Ethics Reform in New Orleans: Progress—and Problems Ten Years Post-Katrina

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“You will know them by their fruits.”¹

Ten years ago, Katrina was the catalyst that precipitated historic changes in New Orleans city government, and in the storm’s aftermath, unprecedented ethics reforms strengthened the systems safeguarding public integrity.² Government does not instinctively install watchdogs to oversee its own activities, but Katrina unleashed a tsunami of reform. The press, public, and prosecutors collectively fueled post-Katrina ethics reform through civic sector engagement.³

Overwhelming public and political support⁴ empowered three new ethics entities. The Office of Inspector General (OIG) uses audits and investigations to fight fraud, waste, abuse, and corruption.⁵ The Office of Independent Police Monitor (OIPM) monitors the New Orleans Police Department (NOPD) to identify problems, analyze data, and suggest solutions.⁶ The Ethics Review Board (ERB) is responsible for enforcing the city ethics code and also plays a critical role in protecting independence among local ethics entities by conducting a national search and hiring a new inspector general.⁷ The OIG and OIPM function through oversight, highlighting poor performance and recommending improvements but without power to implement changes; only the ERB enjoys the power to punish misconduct.

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¹ Matthew 7:16 in the New King James version of The Bible suggests how to distinguish true prophets from false prophets—by their “fruits,” by focusing on their works rather than their words. A modern American idiom expresses the same concept: “Actions speak louder than words.”


³ See Marcello at 92 attributing “post-Katrina ethics reform to the synergy arising out of high-profile prosecutions, press coverage, civic activism, and the political upheaval caused by an environmental catastrophe.”

⁴ Home rule charter amendments were overwhelmingly approved by voters, and enabling ordinances were generally approved unanimously by the City Council and signed by the Mayor.

⁵ See New Orleans Home Rule Charter Sec. 9-401(2) and City Code Sec. 2-1120.

⁶ See New Orleans Home Rule Charter Sec. 9-401(2) and City Code Sec. 2-1121.

⁷ See New Orleans Home Rule Charter Sec. 9-402(1) and City Code Sec. 2-719(1) (“Ethics Review Board”) and City Code Sec. 2-1120(3)(a) (“Office of Inspector General”).
The environmental catastrophe that provoked ethics reform wrote a unique chapter in New Orleans’ history, but the city’s experiences with three new ethics entities during the post-Katrina decade (2005-2015) were not unique and can offer valuable lessons for other municipalities. For example, the OIG-OIPM relationship demonstrated that structural design flaws at the outset may later surface as operational problems; and the ERB illustrated that even well-designed systems can be well or poorly implemented. This article adopts an operational metric: How did the local ethics entities work in practice?

**Office of Inspector General**

The initial Inspector General (IG), Robert Cerasoli, addressed numerous start-up needs during 2007-2009—winning City Council budget support, finding office space and hiring staff, securing local and state legislative reforms, and building sufficient public support to win voter approval of home rule charter changes that assured permanent funding for the three ethics entities. Under its second IG, Ed Quatrevaux, the OIG demonstrated impressive productivity: 61 reports, 15 follow-up reports, 30 public letters, and an estimated savings of $57.9 million for city government.\(^8\) Collaboration with federal investigators yielded indictments and multiple high-profile convictions during 2010-2014.\(^9\) The OIG’s own investigations resulted in numerous city employees fired or suspended for misconduct.\(^10\) OIG findings in draft reports were sustained overwhelmingly in final reports,\(^11\) and no factual errors or material omissions were identified during the 2010-2014 reporting period.\(^12\) To produce such good outcomes, the OIG maintained a high level of excellence within its workforce.\(^13\)

Annual Quality Assurance Review Advisory Committee\(^14\) reports praised the OIG’s “extraordinarily productive” and “outstanding” record of “very effective and timely

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\(^10\) Id. OIG actions led to termination or suspension of 17 city employees in 2012; 9 in 2013; and 13 in 2014. During this entire three-year period, the OIG referred only three matters to the Judiciary Commission and 1 to the state board of ethics.
\(^11\) See OIG annual reports in which final reports sustained draft findings at rates of 100% in 2010; 92% in 2011: 94% in 2012; 97% in 2013; and 93% in 2014.
\(^12\) Id.
\(^13\) See OIG annual reports for percentages regarding professional staff with advanced degrees (68% in 2010; 82% in 2011; 88% in 2012; 87% in 2013; 89% in 2014); staff meeting continuing professional education requirements (95% in 2011 and 100% for each of the other four years); and audit/investigative staff with national certification (100% in 2010; 93% in 2011; 92% in 2012; 100% in 2013; 100% in 2014).
\(^14\) See city code sec. 2-1120(16)[a] regarding “External review of the office of inspector general.”
interventions.” The OIG’s work was “taken quite seriously”; four of the six entities reviewed showed “virtually complete compliance” with OIG recommendations. The advisory committee commended the OIG for being “data-driven in its approach,” which “furthers the objectivity” of its analysis. The committee also “appreciated the brevity” and “clarity” of OIG reports. Overall, the committee issued a “very favorable assessment” of the OIG’s work.

These excellent performance data, the dollars saved, the advisory committee’s glowing evaluation—all taken together do not adequately assess the OIG’s beneficial impact. Its other significant achievements during 2010-2015 included a national search and exemplary public process for selecting the independent police monitor; securing local and state legislative reforms that strengthened its investigative capabilities; and publishing two guides to foster legal compliance and good management among public entities administering city funds. OIG reports about the New Orleans Police Department (NOPD) in 2014 detonated shock waves of public concern and media coverage about gross inadequacies in sex-crime investigations and underreporting of rape and robbery.

