

THE NEW ORLEANS JAZZ ORCHESTRA, INC.



INVESTIGATIVE AUDIT  
ISSUED SEPTEMBER 26, 2018

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LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

September 26, 2018

**MS. SARAH BELL, PRESIDENT  
AND MEMBERS OF THE BOARD OF DIRECTORS  
THE NEW ORLEANS JAZZ ORCHESTRA, INC.**  
New Orleans, Louisiana

We audited certain transactions of The New Orleans Jazz Orchestra, Inc. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the validity of complaints we received.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations, as well as management's response. This is a public report. Copies of this report have been delivered to the United States Attorney for the Eastern District of Louisiana, the District Attorney for the Parish of Orleans, and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/aa

NOJO 2018



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## EXECUTIVE SUMMARY

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### **Excessive Lodging and Entertainment Expenses**

From June 22, 2009 to February 29, 2016, employees of The New Orleans Jazz Orchestra, Inc. (NOJO), including former Artistic Director Irvin Mayfield and former President and Chief Executive Officer Ronald Markham, incurred \$179,226 in lodging and entertainment expenses that appear excessive and personal in nature. These expenses included \$144,776 for lodging and \$34,450 for entertainment. By using public funds for their personal benefit, Mr. Mayfield, Mr. Markham, and other NOJO employees may have violated the Louisiana Constitution and state law.

### **Improper Use of Grant Funds**

From June 2009 to May 2010, NOJO received \$1,210,000 in grant funds from the City of New Orleans (City) to create a sculpture garden in Louis Armstrong Park. Although these funds were restricted to pay the artists creating the sculptures for the sculpture garden, NOJO appears to have used at least \$302,163 of the grant funds to pay operating expenses. In addition, it appears that NOJO improperly used \$175,503 of subsequent grant funds received from the City to pay the artists who created the sculpture garden. By improperly using grant funds for operating expenses and/or expenses associated with other grants, NOJO management may have violated its grant agreements with the City and state law.

### **NOJO Violated Its Cooperative Endeavor Agreement with the State and Appears to Have Improperly Used State, Local, and Donated Funds Provided for the Construction of the New Orleans Jazz Market**

From May 16, 2014 to April 10, 2015, NOJO received \$1,110,000 from the State of Louisiana (state) to pay construction expenses for the New Orleans Jazz Market (Jazz Market). However, records show that NOJO improperly used \$885,603 (79.8%) of the \$1,110,000 for unauthorized expenses. In addition, NOJO received \$1,289,701 in local and donated funds for expenses related to the Jazz Market, which NOJO appears to have used for other purposes. By improperly using state, local, and donated funds for purposes other than Jazz Market expenses, NOJO may have violated its cooperative endeavor agreement with the state, the Louisiana Constitution, and state law.





## BACKGROUND AND METHODOLOGY

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The New Orleans Jazz Orchestra, Inc. (NOJO) is a Louisiana nonprofit corporation that registered with the Louisiana Secretary of State on December 19, 2002. According to its website, NOJO's "mission is to continue and strengthen the legacy of Jazz throughout local and global communities by providing access to unparalleled performances, creative gathering places, and authentic community engagement."

NOJO is funded through donations, ticket sales, performance fees, and City of New Orleans grants. In addition, NOJO received funds from the State of Louisiana to help construct the New Orleans Jazz Market. Because NOJO received state and/or local assistance, it is a quasi-public agency.<sup>1</sup> Louisiana law<sup>2</sup> provides that when a quasi-public agency receives state and/or local assistance and that assistance is commingled with other funds, all of the quasi-public agency's funds shall be audited. During our audit, we found that NOJO commingled \$2,570,000 of public funds with its other funds. As a result, we audited all of NOJO's funds.

In May 2015, several news stories reported that NOJO may have misspent a portion of the \$1,159,325 NOJO received from the New Orleans Public Library Foundation (Library Foundation). NOJO's Artistic Director, Irvin Mayfield, resigned from NOJO in July 2016, and NOJO's President and Chief Executive Officer, Ronald Markham, resigned from NOJO in January 2017. In December 2017, a federal grand jury indicted Mr. Mayfield and Mr. Markham on 19 federal felony charges related to NOJO's misuse of Library Foundation funds. In June 2018, Mr. Mayfield and Mr. Markham were charged in a superseding indictment with four additional federal felony charges related to NOJO's misuse of Library Foundation funds. Mr. Mayfield and Mr. Markham pleaded not guilty; their trial date is set for April 29, 2019.

This audit was initiated after the Louisiana Legislative Auditor (LLA) received a complaint from the Metropolitan Crime Commission regarding NOJO's improper use of public funds. As a result, LLA reviewed available NOJO records to determine the credibility of this complaint. The procedures performed during this audit included:

- (1) interviewing current and former NOJO employees;
- (2) interviewing other persons, as appropriate;
- (3) examining selected NOJO documents and records;
- (4) gathering and examining external parties' documents and records; and
- (5) reviewing applicable state and federal laws and regulations.



## FINDINGS AND RECOMMENDATIONS

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### Excessive Lodging and Entertainment Expenses

**From June 22, 2009 to February 29, 2016, employees of The New Orleans Jazz Orchestra, Inc. (NOJO), including former Artistic Director Irvin Mayfield and former President and Chief Executive Officer Ronald Markham, incurred \$179,226 in lodging and entertainment expenses that appear excessive and personal in nature. These expenses included \$144,776 for lodging and \$34,450 for entertainment. By using public funds for their personal benefit, Mr. Mayfield, Mr. Markham, and other NOJO employees may have violated the Louisiana Constitution<sup>3</sup> and state law.<sup>4,5</sup>**

NOJO is a Louisiana nonprofit corporation domiciled in New Orleans. According to its articles of incorporation, NOJO was “organized exclusively for charitable, religious, educational, and scientific purposes.” During our audit, we found NOJO received grants from the City of New Orleans and capital outlay funding from the State of Louisiana. Records indicate that NOJO did not separately account for the public funds received and, therefore, did not distinguish between public and private funds. We also found that NOJO incurred \$1,115,380 in travel expenses from June 2009 to February 2016. This amount included \$685,111 for airfare and ground transportation and \$430,269 for lodging. NOJO was unable to provide supporting documentation for the majority of these travel expenses.

