procedure. When she learned in December, 2019 that a copy had been leaked to MJS, Karshen looked in her file and verified that the two copies from Wells were still there. She still has them in her file. They are the only copies in the DA's Office.

Every person known to have obtained a copy of the Haywood recording was interviewed and unequivocally denied leaking it, knowing who did, or even having any information which might allow them to draw a reasonable conclusion as to who did. That includes ADA DeSiato (nee Marzick), Off. Thoms, Det. Wells, Capt. Corbett, Lt. Schroeder, Off. Henry, Lt. Gulbrandson, Asst. Chief Howard, Off. Anderson, ADA Karshen, and Chief Morales. There is no specific evidence which contradicts any of them on that issue.

Three accesses to this recording received specific scrutiny as they were done by MPD personnel not involved in the Haywood investigation and preceded the leak. The first occurred on August 13, 2019, the date of the interview. The EAT indicates that Off. James Henry accessed the recording at 2:55 p.m. and, after it buffered, he streamed it. Sgt. Wiorek, who is MPD's Executive Officer for its IT Department, explained that "streamed" means the accessing individual caused the recording to play. Henry was interviewed and he explained what he did and why. After the Haywood interview was done, he went into the interview room to get some privacy for some business he wished to conduct. After he was done, it occurred to him that maybe Wells had not turned the recording off before he entered the room. So, he played the recording and went to the end to see if it ended before he entered the room. It did so he was satisfied. It is significant to note that Henry viewed the recording without downloading it. As Wiorek explained, an individual cannot make a copy of an accessed recording unless it is downloaded.

The second preleak access occurred on November 19, 2019 and was by Lt. Erik Gulbrandson, Administrative Lieutenant to Chief Morales. Gulbrandson was interviewed and provided the following explanation. He agreed with Corbett that Corbett had provided him with a disk containing a copy within a few days of the August 13 interview. Gulbrandson kept that disk. However, he accessed the recording in MPD's system from his desktop computer on November 19, downloaded it, and kept an electronic copy of it in his computer file on the Milwaukee Police Foundation (MPF). Gulbrandson did not make a physical copy. By that time, Haywood had already withdrawn from the MPF board but Gulbrandson wanted to have a copy of the interview for MPF's information in case it was needed at some later date.

The third preleak access occurred on December 11, 2019 and was done by Lt. Chris Schroeder. Schroeder serves as the Grants Manager for MPD's Office of Management Analysis

and Planning. As such he has no investigative responsibilities and that included the Haywood case. Schroeder, Off. Monique Anderson, Asst. Chief Regina Howard, Chief Morales, and the City Attorney's Office explained why this access and downloading, which led to making a recording, occurred. Nick DeSiato, Chief of Staff for Chief Morales, asked Howard to obtain a copy that he wanted to provide to the City Attorney's Office. Howard asked Anderson to obtain a copy. Anderson did not know if she could access the system for storing recordings at that time so she asked Schroeder to do it because she knew he could gain access. Schroeder did so and made a copy of the interview for Anderson. She gave it to Howard who, in turn, gave it to DeSiato, who showed it to Morales. Representatives of the City Attorney's Office have verified that they met with DeSiato and Morales and received the copy of the recording from DeSiato on or about December 11.

As expected, reporters and the editor of the MJS refused to reveal the identity of the "confidential source" who provided them with a copy of the Haywood interview. Investigators informally talked with experienced forensic computer analysts who theorized that if a leaked disk could be examined, its metadata might reveal the computer from which the leaked copy was made. With that possibility in mind, investigators asked the MJS to provide them with the leaked disk or even a copy of it. Of course, the hope was that analysis of that disk's metadata would reveal a lead to discover who had leaked it by at least identifying the computer on which the copy had been made. However, after some discussion and consideration, MJS refused to release its disk or even a copy of it.

Of course, there are occasional legal battles between the press and law enforcement agencies about revealing confidential sources. However, there seems no legal or practical basis to start such a battle with MJS here. These legal battles are usually long and complex, involve constitutional issues, and the outcome cannot be predicted. Furthermore, the battle is usually predicated upon legal process utilized by the law enforcement agency such as a subpoena or civil request for documents. Here, there is no legal process for investigators to try to enforce as they do not have subpoena power.

The attempt to determine who was responsible for the leak is further hampered by the manner in which SCD stores its copies of recordings, which was explained by Wells, Thoms, Corbett, and Henry who work there. A copy is normally kept in the investigator's case file which is kept on his or her desk. The extra copy is normally stored at the investigator's desk. Neither copy is under lock and key. That is because sometimes action is taken on a case while the assigned investigator is not in the office (e.g., the Haywood interview). When that happens, other SCD personnel need to be able to gain access to material in the file to take the assigned action.

So, the file is available to be opened and looked through for anyone who is able to get into SCD. That was explained by Wells, Thoms, Corbett, and Henry. People who are sometimes found in SCD include anyone working in SCD as well as others allowed into SCD space including other MPD personnel, personnel from the DA's auxiliary office at Sojourner, other personnel from partner agencies also situated in Sojourner, or even cleaning or maintenance personnel who come into the space as part of their duties. There is no evidence that any such people made themselves a copy of the Haywood interview or leaked it but any of them could have had access by simply opening the Haywood file on Thoms' desk when he was not present.

This multiplicity of possible copiers and possible leakers only makes discovering the person responsible for the leak more difficult.

SUGGESTED RESOLUTION

This investigation has not come close to being able to prove who was responsible for leaking the copy to MJS. Those who are known to have accessed or even copied the recording before the leak all deny leaking it and there is no evidence to prove that they are lying. The accesses prior to the leak all seem to be legitimately explained, again without evidence to the contrary. Any possibility of trying to forensically discover the computer that made the leaked copy is blocked by MJS' refusal to turn over the leaked disk. Finally, and perhaps most fatally, the manner in which SCD stores its recordings creates a long list of individuals who could have been responsible with no way to even identify them, much less prove their responsibility.

Respectfully submitted this 22nd day of June, 2020.

A handwritten signature in black ink, appearing to read 'Mel S. Johnson', written in a cursive style.

Mel S. Johnson
Independent Investigator
(Working with Scott Schuster)