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16 See 2012 QA Report at 1 and 21. The “beauty” in OIG recommendations often exists mainly “in the eye of the beholder”—a factor beyond OIG control. Data from the 2010 mayoral transition year are instructive: the outgoing Nagin administration accepted only 40% of the OIG’s recommendations, while the incoming Landrieu administration accepted 94% of its recommendations. See the OIG 2010 Annual Report at 7. In the four years thereafter, OIG Annual Reports indicated that recommendations were accepted at declining rates of 86% in 2011; 82% in 2012; 77% in 2013; and 72% in 2014, perhaps signifying steadily decreasing enthusiasm for OIG suggestions in the Landrieu administration.
19 See 2011 QA Report at 8.
21 See Ordinance No. 24,395 M.C.S. (May 4, 2011) codified as city code Sec. 2-1120(10)(n), assuring the OIG’s right to attend all city procurement meetings “including meetings involving third-party transactions”; (12)(e) requiring city personnel to provide information and documents upon written request from the OIG (“No subpoena is required”); and (20)(b) imposing a duty on “every city officer, employee, department, agency, board, commission, public benefit corporation, contractor, subcontractor, and licensee of the city to report to the Office of Inspector General any instance of fraud or abuse.”
22 Act 600 of 2010 exempted from disclosure under the Public Records Act confidential documents of local ethics entities, such as the OIG, ERB, or OIPM. Act 838 of 2012 strengthened OIG subpoena power and the privileged status of documents held by local ethics entities.
24 See “Inquiry into Documentation of Sex Crimes Investigation,” revealing that five detectives in the sex crimes unit submitted reports documenting their investigative work in only 14% of cases assigned to them. OIG 2014 Annual Report at 1.
25 See “Inspector General’s Message” in the OIG 2014 Annual Report at 1, regarding performance audits that found “over 40% of rapes and 37% of robberies were misclassified.”
Finally, the work of an active and well-regarded OIG in Orleans proved contagious in adjacent parishes. Jefferson voters embraced the concept, and St. Tammany’s home rule charter revision commission fielded calls for its implementation. Ed Quatrevaux counseled policymakers in both parishes from the start.

**Office of Independent Police Monitor**

The OIPM was established by ordinance in July 2008 and charged with analyzing data to detect patterns of misconduct among NOPD officers. The OIPM receives and refers civilian complaints, monitors how they are handled in NOPD internal investigations, and makes recommendations to the superintendent for improved management of complaints and investigations.

The OIPM’s Community-Police Mediation Program (one of the first in the South) allows police officers and community members to discuss their conflictual encounters directly with each other through voluntary, confidential mediation—an attractive alternative to lengthy investigations that sometimes yield inconclusive results, leaving residents dissatisfied and officers adversely impacted by unsubstantiated complaints that nonetheless limit their chances for advancement. By contrast, “a three-year study of police mediation programs in other U.S. cities revealed a 90-100 percent satisfaction rate from both civilian complainants and police officers after a mediation session.” The mediation program launched with a $100,000 start-up grant from the U.S. Department of Justice. The city’s 2015 budget allocated $695,259 for the

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26 St. Tammany ultimately went a different route: “In a split vote in February 2014, the task force recommended the enhanced system of audits rather than an IG office.” Robert Rhoden, “Tammany beefs up audit requirements; Coroner scandal propels reform,” in *The Times-Picayune* (April 17, 2015).
27 Richard Rainey, “Inspector general needs independence, New Orleans watchdog tells Jefferson Parish,” *The Times-Picayune* (June 24, 2010), noting Quatrevaux’s seminal advice to “Jefferson Parish officials today as they work to create a similar oversight plan in Louisiana’s most populous parish.” In ERB minutes of April 3, 2012, Ed Quatrevaux reported that “he would participate in an advisory capacity to Jefferson Parish in the search and selection process for its inspector general and will share best practices in the creation of the office of inspector general.” Quatrevaux later addressed the second meeting of a St. Tammany task force set up “to determine the feasibility of establishing an inspector general’s office.” See Robert Rhoden, “New Orleans Inspector General Ed Quatrevaux addresses Tammany’s IG task force,” *The Times-Picayune* (September 9, 2013).
28 Ordinance No. 23,146 M.C.S. (July 18, 2008).
29 See City Code Sec. 2-1121(3) regarding “Duties and Responsibilities.”
30 See City Code Sec. 2-1121(4-5, 8, and 10).
31 See City Code Sec. 2-1121(15) regarding “Mediation of civilian complaints.”
33 McCrory at 213 (emphasis added).
34 Its origins may be found in “the Police-Civilian Review Task Force in 2001, the Department of Justice’s Civil Rights Division in 2011, the New Orleans City Ordinance creating the OPIM, and the Memorandum of Understanding between the NOPD and the OIPM.” Id. at 213.
OIPM, which committed $133,366 from that amount for mediation, but program sustainability depends upon assured funding: The principal reason why such mediation programs fail in the U.S. is the lack of adequate public funding.\textsuperscript{35}

The police monitor and inspector general experienced tensions that were both personal and institutional.\textsuperscript{36} Little can be done about the former, except to ask civility of both parties and to hope for better relations between subsequent personnel.\textsuperscript{37} But the inadequately-planned structural relationship can be reformed. The OIPM was created as a division of the OIG with no authority to report independently and no funding to call its own. City council members oversaw OIG-OIPM negotiations during the first half of 2015 that could produce enduring charter reform, if the parties reach an acceptable compromise and voters approve a ballot proposition.\textsuperscript{38}

Ethics Review Board

The ERB’s most important function may be its power to appoint the inspector general,\textsuperscript{39} which it capably handled in 2007 and 2009.\textsuperscript{40} The original ERB members\textsuperscript{41} also signaled their intention to enforce the city ethics code by adopting ethics enforcement rules\textsuperscript{42} and authorizing

\textsuperscript{35} See McCrory at 213: “The number one reason around the country for the failure of these programs is the lack of public financing.”

\textsuperscript{36} See John Simerman, “Rift aired out between police monitor, inspector general: New Orleans watchdogs battle over who’s the boss,” in \textit{The Advocate} (January 12, 2014), characterizing their personal relationship as “chilled to a frosty silence” and reporting on inadequacies in the institutional design of their two offices that “may require the City Council to resolve ‘structural problems’ with the relationship.”