#### Lodging Expenses

NOJO had no written travel policies or procedures and lacked documentation to support the business purpose for most of the travel expenses we reviewed. However, several performance contracts required the performance venues to pay NOJO’s travel and/or lodging expenses. Some of these contracts contained an addendum that required the performance venue to provide Mr. Mayfield with a suite in “a five star hotel (Ritz Carlton or equivalent)” and “one chauffeured luxury automobile for Mr. Mayfield and his assistant.” Even so, we found that NOJO spent at least \$144,776 (33.6% of NOJO’s total lodging expenses) for charges Mr. Mayfield and his assistants incurred at Four Seasons and Ritz-Carlton Hotels from June 2009 to February 2016. Because NOJO said it did not have performance contracts to support all of its travel expenses, we could not determine the purpose of such travel expenses or if the performance venues were obligated to pay these expenses.

For example, Mr. Mayfield spent seven nights at the New York Ritz-Carlton and incurred \$28,023 in lodging and other expenses<sup>A</sup> from October 3-10, 2012. NOJO could not provide a performance contract or other documentation to support these expenses, which included a daily

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<sup>A</sup> A NOJO check and NOJO’s debit card were used to pay \$23,523.54 of the \$28,023.54 hotel invoice. A New Orleans Public Library Foundation debit card was used to pay the remaining \$4,500. Due to this, only \$23,523.54 of the \$28,023.54 is included in the \$144,776 of lodging expenses paid by NOJO for Mr. Mayfield and his assistants.

room package for \$2,696.39 per night (\$18,874.73 for seven nights) and \$9,149 of incidental expenses. The incidental expenses included \$3,594 for ground transportation; \$3,080 for restaurant and room service charges; \$809 for spa services; \$530 for laundry services; \$447 for long distance charges; and \$689 for other miscellaneous incidentals. The lodging expenses incurred by Mr. Mayfield appear excessive when compared to the United States General Services Administration daily lodging per diem rate of \$295 and the daily rates incurred by other NOJO employees and band members. According to NOJO records, other employees and band members incurred lodging expenses at the Park Central Hotel and the Sheraton Hotel that ranged from \$266 to \$749 per night during the same week. Additional comparisons of the travel expenses incurred by Mr. Mayfield and NOJO employees and musicians are shown in the table below.

<b>Comparison of Lodging Expenses Incurred by Irvin Mayfield and NOJO Employees/Band Members</b>						
<b>Month &amp; Year of Lodging</b>	<b>Hotel Location</b>	<b>Irvin Mayfield's Hotel</b>	<b>Mayfield Pre-tax Daily Room Rate</b>	<b>NOJO Employees and Band Members' Hotel</b>	<b>NOJO Pre-tax Daily Room Rate</b>	<b>Daily Room Rate Difference</b>
3/2012	San Francisco, CA	The Ritz-Carlton	\$489	Hampton Inn	\$99	\$390
10/2012	New York, NY	The Ritz-Carlton	\$2,345	Sheraton Hotel	\$650	\$1,695
8/2013	Biloxi, MS	Beau Rivage Resort	\$262	Beau Rivage Resort	\$109	\$153
11/2014	Kansas City, MO	Westin Crown Center	\$329	Hotel Phillips	\$99	\$230
11/2014	Beverly Hills, CA	Four Seasons Hotel	\$1,020	Oxford Inn & Suites	\$76	\$944
11/2014	Beverly Hills, CA	Four Seasons Hotel	\$1,020	Hotel Beverly Terrace	\$189	\$831
2/2015	Miami Beach, FL	The Ritz-Carlton	\$799	The Albion	\$209	\$590
2/2015	Miami Beach, FL	The Ritz-Carlton	\$399	The Albion	\$249	\$150
2/2015	Sarasota, FL	The Ritz-Carlton	\$629	Hyatt Place	\$142	\$487
2/2015	Philadelphia, PA	The Ritz-Carlton	\$409	Doubletree Hotel	\$99	\$310
2/2015	Philadelphia, PA	The Ritz-Carlton	\$499	Doubletree Hotel	\$99	\$400
2/2015	Washington D.C.	The Ritz-Carlton	\$549	Bethesda Marriott Suites	\$169	\$380
2/2015	New York, NY	The Ritz-Carlton	\$645	Hudson Hotel	\$194	\$451
1/2016	New York, NY	The Ritz-Carlton	\$645	Park Central Hotel	\$105	\$540

According to Mr. Markham, NOJO paid Mr. Mayfield's lodging and transportation expenses when the performance venue did not. Mr. Markham stated that he attempted to keep Mr. Mayfield from incurring these travel and lodging expenses; however, he allowed Mr. Mayfield to incur the expenses because it was consistent with the type of travel accommodations Mr. Mayfield received when performance venues or other businesses paid the expenses. Mr. Markham said that he also allowed Mr. Mayfield to incur these travel expenditures because the board did not have any concerns regarding the cost of the travel.

Mr. Mayfield told us that he did not have a written employment contract with NOJO; that he was not a signor or authorized user on any of NOJO's bank accounts, debit, or credit cards; and that he was not involved in scheduling and booking his own transportation and lodging. Mr. Mayfield further stated that "NOJO would have been unable to book its performance venues

without using his name” and, as a result, he had an understanding with Mr. Markham and NOJO’s board that his travel and lodging arrangements were to “maintain the same standard of living” at which he was accustomed regardless of whether the costs were paid by the performance venue or NOJO. We spoke with seven members who served on NOJO’s board during this period of time, none of which said they had any knowledge of an understanding or agreement regarding Mr. Mayfield’s travel and lodging expenses. The board members also told us that they rarely received written financial reports and that, prior to May 2015, they had no knowledge of Mr. Mayfield’s travel expenses and never received a financial report detailing the costs of Mr. Mayfield’s travel. According to a NOJO board member, NOJO is seeking reimbursement of approximately \$3,500 of travel expenses from Mr. Mayfield.

Louisiana *Attorney General Opinion 03-0157* states, in part, that, “...providing exclusive or luxurious accommodations for attendance at a conference, when safe, reasonably priced accommodations could instead be provided, would be unreasonable....” The use of public funds to pay hotel rates that appear unreasonable may violate Article VII, Section 14 of the Louisiana Constitution, which provides, in part, that, “the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.” By using public funds to provide luxury lodging accommodations for Mr. Mayfield and his assistants, NOJO management may have violated the Louisiana Constitution<sup>3</sup> and state law.<sup>4,5</sup>

### Entertainment Expenses

From August 17, 2009 through February 19, 2016, NOJO incurred \$34,450 in expenses at Irvin Mayfield’s Jazz Playhouse at the Royal Sonesta New Orleans (Irvin Mayfield’s Jazz Playhouse). The majority of these expenditures were made by Mr. Markham using NOJO’s debit card. NOJO was able to provide itemized receipts for only four of these charges, totaling \$655. These receipts showed the purchases were primarily for alcoholic beverages, taxes, and gratuity. For example, NOJO’s former chief-of-staff was reimbursed \$280 for a purchase made at Irvin Mayfield’s Jazz Playhouse at 11:32 p.m. on Wednesday, September 16, 2015. According to the itemized receipt for this transaction, the purchase included \$210 for alcoholic beverages, a \$50 gratuity, and \$20 in taxes. Supporting documentation for the reimbursement listed “staff bar tab” as the expenditure’s purpose.

According to Mr. Markham, these expenditures were incurred almost weekly and were primarily made to purchase alcoholic beverages for NOJO employees who had worked long hours. Mr. Markham also told us that he did not begin maintaining copies of detailed receipts for the purchases made at Irvin Mayfield’s Jazz Playhouse until April 2016. According to *Attorney General Opinion No. 96-458*, expenses must be reasonable in nature and public funds should not be used to purchase alcoholic beverages. By using public funds to purchase alcoholic beverages, NOJO management may have violated the Louisiana Constitution<sup>3</sup> and state law.<sup>5</sup>

### Improper Use of Grant Funds

**From June 2009 to May 2010, NOJO received \$1,210,000 in grant funds from the City of New Orleans (City) to create a sculpture garden in Louis Armstrong Park. Although these funds were restricted to pay the artists creating the sculptures for the sculpture garden, NOJO appears to have used at least \$302,163 of the grant funds to pay operating expenses. In addition, it appears that NOJO improperly used \$175,503 of subsequent grant funds received from the City to pay the artists who created the sculpture garden. By improperly using grant funds for operating expenses and/or expenses associated with other grants, NOJO management may have violated its grant agreements with the City and state law.<sup>5,6</sup>**

#### Background

The Edward Wisner Donation (Wisner Donation) was created in 1914 from the estate of Edward Wisner for the City as a 100-year charitable trust to support local needs in the areas of beautification, education, recreation, or human services. The Wisner Donation is overseen by an advisory committee composed of five members, including the Mayor of the City of New Orleans, who is the trustee of the fund and also serves as the chairman of the advisory committee. Each of the following entities appoints one of the four remaining members of the advisory committee: (1) the administrators of the Tulane Educational Fund; (2) the board of administrators of the Charity Hospital; (3) the Salvation Army of America; and (4) jointly by the heirs, legatees, or assigns of the late Edward Wisner or a majority in interest thereof.

Nonprofits and public entities can request funding through the Wisner Donation by submitting a formal proposal to the City. Grantees are selected by the Mayor, approved by the advisory committee, and required to enter into a cooperative endeavor agreement with the City. The Mayor of New Orleans signs all checks payable to grant recipients, and the City distributes and monitors the use of the grant funds. At the end of the grant period, the recipient must provide the City with a report summarizing the use of the grant funds and an itemized expense report. From June 22, 2009 to May 10, 2010, NOJO received three Wisner Donation grants totaling \$1,460,000. These grants were awarded for multiple purposes, as shown in the table below.

<b>Edward Wisner Donation Grant Funds Received by The New Orleans Jazz Orchestra, Inc.</b>		
<b>Grant Award Date</b>	<b>Amount</b>	<b>Purpose</b>
June 1, 2009	\$1,210,000	To create a cultural sculpture garden in Louis Armstrong Park.
December 2, 2009	50,000	For a Spring/Summer 2010 local concert series, children's educational programming, redevelopment efforts of Armstrong Park and the Municipal Auditorium along with a Jazz Sculpture Garden, general operations expenses of NOJO including artist fees and administrative costs.
March 3, 2010	200,000	For the Roots of Music Cultural Garden; Seeking Satch Youth Jazz Music Competition; New Orleans Local Concert Series.
<b>Total</b>	<b>\$1,460,000</b>	<b>Total Wisner Funds Received by NOJO</b>

### Sculpture Garden Grant Funds Used for Operating Expenses

From June 1-18, 2009, NOJO and the City entered into cooperative endeavor agreements (CEAs) with five artists for each to create a separate sculpture for the “Roots of Music Cultural Garden” (sculpture garden). According to each CEA, NOJO was the official applicant for the Wisner Donation grant. In connection with the CEAs, NOJO was responsible for distributing \$1,210,000 to the artists between June 1, 2009 and May 30, 2010. According to the CEAs, the artists were required to assemble and install their sculptures in the sculpture garden on or before March 30, 2010. Records indicate that from June 22, 2009 to February 22, 2010, NOJO received three disbursements from the City totaling \$1,210,000 for the sculpture garden. These amounts were deposited into NOJO’s operating bank account as follows:

- (1) \$410,000 deposited on June 22, 2009;
  - (2) \$400,000 deposited on September 24, 2009; and
  - (3) \$400,000 deposited on February 22, 2010.
- \$1,210,000 Total Deposited**

According to Mr. Markham, NOJO was to hold the \$1,210,000 Wisner Donation grant funds as the fiscal agent and was to use the funds to pay the artists for their sculptures. However, records indicate that NOJO used \$302,163 of the Wisner grant funds to pay NOJO’s operating expenses, including payroll, travel, and entertainment expenses.

Although the CEAs required NOJO to make three payments to each artist for his or her sculpture between June 1, 2009 and May 30, 2010, we found that NOJO actually made the payments (totaling \$1,210,007) to the artists over a 35-month period from July 2009 to June 2012. We determined that if NOJO had not received and expended a portion of this Wisner Donation grant for its operating expenses, NOJO’s bank accounts would have had a combined negative balance at the end of the day on 947 of the 1,087 days (87%) between June 22, 2009 and June 12, 2012.