\textsuperscript{37} To date, the ERB’s only investigation of a discrimination complaint involved its two colleagues among the ethics entities. As relations continued to deteriorate during 2014, the ERB hired counsel to conduct an independent investigation of the monitor’s allegation that the inspector general created a hostile work environment. See July 7, 2014 ERB minutes. The ERB later accepted counsel’s conclusion “that the Inspector General has \textbf{not} created a hostile work environment.” See ERB minutes of December 8, 2014 (emphasis in original).

\textsuperscript{38} See Matt Sledge, “Watchdog agencies discuss ‘divorce’,” at 4A, \textit{The Advocate} (May 7, 2015), reporting that the OIG and OIPM were discussing “a proposal for a City Charter amendment to remove Hutson’s operation from Quatrevaux’s office.”

\textsuperscript{39} Section 2-1120(3) of the New Orleans City Code empowers the ERB to appoint the inspector general.

\textsuperscript{40} See Martha Carr, “Inspector General chosen for N.O.,” \textit{The Times-Picayune} (June 12, 2007), announcing selection of Robert Cerasoli as the city’s first inspector general; and Frank Donze, “New Orleans gets new inspector general,” \textit{The Times-Picayune} (September 3, 2009), announcing appointment of Ed Quatrevaux as the city’s second inspector general.

\textsuperscript{41} The original ERB members who served during the critical start-up years of 2007-2010 were Dean Winston Brown, Ms. Leah Chase, Dr. Beverly Favre, Prof. Kathryn Lorio, Ms. Elizabeth Nalty, Rev. Cornelius Tilton, and Fr. Kevin Wildes, S.J. See ERB minutes of January 26, 2007.

\textsuperscript{42} See ERB agenda item #4 (“Public hearing on Rules”) and minutes for April 29, 2008, amending and approving proposed ERB rules, soliciting public comments, and forwarding them to the City of New Orleans for promulgation, all in accordance with home rule charter sec. 4-107(3) requiring notice-and-comment rulemaking.
investigation of ethics complaints. But as its membership changed, the ERB lost focus on its legal responsibilities, and distressingly, it abandoned local ethics enforcement.

(1) The ERB abandoned local ethics enforcement because it lacked a good understanding of its legal authority.

The ERB was ill-served by a legal memorandum prepared for its March 2012 strategic planning retreat. The memo’s crabbed and miserly view of the ERB’s ethics enforcement authority led many members to conclude that the ERB possessed only “limited enforcement responsibilities in connection with the city’s ethics code.” In fact, however, constitutional home rule power provided ample authority for vigorous local ethics enforcement.

(a) The ERB was inadequately informed about home rule authority as a constitutional source of support for local ethics enforcement.

The memorandum that facilitated the ERB’s flawed legal understanding asked in bold type if the ERB had authority to impose fines under the state ethics code and concluded (again in bold type) that “the Louisiana Board of Ethics will not permit the ERB to enforce the Louisiana Code of Governmental Ethics so its provisions are unavailable” as authority for the ERB to impose fines. The memorandum thus boldly asked and answered the wrong question—whether the ERB could impose fines through power derived from the state board of ethics—while missing the importance of powerful provisions in the state constitution and New Orleans’ home rule charter.

The memorandum briefly noted home rule charter authority for the ERB to impose fines, but then focused fruitlessly on two outdated provisions of the city ethics code, asserting that “the only way in which the ERB could impose fines is through the State law incorporation

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43 See ERB agenda item #3 (“Complaint Procedure”) for August 25, 2009 meeting; ERB agenda item #2 (“Executive Session: Consideration of complaints deemed confidential pursuant to La. R.S. 33:9614”) (emphasis added) and minutes for November 3, 2009; and the less specific ERB agenda item #2 (“Executive Session: Consideration of matters deemed confidential pursuant to La. R.S. 42:6.1”) (emphasis added) and minutes for December 1, 2009.

44 See the January 12, 2012 memorandum by ERB General Counsel regarding “The New Orleans City Code of Ethics” (hereinafter, “Counsel’s memo”), posted with other documents and email exchanges referenced in this article at The Public Law Center’s website under “Ethics + 10 Documents Depository” (hereinafter, “Ethics Depository”): http://www.law.tulane.edu/tlscenters/PublicLawCenter/index.aspx

45 See the September 14, 2012 memorandum from the ERB Education working group, reporting on members’ conclusions at the ERB’s March 2012 strategic planning retreat.

46 See pages 4-5 of Counsel’s memo.

47 Counsel’s memo judged that city code sections 2-716 (Civil penalties) and 2-717 (Criminal penalties) were of no value to the ERB’s ethics enforcement program. But the memo need not simply have accepted as immutable these provisions that were unchanged since the city ethics code was adopted in 1956. The memo could have suggested an ordinance adding a schedule of fines and authorizing the ERB to impose them under the city’s home rule powers.
clauses” that were “unavailable” to the ERB. The memorandum never considered the generous legislative power that home rule cities enjoy under the state constitution. New Orleans received home rule authority before the 1974 constitution and therefore enjoys even greater constitutional protections. Its home rule charter explicitly directed that the City Council establish an ERB, empowering it to enforce the city ethics code by imposing fines. This constitutional backdrop of home rule power enabled the City Council to establish local ethics enforcement authority simply by passing an ordinance—a legal possibility never mentioned in the memorandum.

**(b) The ERB was inadequately informed about dual state-local jurisdiction for ethics enforcement.**

The ERB abandoned local ethics enforcement because it believed the state ethics board overwhelmed any meaningful opportunity for local enforcement. This understanding of the law was incorrect.

New Orleans’ home rule charter clearly contemplated dual state-local jurisdiction when it provided that the city code of ethics “shall incorporate by reference and adopt the provisions of the Louisiana Code of Governmental Ethics and shall provide for such other, more stringent provisions as the Council may deem appropriate.” The city ethics code also contemplated dual jurisdiction: “The city code of ethics . . . is intended to supplement the provisions of the state code of governmental ethics. In some matters, the city ethics code is intended to be more restrictive than the state code of governmental ethics.” In such cases its provisions may be enforced by local ethics bodies.