### **New Orleans Marching Brass Band Sculpture**



For example, NOJO's operating and payroll bank accounts<sup>B</sup> had a combined balance of \$1,666.53 at the close of business on Friday, February 19, 2010. Three days later, on Monday, February 22, 2010, a \$400,000 Wisner Donation check was deposited in NOJO's operating bank account. The first two bank transactions following this deposit were a \$99.96 debit card purchase at the Royal Sonesta Hotel on February 22, 2010, and a \$31,000 transfer to NOJO's payroll account on February 24, 2010. Based on these transactions and NOJO's bank account balances prior to the deposit of the Wisner Donation grant funds, it appears that NOJO would have been unable to fund its payroll for February 2010 without using the Wisner Donation grant funds. Following the deposit on February 22, 2010, NOJO paid its first payment to an artist on March 17, 2010, 25 days after depositing the \$400,000 Wisner Donation check. Bank records show that NOJO's bank accounts received no other deposits between February 22, 2010 and March 17, 2010, and that NOJO used \$52,129 of Wisner Donation grant funds to pay NOJO's operating expenses during this time.

### NOJO Used Subsequent Grant Funds to Pay Artists for the Sculpture Garden

From December 21, 2009 to May 5, 2010, NOJO received two more Wisner Donation grants from the City, totaling \$250,000, to put on local concerts. The first was a \$50,000 grant to be used to fund a "variety of the operational and programmatic elements of the New Orleans Jazz Orchestra, including a Spring/Summer 2010 local concert series," children's educational programming, NOJO's general operations, administrative expenses; and the redevelopment efforts of Armstrong Park, the Municipal Auditorium and the Jazz Sculpture Garden. The second was a \$200,000 grant to fund programs and educational efforts, including; "a partnership with the City of New Orleans and the Roots of Music Cultural Garden, Seeking Satch Youth Jazz Music Competition; New Orleans Local Concert Series featuring the Grammy award-winning NOJO Bigband; NOJO/University of New Orleans free Saturday Music Conservatory for children ages 8-17."

### **Charles "Buddy" Bolden Sculpture**



According to bank records, NOJO deposited all grant funds into its operating bank account and commingled them with NOJO's private funds. We reconciled NOJO's bank accounts and found that NOJO used \$175,503 (70.2%) of the \$250,000 from these two grants to pay the sculpture garden artists for their sculptures. The remaining funds were used for operating expenses and to pay expenses related to a local performance. These funds were used as follows:

<sup>B</sup> According to Mr. Markham and NOJO's current President, Sarah Bell, NOJO had no other bank accounts that were used on a regular basis for operations during this period of time.



- NOJO's bank records show that \$16,496 of the \$50,000 grant funds were used to pay artists for the sculptures that were to be paid using the original \$1.21 million grant. The remaining grant funds (\$33,504) appear to have been used to pay \$28,564 in monthly payroll expenses; \$3,925 in contract labor; a \$975 expense at Morton's of New Orleans; and \$40 in administrative expenses.
- According to bank records, NOJO used \$159,007 of the \$200,000 grant to pay artists for their sculptures that were to be paid using the original \$1.21 million grant. The remaining grant funds (\$40,993) appear to have been used for travel, per diem, and contract labor expenses associated with a local NOJO performance.

Records indicate that Mr. Markham provided itemized expense reports summarizing NOJO's use of these grant funds to the City on July 7, 2015. Although bank records indicate that NOJO used \$175,503 of the grant funds to pay artists for their work on the sculpture garden, the reports that Mr. Markham provided to the City suggest that a majority of the funds were used for local concerts and tours, general and administrative expenses, accounting fees, and contract labor. A summary of the reports that Mr. Markham submitted to the City is provided in the table below.

<b>NOJO's Use of Wisner Donation Grant Funds Reported to the City</b>			
<b>Use of \$50,000 Wisner Donation Grant</b>		<b>Use of \$200,000 Wisner Donation Grant</b>	
Expense Type	Amount	Expense Type	Amount
Elysian Fields Commission	\$45,200.00	Local concerts and tours	\$118,589.96
Contract Labor	2,800.00	Educational programs	300.00
Master's Month	2,000.00	General and admin expenses	55,362.13
		Accounting fees	22,749.35
		Hotel/Lodging expenses	2,998.56
<b>Total</b>	<b>\$50,000.00</b>	<b>Total</b>	<b>\$200,000.00</b>

Due to NOJO's lack of detailed accounting, we could not determine the total amount of grant funds NOJO used for local concerts. However, based on our reconciliations of NOJO's bank accounts, we determined that NOJO used at least \$175,503 of the grant funds to pay artists for their work on the sculpture garden. As a result, it appears that NOJO improperly used grant funds to pay expenses incurred for a previous grant (sculpture garden) and provided the City with misleading information regarding the use of the funds.

#### Library Foundation Funds Used to Pay Artist for the Sculpture Garden

Because NOJO used portions of the \$1,210,000 Wisner Donation grant funds for operating expenses and portions of subsequent Wisner Donation grant funds to pay for operating expenses and the sculpture garden, NOJO obtained additional funding to complete the sculpture garden. NOJO bank records indicate that a portion of the funds used to complete the sculpture garden came from the New Orleans Public Library Foundation (Library Foundation). For example, on October 21, 2011, NOJO received a \$150,000 wire transfer from the Library Foundation that was deposited into NOJO's operating account. The Library Foundation is a

nonprofit corporation that was registered with the Louisiana Secretary of State on October 30, 1990; its primary purpose, at the time of the transfer, was to receive and expend private donations to purchase books and other materials for the City of New Orleans Library. At the time this transfer took place, Mr. Mayfield was the President of the Library Foundation Board of Directors. According to an email we reviewed, Mr. Mayfield requested the transfer for NOJO's "special collection/archive development." However, NOJO appears to have used these funds to pay operating expenses, including payroll and travel expenses. In addition, NOJO used \$23,000 of the Library Foundation funds to pay one of the sculpture artists. NOJO currently has a memorandum of understanding with the Library Foundation for the repayment of Library Foundation funds received by NOJO.