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48 See Counsel’s memo at pages 4-5 (emphasis added). The memorandum recommended relying on La. R.S. 33:9612.1, which authorizes local ethics ordinances to “regulate the same or similar activity as regulated by the provisions of the Code of Governmental Ethics.” But as a constitutionally-empowered home rule jurisdiction, the City of New Orleans may go well beyond this limited statutory authority in regulating ethical conduct at the local level of government, as long as it does not conflict with state law.

49 Article 6, Section 5 of the Louisiana Constitution of 1974 confers on home rule jurisdictions “the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.”

50 See Article 6, Sections 4 and 6 of the Louisiana Constitution of 1974.

51 Section 9-402 of the New Orleans home rule charter explicitly directs that the city council “shall by ordinance establish an Ethics Review Board and shall authorize it to enforce the provisions of the Code of Ethics,” including the power “to impose fines.”

52 A March 25, 2015 email response to the author’s public records request stated that “the original mission of adjudicating complaints was abandoned” by the ERB, citing “legal research and discussions with the state Ethics Board” as the reason for its decision. See Ethics Depository.

53 See New Orleans home rule charter sec. 9-402 (“Ethics”).

54 See city code sec. 2-774 (“City ethics code supplemental”), which clearly contemplates that if a local code is more restrictive, its provisions will be enforced; but correspondingly, “If any provisions of the state code of
Louisiana law has long recognized dual jurisdiction between state and local ethics boards: “We find no prohibition from the Parish having their own Code of Conduct and enforcing it. Accordingly, it is possible for the two to have equal but separate jurisdiction that is enforceable by the proper authorities independently of the other.”56 The state’s ethics administrator recently confirmed the following description of dual jurisdiction as an accurate statement of Louisiana law: “In summary, the New Orleans Ethics Review Board has authority to enforce provisions of the city code of ethics that are not addressed in the state code, that are more stringent than the state code, or that will not be considered by the state board.”57

Ethics enforcement is a limited resource, so a triage system is useful in prioritizing scarce resources. The home rule charter prioritizes enforcement by prohibiting the ERB “from hearing any alleged violation that constitutes a violation of the State Code of Governmental Ethics if the Ethics Review Board ascertains that the entity designated by the State to enforce said State Code has considered or is considering the alleged violation.”58 Note that deferral is required only for matters considered by the state ethics board, a narrower restriction than was understood by the ERB.59

Counsel’s memorandum analyzed 14 provisions in the city ethics code60 and concluded (sometimes grudgingly) that over half were immediately enforceable by the ERB.61 These ethics

55 Shared state and local jurisdiction is no anomaly: “In some cases, local governments can supplement state law, making requirements that are stricter than state law . . . .” Robert Wechsler, Local Government Ethics Programs: A Resource for Ethics Commission Members, Local Officials, Attorneys, Journalists, and Students, and a Manual for Ethics Reform at 71 (City Ethics, Inc.: Ed. 2.0, 2013) (hereinafter, “Wechsler”):
56 See Bodet v. Broussard, 407 So.2d 810, 812 (La. App. 4th Cir. 1981), where the Fourth Circuit Court of Appeal rejected an assertion that the state board of ethics had exclusive jurisdiction over ethics enforcement.
57 See email exchange of May 4, 2015 between the author and the ethics administrator for the state board of ethics, Kathleen Allen, who confirmed after reviewing a legal summary of local ethics jurisdiction that, “I have reviewed and do not see anything wrong with your analysis.” Copies of the email exchange and legal summary may be viewed at the Ethics Depository.
58 See city code sec. 2-774 (emphasis added).
59 The ERB believed that its local ethics enforcement authority was much more limited: “the ERB may only hear complaints of violations of the City’s code that are not violations of the state code.” See March 25, 2015 email reply to the author’s public records request (emphasis added) in the Ethics Depository.
60 See city code secs. 2-769 through 2-782.
61 See Counsel’s memo for comments on city ethics code sections 2-770 Nonpartisanship and nondiscrimination (“would appear to be enforceable”); 2-772 Freedom from reprisal and disclosure of improper acts (“enforceable by the ERB”); 2-773 Matters of public information (“enforceable by the ERB in the sense of imposing a sanction”); 2-777 Prohibited financial interests (“enforceable by the ERB”); 2-778 Leases, concessions restricted (“enforceable by the ERB”); 2-779 Borrowing from, interest in contractors (“enforceable by the ERB”); 2-781 Political activities ("suppose this section is otherwise enforceable by the ERB"); and 2-782 Recusal of board members (“may be enforceable by the ERB but is also clearly enforceable by the Louisiana Board of Ethics”). See Ethics Depository for the complete text of each section followed by pertinent excerpts from Counsel's memo.
provisions were not trivial pursuits: nonpartisanship and nondiscrimination, freedom from reprisal, public information, prohibited financial interests, political activities, recusal, conflict-of-interest restrictions on leases and concessions and on borrowing from contractors.

By declining to exercise its ethics enforcement powers, the ERB rendered inert these significant, locally enforceable provisions in the city code of ethics.

(2) The ERB performed poorly on its city code and home rule charter legal responsibilities.

New Orleans’ home rule charter confers upon the ERB—and no other—power to enforce the city code of ethics:

The City Council shall authorize the Ethics Review Board [i] to establish additional recommendations for the Code of Ethics, [ii] to issue advisory opinions, [iii] to promulgate rules regarding the interpretation and enforcement of the Code of Ethics, [iv] to refer cases for investigation on referral or complaint, [v] to retain counsel, and [vi] to impose fines.

Items i-vi are the muscle and sinew of ethics code enforcement. The ERB quickly dispensed with four of the six. Since unanimously adopting a 2011 mission statement that reiterated these powers, the ERB has issued no advisory opinions; imposed no fines; promulgated no rules to interpret or enforce the city code of ethics; and proposed no revisions to the city code of ethics. By relying on the fourth item listed (referral) to dismiss or refer all ethics complaints

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62 See city code sec. 2-770.
63 See city code sec. 2-772.
64 See city code sec. 2-773.
65 See city code sec. 2-777.
66 See city code sec. 2-781.
67 See city code sec. 2-782.
68 See city code sections 2-778 and 779.
69 See Sec. 9-402 of the home rule charter. Romanettes i-vi in italics inserted by the author.
70 Much of the ERB’s 2011 mission statement was drawn directly from Sec. 9-402 of the home rule charter: “The Ethics Review Board seeks to uphold and enforce high ethical standards and promote public confidence in the government of the City of New Orleans by overseeing a program of ethics education, issuing advisory opinions, promulgating rules regarding the interpretation and enforcement of the city’s Code of Ethics, proposing revisions to that code, referring cases for investigation on referral or complaint, and imposing fines.” See ERB minutes of April 5, 2011. In 2012, the ERB adopted a more general mission statement: “The Ethics Review Board seeks to uphold and enforce high ethical standards and promote the public’s confidence in the government of the City of New Orleans.” See Public Strategies Group, “Strategic Planning Meeting Summary” at 2. But the responsibilities listed in its 2011 mission statement mirrored home rule charter and city code requirements that all remained legally effective, even after approving the new generic mission statement.
71 In ERB minutes of March 1, 2011, the Chair “requested that Okyeame Haley serve as the point person or conduit on the ERB for updating the ethics laws for the City of New Orleans.” By the time Mr. Haley resigned from the ERB in December 2012, no updates had been recommended nor were any reported thereafter in ERB minutes.
elsewhere, the ERB made itself into a mild-mannered information-and-referral service: “The mission of the ERB today, aside from receiving OIG reports, is ethics training. The ERB will accept complaints of state ethics code violations but refers all of them.” The ERB declined to exercise these substantial legal powers and accomplished little of consequence on its charter-derived responsibilities.

(3) **The ERB neglected opportunities to strengthen ethics enforcement and expand its authority by failing to recommend any revisions to the city’s code of ethics.**

The city ethics code was adopted in 1956 and remained substantially unchanged by the time Katrina hit New Orleans. The home rule charter and city code both expressly invited the ERB to recommend revisions to the city ethics code. A sixty-year-old ethics code only modestly amended might seem like a strong reason to recommend improvements, but none were forthcoming—despite an acknowledged need within the ERB to strengthen outdated city ethics provisions.

The ERB knew of its authority to recommend ethics code revisions. The ERB was aware that its existing authority addressed important public policies, such as discrimination and public

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72 Of 47 complaints or requests for investigation received during 2009-2013, the ERB closed more than three-fifths as matters “outside the ERB’s jurisdiction or without merit or sufficient corroborating evidence” (29 = 61%); more than a third (16 = 34%) were referred elsewhere (3 to the state ethics board; 5 to the OIG; 7 to the OIPM; 1 to the Louisiana Disciplinary Board); and the remaining two (one pending since 2009) were unclear as to disposition. Confidentiality restrictions make complaints hard to track, but none resulted in enforcement proceedings or any public findings of “wrongdoing” or “no wrongdoing.” According to the ERB’s 2014 annual report at 11, “During 2014, the Ethics Review Board received eight complaints alleging ethical misconduct. Of the complaints received by the ERB, all were referred to other entities.” In one series of 2014 transactions, the ERB sent three matters to the state ethics board, which accepted jurisdiction in only one, declined enforcement action in another, and returned the third to the ERB because the state board lacked jurisdiction. When asked if the ERB had taken any further action on matters declined by the state board, the answer was “No.” See Ethics Depository for May 11, 2015 email exchanges. Thus, even when the state board declined jurisdiction, the ERB took no action.

73 See Ethics Depository for March 25, 2015 email response to the author’s public records request.

74 Wechsler observes at 67 that “some ethics programs and bodies are created pursuant to a charter provision. It is important to make sure that charter requirements are followed carefully. Too often, they are ignored.”

75 See art. VII (Ethics), division 3 (Code of Ethics), subdivision III (City Code of Ethics) of the city code, secs. 2-766 through 2-784, enacted pursuant to Code 1956, § 22B.

76 See home rule charter sec. 9-402(1): “The City Council shall authorize the Ethics Review Board to establish additional recommendations for the Code of Ethics . . . .”

77 See city code sec. 2-719(1): “Pursuant to section 9-402 of the Home Rule Charter, the ethics review board may establish additional recommendations for the code of ethics . . . .”

78 See M.C.S., Ord. No. 17,163 (6-20-96); M.C.S., Ord. No. 22,810 (9-6-07); and M.C.S., Ord. No. 20,966 (2-6-03), amending the 1956 city ethics code.

79 See ERB minutes of October 4, 2011 (emphasis added), where the Chair “referenced the recent changes in state statutes pertaining to functions of local ethics entities in Louisiana and intimated the need to strengthen the ethics provisions for New Orleans.”

80 Board members were briefed during the ERB’s second year of operations about their authority to recommend changes in the city’s ethics code: “The ERB should make additions to the City Ethics Code” (ERB minutes of August
information. The ERB was urged to seek expanded powers that would enable it to regulate contributions by professional services contractors or to prohibit false declarations by public employees. But no recommendations were forthcoming.

The ERB’s general counsel regarded a city ethics provision on leases and concessions as “very watered down,” but never suggested that the city council could strengthen it. Counsel doubted that the ERB could enforce recusal provisions against board and commission members because “the ERB does not have removal power.” Counsel might have advised the ERB to ask for removal power, but again, no recommendations were forthcoming.

(4) The ERB did not need to choose between ethics enforcement and ethics education.

At its March 2012 strategic planning retreat, the ERB embraced a needless dichotomy by deciding that “it should prioritize ethics training and enforcement.” This implication that the ERB could not possibly do both ethics training and ethics enforcement seems particularly ill-founded, given the unproductive ethics education program that unfolded over the next three years.

Administrative missteps surely contributed to the shortfall. The ERB solicited ethics education in a June 2014 RFP; cancelled it two months later in August; then promised a renewed RFP for October 2014, but that never happened. Instead, the ERB directed its executive director to implement ethics education “no later than January 31, 2015” and sternly

26, 2008) and “the ERB has the ability to make recommendations on the city’s code of ethics” (ERB minutes of October 26, 2008).