By misrepresenting the reason why NOJO requested funds from the Library Foundation and improperly using grant funds for operating expenses and/or expenses associated with other grants, NOJO management may have violated its grant agreements with the City and state law.<sup>5,6</sup>

### **NOJO Violated Its Cooperative Endeavor Agreement with the State and Appears to Have Improperly Used State, Local, and Donated Funds Provided for the Construction of the New Orleans Jazz Market**

**From May 16, 2014 to April 10, 2015, NOJO received \$1,110,000 from the State of Louisiana (state) to pay construction expenses for the New Orleans Jazz Market (Jazz Market). However, records show that NOJO improperly used \$885,603 (79.8%) of the \$1,110,000 for unauthorized expenses. In addition, NOJO received \$1,289,701 in local and donated funds for expenses related to the Jazz Market, which NOJO appears to have used for other purposes. By improperly using state, local, and donated funds for purposes other than Jazz Market expenses, NOJO may have violated its cooperative endeavor agreement with the state, the Louisiana Constitution,<sup>3</sup> and state law.<sup>5</sup>**

#### Background

In March 2014, NOJO began construction to redevelop and renovate the former Gators department store located at 1436 Oretha C. Haley Boulevard, New Orleans, LA (1436 Oretha C. Haley Blvd.), into the Jazz Market. Construction of the Jazz Market was substantially completed on December 3, 2014, with construction and development costs totaling \$8,957,757. To fund the construction of the Jazz Market, NOJO used \$139,078 of its own funds as a down payment for the purchase of the property and obtained loans totaling \$10,267,386 to finance the purchase, planning, development, and construction of the Jazz Market.

To facilitate the financing of the Jazz Market, NOJO utilized certain New Market Tax Credits<sup>7</sup> (tax credits) to help secure the following loans to finance the Jazz Market construction:

- |     |   |
|-----|---|
| (1) | \$7,419,886 from Goldman Sachs Bank USA (Goldman Sachs),    |
| (2) | 2,047,500 from outside investors, and                       |
| (3) | <u>800,000 from the New Orleans Redevelopment Authority</u> |
|     | <b>\$10,267,386 Total Loan Proceeds</b>                     |

### Before and After Construction Pictures of the New Orleans Jazz Market

Before



After



In addition to securing these three loans totaling \$10,267,386, NOJO received \$1,875,282 in Musical and Theatrical Production tax credits<sup>8</sup> and \$1,856,163 in Qualified Rehabilitation of Historic Structure tax credits.<sup>9, C</sup> NOJO also received \$1,110,000 in state capital outlay funds that were appropriated to NOJO by the Louisiana Legislature to pay for costs associated with the planning and construction of the Jazz Market.

#### Possible Violation of Cooperative Endeavor Agreement with the State

NOJO entered into a cooperative endeavor agreement with the state on December 18, 2013, in order to receive \$1,110,000 of state capital outlay funds for the Jazz Market. According to the cooperative endeavor agreement, NOJO was required to own 1436 Oretha C. Haley Blvd. outright or acquire title to 1436 Oretha C. Haley Blvd. The cooperative endeavor agreement also prohibited NOJO from assigning an interest in the Jazz Market to a third party and prohibited NOJO from utilizing tax credits to finance the Jazz Market construction.

During the course of our audit we discovered that NOJO did not own 1436 Oretha C. Haley Blvd. outright prior to and following the execution of the cooperative endeavor agreement with the state. According to property records from the Clerk of Civil District Court for the Parish of Orleans, NOJO used \$139,078 (consisting primarily of proceeds from its BP Settlement) as a down payment to purchase 1436 Oretha C. Haley Blvd. for \$621,078<sup>D</sup> on September 12, 2013. NOJO financed the remaining amount of the purchase (\$480,000) with a mortgage and, therefore, did not own the property outright.

A review of the Jazz Market construction financing documents revealed that NOJO's construction loan agreement with Goldman Sachs, dated December 24, 2013, assigned an interest in the Jazz Market to Goldman Sachs (a third party) by providing Goldman Sachs with "a mortgage lien, collateral assignment, and continuing security interest in and to the mortgaged

<sup>C</sup> As part of its financing agreement, NOJO sold the \$1,856,163 of Qualified Rehabilitation of Historic Structure tax credits for \$1,596,300.

<sup>D</sup> The purchase price includes the property purchase price, settlement charges, the payoff of a lien placed on the property, City/town taxes, and the receipt of a rent refund.

property.” In addition, according to a resolution adopted by NOJO’s board of directors on December 24, 2013, NOJO’s board consented that the financing of the Jazz Market construction loan was to be eligible for federal new market tax credits, historic tax credits, theatre infrastructure tax credits, and theatre infrastructure payroll tax credits. The consent also acknowledged that these tax credits were to be sold to a third-party purchaser or claimed as “a refund for such state tax credits from the state.”

By not owning the Jazz Market property outright, assigning an interest in the property to a third party, and utilizing tax credits to fund construction of the Jazz Market, NOJO appears to have violated its cooperative endeavor agreement with the state.

### Improper Use of Capital Outlay Funds

From May 16, 2014 to April 10, 2015, NOJO received \$1,110,000 in capital outlay funds from the state. The state capital outlay budget is administered by the State of Louisiana’s Office of Facility Planning and Control (FP&C), which also oversaw the cooperative endeavor agreement with NOJO.<sup>10</sup> According to Mark Gates, Assistant Director of FP&C and the original FP&C project manager for the Jazz Market, in order for the Jazz Market’s redevelopment to qualify for capital outlay funding and comply with state law and FP&C policies, NOJO was required to apply the entire \$1,110,000 of capital outlay funds to the principal of NOJO’s construction loan. In addition to being a requirement of the cooperative endeavor agreement, NOJO’s loan agreement with Goldman Sachs required NOJO to apply the capital outlay funding received by NOJO to the principal balance of NOJO’s construction loan.