81 ERB minutes of August 26, 2008 reported that the ERB “may lend its weight to public records requests. A lack of response to public records requests is an ethical issue. The board may also begin responding to discrimination complaints.” Minutes of the October 28, 2008 meeting reiterated “examples of areas on which the board may wish to focus; discrimination and public records requests.”

82 See minutes of December 17, 2010, where the ERB took under advisement recommendations to restrict contributions from professional services contractors and to prohibit false declarations by city employees. The NOPD received widespread praise for its analogous “you lie, you die” policy penalizing false declarations by police officers. See Laura Maggi, “Lying will be a firing offense in New Orleans Police Department,” The Times-Picayune (August 23, 2010). But the ERB never thereafter brought up for discussion possible application of a similar principle to other city employees.

83 See Counsel’s memo at page 4.

84 See Counsel’s memo at page 4.

85 See Counsel’s memo at 6. Six months after the strategic planning retreat, a September 14, 2012 memorandum from the ERB Education Working Group recapitulated the same needless dichotomy as “Choice 1: Enforcement or education.”

86 Ethics enforcement and ethics training are among “the essential elements of a local government ethics program,” and both are presumptively part of “an independent ethics commission with teeth, which gives swift advisory opinions, which has a monopoly on interpreting and enforcing the code, which can give waivers for exceptions, and which provides training for all officials and employees, as well as for everyone who does business with the local government.” See Wechsler at 62 (emphasis added).

87 See ERB minutes of August 5, 2014.
warned that “Any delay would require board approval.” The executive director and general counsel both departed in December 2014. Consequently, the ERB still lacked an effective ethics education program during the first half of 2015.

ERB annual reports never recorded the number of city employees actually trained, but such records as do exist suggest that the numbers were very modest. The ERB’s ethics consultant made only two presentations to city personnel during a three-year contract. The incoming ERB Chair discouraged a mayoral executive order requiring ethics code training for all city personnel, even though the ERB repeatedly identified ethics education as a “high priority” and as its “primary mission and focus.” Occasional ERB training sessions for new city employees and ad-hoc continuing legal education for lawyers did not deliver on the commitment for comprehensive ethics education.

(5) The ERB did not invite transparency and public participation when it abandoned local ethics enforcement.

The ERB abandoned local ethics enforcement without inviting public input from area residents. The ERB’s only strategic planning retreat took place on a distant shore of Lake Picayune.

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88 See ERB minutes of September 2, 2014.
89 Richard A. Webster, “Director, counsel quit ethics board for N.O., Both stepping down at end of the year,” The Times-Picayune at B-4 (December 14, 2014). Signs of stress were evident a year earlier in minutes of the November 20, 2013 meeting, where the “general counsel expressed concerns about the chair’s management style for the past year . . . .” The executive director “reiterated the concerns raised and remarked that the chair had limited her interaction with the consultant and expressly forbidden any communication by the executive director with board members as regards the work of the consultant unless approved by him.”
90 The ERB sought “Ethics Training” services in RFP No. 7102-2 during March 2015 with a deadline for receipt of proposals by April 30 and a proposed award date of June 1, to be followed by several days of contract negotiation and an expected start date of July 1. The ERB proposed annual compensation of $50,000 for the training services.
91 When the City of New Orleans Bureau of Purchasing was asked “What type of ethics training (content, number of hours, number of people trained, approximately) has already been conducted in the last 2 years . . . .,” its July 11, 2014 response offered the following account of ERB training activities: “Periodically, the ERB makes brief presentations on governmental ethics as part of Employee Orientation coordinated through the Department of Civil Service; participation is varied . . . . The ERB has presented to staff of the city Council (approximately 45 minutes and 12-15 participants) and most recently to the board and staff of the City Planning Commission (9-10 participants; approximately 1 ¼ hours).” The consultant’s pilot training program “included the participation of approximately 30 participants.” See ADDENDUM NO.: TWO (2)(July 11, 2014) “Questions and Answers” at 2-3.
92 In “Questions and Answers” prepared by the City of New Orleans Bureau of Purchasing, Answer #4 (emphasis added) cited two consultant trainings, “The state and local ethics codes were not discussed as part of either presentations [sic].” ADDENDUM NO.: TWO (2) RE: RFP PROPOSAL NO.: 7101-01661 (July 11, 2014).
93 See ERB minutes of June 5, 2012: “Dr. Cowan expressed reservation about moving forward with an executive order with the mayor until the ERB has developed more concrete plans with respect to ethics education.”
94 ERB minutes of January 5, 2010.
95 ERB minutes of May 18, 2010.
Pontchartrain, a drive of 45 minutes or more away from most ERB constituents.96 Minutes of the retreat were vague and inconclusive; a half-page of text summarized the day-long meeting and nowhere mentioned possible abandonment of local ethics enforcement.97

Two points bear emphasis. First, the ERB’s decision to abandon local ethics enforcement was a policy choice, not legally compelled. The constitutional powers of home rule jurisdictions and an explicit invitation for the ERB to recommend revisions to the city ethics code provided ample opportunity for a vigorous ERB to pursue local ethics enforcement, but the ERB failed to do so. Second, by writing ethics enforcement out of its mission statement, the ERB unilaterally neutered the city ethics code. The home rule charter specifically empowers the ERB “to enforce the provisions of the Code of Ethics.”98 If the ERB declines to enforce the city ethics code, who fills the void? The charter confers authority for the ERB to enforce the city code of ethics, not to repeal it by refusing to enforce it.

This poorly-informed decision should be reopened and reconsidered with an eye toward reversing it. The ERB should play an active (not a moribund) role in local ethics enforcement.

(6) The ERB has repeatedly violated laws that impose “sunshine” safeguards on governmental actors.

Ethics bodies enforce the law against others. Credibility suffers when an ethics body violates the law, particularly when the violation involves “sunshine” laws.99 Ethics bodies are supposed to defend transparency in government, but the ERB has repeatedly violated Louisiana’s open meetings law.