During our audit, we found that NOJO only applied \$224,397 of the capital outlay funds to the principal balance of NOJO’s Jazz Market construction loan. In addition, NOJO appears to have improperly used the remaining \$885,603 of capital outlay funds to pay for operating expenses and for Jazz Market expenses that were not authorized by the cooperative endeavor agreement with the state. NOJO’s improper use of capital outlay funds may have violated the Louisiana Constitution<sup>3</sup> and state law.<sup>5</sup>

### *Capital Outlay Funds Used for Operating Expenses*

NOJO’s cooperative endeavor agreement with the state restricted the use of capital outlay funds for operating expenses by specifying that “allowable costs shall not include the operating expenses of the entity.” Our reconciliation of NOJO bank records indicates that NOJO used \$604,809 of capital outlay funds to pay for operating expenses. Further, our analysis revealed that between July 3, 2014 and August 11, 2016, NOJO would not have had sufficient funds to pay for items such as payroll, administrative costs, and travel expenses without using capital outlay funds to pay for these expenses.

For example, the combined balance of NOJO’s unrestricted bank accounts (operating and payroll accounts) at the close of business on October 28, 2014, was \$10,743. On October 29, 2014, a \$100,710 state capital outlay check was deposited in NOJO’s operating bank account. On October 31, 2014, NOJO transferred \$40,000 to its payroll account and paid a \$7,756 Ritz-Carlton Hotel bill on November 12, 2014. Based on these transactions and the combined balance

of NOJO's unrestricted bank accounts prior to the deposit of the capital outlay funds, it appears that NOJO would have been unable to make this transfer to its payroll account or to pay this hotel bill without using capital outlay funds for these expenses.

By using capital outlay funds to pay for operating expenses, NOJO failed to pay the balance of its construction loan in accordance to the terms of its cooperative endeavor agreement with the state and its loan agreement with Goldman Sachs. As a result, NOJO may have violated the Louisiana Constitution<sup>3</sup> and state law.<sup>5</sup>

#### *Capital Outlay Funds Used for Unauthorized Jazz Market Expenses*

NOJO's cooperative endeavor agreement with the state required NOJO to have FP&C review and approve all Jazz Market construction plans prior to receiving capital outlay funds. Our reconciliation of NOJO's bank records revealed that NOJO used \$280,794 of the capital outlay funds for Jazz Market expenses that were not authorized by the cooperative endeavor agreement or approved by the state. Records indicate that NOJO used the \$280,794 of capital outlay funds to pay for the following expenses:

(1)	Digital Jazz Archive	\$98,398
(2)	Audio and Video Systems Upgrade	76,478
(3)	Lighting and Signage	39,819
(4)	Architectural and Project Administration Services	36,128
(5)	Furniture	16,696
(6)	Miscellaneous and Reoccurring Expenses	7,000
(7)	Instruments	5,000
(8)	<u>Books for NOJO's Book Exchange Program</u>	<u>1,275</u>
	<b>Total</b>	<b>\$280,794</b>

By using capital outlay funds to pay for Jazz Market expenses that were not authorized by the state, NOJO failed to pay the balance of its construction loan in accordance to the terms of its cooperative endeavor agreement with the state and its loan agreement with Goldman Sachs. As a result, NOJO may have violated the Louisiana Constitution<sup>3</sup> and state law.<sup>5</sup>

#### *NOJO Defaulted on Jazz Market Construction Loan*

On January 19, 2017, Goldman Sachs issued a letter to NOJO indicating that NOJO failed to deliver \$551,228 of tax credits to Goldman Sachs that NOJO received from the state for the Jazz Market. According to Goldman Sachs' letter, NOJO's failure to deliver the tax credits "constitutes an Event of Default." However, according to a NOJO board member and representatives of Goldman Sachs, both parties currently have an unwritten agreement allowing NOJO to make interest-only payments on its loan until NOJO becomes more financially stable.

### Donated Funds Were Not Used for Expenses Related to the Jazz Market

From August 23, 2011 to November 18, 2013, NOJO received \$1,159,325 from the Library Foundation and \$122,000 from the Youth Rescue Initiative, Inc. (Youth Rescue Initiative). The Youth Rescue Initiative is a nonprofit corporation that was registered with the Louisiana Secretary of State on May 16, 2008. The Youth Rescue Initiative was organized for charitable, religious, educational, or scientific purposes. According to email correspondence, NOJO documentation and statements made by Mr. Markham, NOJO received these funds to create a book exchange, purchase and install a digital jazz archive within the Jazz Market (see pictures below), and pay for Jazz Market construction expenses.

A reconciliation of NOJO's bank records found that NOJO does not appear to have expended any of the \$1,281,325 from the Library Foundation and the Youth Rescue Initiative to create a book exchange, purchase and install the digital jazz archive, or pay for Jazz Market construction expenses. NOJO appears to have spent the Library Foundation and Youth Rescue Initiative funds on operating expenses, including payroll expenses, contract labor, travel expenses, and the reimbursement of personal loans made to NOJO by Mr. Markham and Mr. Mayfield. For example, at the close of business on Wednesday, October 31, 2012, NOJO's bank accounts had a combined balance of -\$436.39. On Thursday, November 1, 2012, NOJO received a \$100,000 wire transfer from the Library Foundation that it deposited into its operating bank account. Following this deposit, a \$45,000 transfer was made to NOJO's payroll bank account. According to our analysis, NOJO would have been unable to pay its October 2012 payroll without receiving the \$100,000 wire transfer from the Library Foundation.

In a second example, Mr. Mayfield initiated a \$100,000 wire transfer from the Library Foundation to the Youth Rescue Initiative on November 20, 2012. According to the Youth Rescue Initiative's articles of incorporation, Mr. Mayfield was a member of the Youth Rescue Initiative's board of directors at the time that this transfer took place. On December 5, 2012, NOJO received and deposited a \$77,000 cashier's check from Youth Rescue Initiative. Following the deposit, NOJO issued a \$66,000 check to Mr. Mayfield for a "partial loan payback" on December 14, 2012. Mr. Markham stated that he never saw the \$77,000 check from Youth Rescue Initiative because Mr. Mayfield deposited the check into NOJO's operating bank account. Mr. Markham further stated that because Mr. Mayfield made the deposit, he originally believed that the \$77,000 deposit was a personal loan from Mr. Mayfield

#### **NOJO Digital Jazz Archive**



#### **NOJO Book Exchange**



because the balance of NOJO's bank account was -\$35,003.58 prior to the deposit. Mr. Markham said that approximately one year later, he discovered that Mr. Mayfield did not loan NOJO the funds for which Mr. Mayfield received the \$66,000 reimbursement check.

When asked how the expenditure of any of these funds was related to the Jazz Market or digital jazz archive, Mr. Markham said that the Library Foundation and Youth Rescue Initiative funds paid for expenses to create content for the digital jazz archive. According to Mr. Markham, these expenses included paying for recordings, musician performances, and music copyrights. Mr. Markham further stated that, "in the organization's mind" he allocated the Library Foundation and Youth Rescue Initiative funds for these purposes, but after reviewing schedules of NOJO's bank records with auditors, Mr. Markham confirmed that a portion of the Library Foundation and Youth Rescue Initiative funds were used to pay for NOJO expenses, such as payroll, operating, and travel expenses. In addition, we spoke with multiple NOJO board members who all stated that the board was not aware of the receipt or use of Library Foundation and Youth Rescue Initiative funds by NOJO until after news stories regarding the use of these funds were published in May 2015.

#### Improper Use of New Orleans Redevelopment Authority Loan Proceeds

As part of the construction financing for the Jazz Market, NOJO obtained an \$800,000 loan from the New Orleans Redevelopment Authority (NORA). According to NORA records, NOJO received the proceeds of this loan after NOJO provided NORA with reimbursement requests documenting Jazz Market construction expenses incurred by NOJO. NOJO's loan agreements with Goldman Sachs and NORA required the entire \$800,000 of NORA loan proceeds be applied to the principal balance of NOJO's construction loan. However, our reconciliation of NOJO's bank accounts revealed that NOJO deposited \$8,376 of the NORA funds into NOJO's operating bank account and used the loan proceeds for operating expenses. As a result, NOJO does not appear to have applied all NORA loan proceeds to the principal balance of the Jazz Market construction loan and may have violated its loan agreements with Goldman Sachs and NORA.

### **Recommendations**

We recommend that NOJO management:

- (1) Implement written policies and procedures to ensure that management and staff comply with the Louisiana Constitution and state laws regarding the use of public funds;
- (2) Strengthen current policies and procedures regarding employee travel and entertainment expenditures;
- (3) Develop written policies and procedures requiring detailed accounting of all revenues and expenditures;

- (4) Review all prior travel expenditures and seek reimbursement for any expenditures that are determined to be improper;
- (5) Develop written policies and procedures for the proper use of debit and credit cards;
- (6) Require and maintain documentation of all expenditures and their business purpose;
- (7) Require timely submission and retention of original credit/debit card receipts;
- (8) Require review of monthly bank statements for reasonableness and compliance with NOJO policies. Any exceptions or noncompliance issues should be immediately investigated and resolved;
- (9) Inform the board of NOJO's financial status and operations on a regular basis;
- (10) Develop policies and procedures to ensure that contractual requirements are properly followed and enforced; and
- (11) Seek legal advice regarding the repayment of funds received from the Wisner Donation, state capital outlay, Library Foundation, and the Youth Rescue Initiative.



## LEGAL PROVISIONS

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<sup>1</sup> **Louisiana Revised Statute (La. R.S.) 24:513 (A)(1)(b)(iv)** defines quasi-public agency as “any not-for-profit organization that receives or expends any local or state assistance in any fiscal year.”

<sup>2</sup> **La. R.S. 24:513(A)(3)** states, in part, that, “The financial statements of the offices of the independently-elected public local officials, including judges, sheriffs, clerks of court, assessors, and district attorneys, all parish governing authorities, all political subdivisions created by parish governing authorities or by law, and all districts, boards, and commissions created by parish governing authorities either independently or in conjunction with other units of government, school boards, district public defender offices, municipalities, all political subdivisions created by municipal governing authorities, and all boards and commissions created by municipalities, either independently or in conjunction with other units of government, city courts, quasi-public agencies, housing authorities, mortgage authorities, or other political subdivisions of the state not included within the state’s Comprehensive Annual Financial Reports, hereinafter collectively referred to as ‘local auditee,’ shall be audited or reviewed by licensed certified public accountants subject to Paragraphs (5) and (6) of this Subsection, but may be audited by the legislative auditor pursuant to Paragraph (4) of this Subsection.”

**La. R.S. 24:513(J)(1)(d)** states, “The provisions of Subparagraph (1)(c) of this Subsection shall apply to the state or local assistance received and/or expended by a quasi-public agency or body when such funds are not commingled with other funds of the quasi-public agency or body. However, if the state or local assistance received and/or expended by a quasi-public agency or body is commingled with other funds of the quasi-public agency or body then such state or local assistance and other funds of the quasi-public agency or body shall be audited pursuant to Subparagraph (1)(c) of this Subsection.”

<sup>3</sup> **Louisiana Constitution Article VII, Section 14(A)** states, in part, “Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”

<sup>4</sup> **La. R.S. 14:67 (A)** states, “Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.”

<sup>5</sup> **La. R.S. 42:1461(B)** states, “When, pursuant to a statute, ordinance, resolution, or contract or other agreement, a public entity, as defined in Subsection A, entrusts to a contractor or to a quasi-public entity of any kind the care, administration, allocation, or disposition of funds, property, or other things of value belonging to it or under its custody or control, the contractor or the quasi-public entity, and the officers and employees thereof personally, shall be deemed to have undertaken the obligation of a fiduciary with respect to such funds, property, or other things of value of the public entity.”

<sup>6</sup> **La. R.S. 14:133(A)** provides, “Filing false public records is the filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation, or rule, with knowledge of its falsity, of any of the following: (1) Any forged document. (2) Any wrongfully altered document. (3) Any document containing a false statement or false representation of a material fact.”

<sup>7</sup> **26 United States Revenue Code § 45D** permits individual and corporate taxpayers to receive a credit against federal income taxes for making Qualified Equity Investments (QEIs) in qualified community development entities (CDEs). These investments are expected to result in the creation of jobs and material improvement in the lives of residents of low-income communities.

<sup>8</sup> **La. R.S. 47:6034(A)** states, in part, “Purpose. It is the intention of the legislature in creating these different types of tax credits: a credit for qualified production expenditures made from investments in a state-certified musical or

theatrical production; a credit for the construction, repair, or renovation of facilities related to such productions and performances....”