The open meetings law requires that public bodies convening in executive session must first pass a motion and then preserve legally permissible reasons for private meetings in the

97 See minutes for the March 8, 2012 retreat posted on the ERB website. A lengthier “Strategic Planning Meeting Summary” by the Public Strategies Group noted at 5 the ERB’s agreement “in concept that it has some enforcement and adjudication options . . . for those who will not comply with . . . City and State codes of ethics” and further, that “where it is allowed, the ERB will undertake enforcement duties”; but no such enforcement actions ensued.
98 See New Orleans home rule charter section 9-402(1).
99 “Sunshine” in government usually encompasses the open meetings (La. R.S. 42:12, et seq.) and public records (La. R.S. 44:1, et seq.) laws that are statutory expressions of Louisiana’s Right to Direct Participation in La. Const. Art 12, Sec. 3: “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” Other laws also contribute to “sunshine” in government by promoting transparency and protecting the public’s right to know, such as the Local Government Budget Act (R.S. 39:1301, et seq.) and notice-and-comment rulemaking procedures under the Administrative Procedure Act (R.S. 49:950, et seq.).
minutes—both steps, legally required.\textsuperscript{100} Beginning in 2010, the ERB consistently\textsuperscript{101} violated the open meetings law by convening in executive session with perfunctory motions that stated no reason on the record.\textsuperscript{102} On one occasion, the ERB convened an executive session without considering a motion, specifying a reason, or recording a vote.\textsuperscript{103}

A second provision of the open meetings law requires advance notice of meetings with a descriptive agenda.\textsuperscript{104} ERB agendas that routinely announced “Executive Session: Consideration of matters deemed confidential pursuant to La. R.S. 42:6.1” were equivalent to “Go Fish,” citing all the legal reasons why public bodies may meet in private but giving no hint on the agenda or in minutes of the specific reason for an executive session. The first use of legally-noncompliant “in globo” terminology occurred on the December 1, 2009 agenda, and violations continued for more than a year-and-a-half thereafter.\textsuperscript{105}

The ERB violated a third open meetings requirement with agendas that announced executive sessions to discuss “prospective litigation” but failed to include a “statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made . . . .”\textsuperscript{106} Omitting this legally required information violated the open meetings law on its face.

\textsuperscript{100} La. R. S. 42:16 provides in pertinent part (emphasis added) that when a public body convenes in executive session, “The vote of each member on the question of holding such an executive session and reason for holding such an executive session shall be recorded and entered into the minutes of the meeting.” Full disclosure: The author served as the ERB’s pro bono counsel during its 2007-2009 start-up period; fulltime compensated general counsel took over attending the meetings in November 2009.

\textsuperscript{101} Minutes show the ERB was noncompliant with the open meetings law at 6 of its 7 total meetings in 2010; 7 out of 9 in 2011; 7 out of 9 in 2012; 5 out of 8 in 2013; and 5 out of 7 in 2014 (a total of 30 out of 40, or averaging three of every four meetings). Counsel was present at all meetings except for an absence on October 8, 2013 and on June 7, 2011, when represented at the meeting by the OIG’s General Counsel.

\textsuperscript{102} The ERB typically approved “a motion to enter into executive session” with no further explanation given. See, e.g., ERB minutes of January 5, 2010.

\textsuperscript{103} The ERB minutes for November 20, 2012 simply stated that “The board recessed into executive session at 3:25 p.m.”

\textsuperscript{104} La. R.S. 42:19 (“Notice of meetings”) requires that public bodies post a legally compliant agenda at least 24 hours before a meeting and requires more particularly in R.S. 42:19(A)(1)(b)(ii)(bb) (emphasis added) that “Each item on the agenda shall be listed separately and described with reasonable specificity.”

\textsuperscript{105} Not until the August 16, 2011 agenda did the ERB finally cite specific reasons for convening in executive session: to conduct interviews for the ERB Executive Director’s position and for “Consideration of complaints of alleged ethical misconduct” (emphasis added).

\textsuperscript{106} Three straight ERB agendas that announced executive sessions for “Discussion of prospective litigation” on May 21, June 23, and July 7, 2014, all ignored the open meetings requirement that there be “attached to the written public notice of the meeting . . . (bb) A statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made that is to be considered at the meeting.” See La. R.S. 42:19(A)(1)(b)(iii) (emphasis added). At the last meeting of the year, the December 8, 2014 agenda recited “Prospective litigation” as a reason for the executive session and again failed to supply the legally required information.
These serial violations of the open meetings law were more than an inconsequential technicality. They undermined the ability of the press and public to monitor the ERB or hold its members accountable when meeting behind closed doors.

The ERB failed to comply with another “sunshine” safeguard guaranteed by the home rule charter and city code. Notice-and-comment rulemaking promotes transparency and public participation by requiring that agencies publish proposed rules, afford the public an opportunity to comment on them, and then submit the rules for city council review and approval before final adoption. Rules that were revised and posted on the ERB website apparently never complied with these legally-compelled promulgation procedures.

(7) ERB control of its own budget may require members to file annual financial disclosure statements.

The ERB must reconcile budget control and financial disclosure requirements, two issues linked since the ERB first asked whether its members were required to file annual income disclosure statements: “The Louisiana Board of Ethics concluded that the ERB is not governed by the financial disclosure requirement due to the fact that the ERB does not have control of its own funds. If the board gains the ability to administer its own budget, the issue would need to be revisited.” The ERB did revisit the matter after charter amendments approved annual funding for the ERB in 2008, but the state board concluded members still did not need to file disclosure reports because the ERB still lacked authority to expend funds of $10,000 or more.

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107 See Greemon v. City of Bossier City, 65 So.3d 1263, 1267 (La. 2011), where the Louisiana Supreme Court quoted approvingly (emphasis added) from a lower court opinion by the Second Circuit Court of Appeal: “The express procedure required by the Open Meetings Law is not a ‘technical’ triviality, which may be ignored at the whim of a public body.” The Supreme Court reversed because the lawsuit was filed too late (after 17 months rather than within the 60-day peremptory time period), but the Court did “not condone the Civil Service Board’s apparent failure to formally vote” or to give reasons for deliberating in executive session. Id. at 1272.