<sup>9</sup> **La. R.S. 47:6019(A)(1)(a)** states, “There shall be a credit against income and corporation franchise tax for the amount of eligible costs and expenses incurred during the rehabilitation of a historic structure located in a downtown development or a cultural district. The amount of the credit shall equal twenty-five percent of the eligible costs and expenses of the rehabilitation incurred prior to January 1, 2018, regardless of the year in which the property is placed in service. The amount of the credit shall equal twenty percent of the eligible costs and expenses of the rehabilitation incurred on or after January 1, 2018, and before January 1, 2022, regardless of the year in which the property is placed in service. No credit is authorized pursuant to this Section for expenses incurred on or after January 1, 2022.”

<sup>10</sup> **La. R.S. 39:2(9)** states “‘Capital outlays’ means expenditures for acquiring lands, buildings, equipment, or other permanent properties, or for their preservation or development or permanent improvement.”

## APPENDIX A

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### Management's Response



## **THE NEW ORLEANS JAZZ ORCHESTRA AUDIT RESPONSE**

Most of the NOJO financial transactions referenced in the Louisiana State Auditors report predate May 2015 when these matters surfaced in news reports, and a large portion of the transactions relate to the time period 2008 to 2010 – over 8 years ago. As these matters came to light, NOJO Board and its Compliance Committee took a number of steps to remedy the problems later outlined by this audit.

After May 2015, the New Orleans Jazz Orchestra chartered a Compensation Committee of the Board for implementation of measures for determining salary compensation; and monitoring travel expenses and a Finance Committee to oversee the finances with outside CPAs now handling the day to day records and expenses of NOJO.

Most importantly, the NOJO Board implemented requirements that future state or public funds be kept in separate accounts, not be co-mingled with other private donations and that such funds will only be used for the state purpose.

While state funding is only 25% to 30% of the total donations made to NOJO, the State Auditor scrutinized all NOJO travel expenses based upon the fact that NOJO co-mingled the funds. This co-mingling should not re-occur in the future due to new requirements to keep such funding separate.

### **I. WHILE STATE FUNDS WERE NOT IMMEDIATELY USED FOR DESIGNATED PROJECTS, THE PROJECTS WERE ULTIMATELY COMPLETED AS INTENDED WITH LATER FUNDING**

### **II. NEW TRAVEL AND ENTERTAINMENT GUIDELINES IN PLACE**

After a great deal of effort, NOJO published its formal “Travel Policies and Principles” in August 2015. For example: NOJO Personnel are required to advance book airline travel through preferred travel agencies; to utilize economy class, to select hotels based on business needs and to choose the lowest available price.

### **III. RECOMMENDATIONS OF THE AUDITOR ARE NOW IN PLACE**

The Louisiana Auditor recommended implementation of written policies and procedures to oversee management and staff, strengthening of certain policies and procedures with regard to employee travel and entertainment. Since the disclosures of May 2015, the NOJO, through its Compliance Committee Board has diligently worked to comply with all Louisiana Constitution and State Laws, and has already implemented most of the recommendations of the audit report. In the event of any future funding, the Board will segregate state public from other private donated funds.

**The NOJO Board looks forward to its continuing operation and fundraising in an effort to implement the purposes of the New Orleans Jazz Orchestra Charter, and to preserve New Orleans Jazz Heritage, making its new Jazz facility and other jazz projects available to all the residents of the City of New Orleans.**



## APPENDIX B

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### Additional Responses





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September 4, 2018

Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
P.O. Box 94397  
Baton Rouge, Louisiana 70804-9397

Re: Audit of the New Orleans Jazz Orchestra

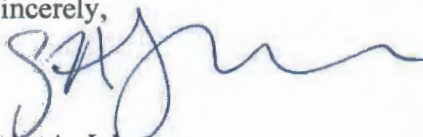
Dear Mr. Purpera,

I have received your draft investigative audit report on the New Orleans Jazz Orchestra. As your investigator, Brent McDougall, noted, my client, Ronald Markham, cooperated extensively with the investigation.

The draft report contains misleading conclusions that rest on assumptions rather than facts. It discusses several documents that we do not have. We requested and obtained a subpoena for the LLA's work papers and interviews. The LLA has given a copy of all of these materials to the United States Attorney's Office, who has not produced them to us, despite having some of these materials for several months, and in some cases, two years. The LLA relies on the fact that it has already produced these materials to the USAO as a ground to resist compliance with the subpoena, together with the LLA's stated policy that it "moves to quash all non-law enforcement subpoenas as a matter of course."

The LLA has worked in concert with the USAO to deny Mr. Markham access to the documents to which he is entitled until after the report is released publicly. Absent those documents, Mr. Markham is not able to provide the LLA with a substantive response.

Sincerely,



Sara A. Johnson  
Counsel for Ronald Markham

**FEDERAL PUBLIC DEFENDER  
EASTERN DISTRICT OF LOUISIANA**  
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HALE BOGGS FEDERAL BUILDING  
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September 5, 2018

Mr. Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
P.O. Box 94397  
Baton Rouge, Louisiana 70804-9397

Re: Audit of the New Orleans Jazz Orchestra

Dear Mr. Purpera:

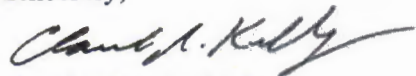
Thank you for providing the draft legislative audit report on the New Orleans Jazz Orchestra and inviting us to respond on behalf of Irvin Mayfield.

Many of the assertions in your report are misleading, and your conclusions rest on assumptions for which you provide no factual support or documentation. Unfortunately, however, we are unable to provide a full response to the draft, because a complete response would require us to review the supporting documentation that you used to arrive at your conclusions. Thus far, you have refused to provide that documentation and apparently intend to release this report publicly before doing so. We have been supportive of our co-defendant's attempts to secure this information from your agency through a federal subpoena and are extremely disappointed at your refusal to comply.

It is disillusioning that you have chosen to share this information with the Federal Government—including Federal Prosecutors—but not with the citizens that you publicly disparage. It is even more shocking that the policy of your office is to resist valid subpoenas issued by Federal District Courts on behalf of the citizens you target in your reports. We expect more professionalism and ethical behavior from our state government entities.

Accordingly, we are unable to respond to your accusations.

Sincerely,



CLAUDE J. KELLY  
Federal Public Defender