108 Under Section 4-107(3) of New Orleans’ home rule charter and chapter 2, article XI in the city code, rules must first be noticed and published for public comment and must thereafter be approved by the city council.

109 The ERB’s enabling ordinance specifically directs at City Code Sec. 2-719(9) (emphasis added) that the “ethics review board, pursuant to section 4-107 of the Home Rule Charter, shall adopt rules and regulations governing the transaction of its business.”

110 A March 25, 2015 email reply to the author’s public records request informed that “the chairman is unaware of any rule promulgation.” See Ethics Depository.

111 ERB minutes for December 16, 2008. The Louisiana Board of Ethics subsequently rendered a formal opinion in response to a request from the City of New Orleans. See Docket No. 2008-675 (February 3, 2009).

112 Ethics Board Docket No. 2008-984a held that even after the Home Rule Charter was amended to assure funding for the ERB, its members were “not subject to the financial disclosure laws” because the ERB did “not have the authority to expend, disburse or invest $10,000 or more in funds” but “still must first seek approval from the Chief Administrative Officer before any expenditure may be made. The CAO holds final authority on the expenditure of any funds.”
The written record has since raised substantial questions about the continuing validity of those earlier opinions. Minutes during 2012–2014 show that the ERB allocated $15,000, $30,000, and $35,000 to ethics education, suggesting that the ERB is exercising authority to expend more than $10,000. A current OIG-ERB Memorandum of Understanding states that after funds are “appropriated and allocated each fiscal year between the ERB and OIG, each agency shall maintain control over said funds,” again suggesting the ERB has control over its own budget.

To protect its integrity and independence, the ERB must control its own spending. ERB members conduct the search and selection process for a new inspector general. Consider the damage to ERB independence if a CAO refused to provide funding for the legally-required national search. The ERB should also be enforcing the city ethics code against misconduct by city personnel—another task that could be hamstrung by a hostile CAO.

Financial control is vital to the independence and operational integrity of both the OIG and the ERB. Both should be treated equally with regard to budget independence, because both stand in the same relation to the ballot proposition that assured their annual funding. The ERB should resolve any doubts about its budget control in discussions with the CAO and city attorney. If doubts remain, clarifying language should be added to the proposed ballot proposition that will address structural relationships between the OIG and OIPM.

Changed circumstances appear to have removed the rationale for not filing annual income disclosure statements. Only one ERB member had a personal financial disclosure statement on file in January 2015. New members who faced their first filing deadline on May 15, 2015 were encouraged to seek up-to-date guidance from the Louisiana Board of Ethics, but the ERB declined after discussion to do so. Transparency is integral to governmental ethics.

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113 See ERB minutes of November 20, 2012.
114 See ERB minutes of October 8, 2013.
115 See ERB minutes of May 21, 2014.
116 The ERB should seek a legal assessment of its need to comply with the Louisiana Local Government Budget Act at La. R.S. 39:1301, et seq. The ERB appears to meet the definition of a “political subdivision” at R.S. 1302(1)(a): “all districts, boards, or commissions created by such parish governing authority either independently or in conjunction with other units of government.” If the ERB has not complied with the Local Government Budget Act in the past, it may need to do so in the future.
117 See 1(a)(iii) on page 2 of the “Supplemental and Amended Memorandum of Understanding,” dated December 12, 2012 between the ERB and OIG (emphasis added).
118 When asked whether “the ERB does control its own budget,” the ERB Chair responded with the assurance, “Yes, that is precisely the case.” See email exchange of May 13, 2015 in the Ethics Depository.
119 See “Search Personal Financial Disclosures by Name” [http://ethics.la.gov/PFDisclosure/SearchByName.aspx](http://ethics.la.gov/PFDisclosure/SearchByName.aspx), which lists Howard L. Rodgers, III.
120 The author first recommended in a May 5, 2015 email to the ERB chair that board members seek legal advice on whether they were subject to financial disclosure requirements; then sent two state ethics opinions to the ERB.
and financial disclosure is part of transparency. Ethics boards should set an example for others in government, showing by their actions that ethics rules are minimal requirements. ERB members should exhibit by their conduct the highest standards of ethics and transparency.\(^{121}\)

**\(8\) ERB membership does not currently satisfy diversity requirements.**

No women, no Hispanics, and no Asians served on the ERB in 2015,\(^{122}\) despite city code requirements that “boards and commissions should reflect the diversity of our population.”\(^{123}\) University leaders nominate and the mayor appoints ERB members, subject to approval by the City Council.\(^{124}\) Public officials must consider diversity when selecting new members and should begin redressing diversity imbalances with summer 2015 vacancies.\(^{125}\)

The ERB needs energetic new members not just to serve diversity, but also to propel a reinvigorated ERB into local ethics enforcement.

The ERB did not arrive at its current condition overnight. Its journey consisted of numerous incremental steps—sub silentio decisions that took place off the public’s radar screen and even to a considerable extent beneath the consciousness of ERB members. They never provoked a focused discussion about abandoning local ethics enforcement (neither among themselves, nor with the public) because multiple factors obscured their view of what was happening. The March 2012 strategic planning retreat was not the singular moment when

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\(^{121}\) On July 1, 2015, the Governor signed into law Act 450, which exempts members from annual income disclosure requirements if their board or commission cannot “expend, disburse, or invest more than fifty thousand dollars of funds in a fiscal year.” The ERB controls a budget in excess of $50,000 a year and therefore appears unaffected by the new law. But regardless, ERB members should be governed on income disclosure questions by their oft-stated commitment to fostering an ethical culture and not simply by a concern for rules-based compliance.

\(^{122}\) During the first quarter of 2015, the website at [http://nolaethics.org/main/inside.php?page=board_and_staff](http://nolaethics.org/main/inside.php?page=board_and_staff) listed Dr. Michael A. Cowan, Chair; Allen C. Miller, Vice-Chair; Dr. Joe M. Ricks, Jr., Secretary; James A. Brown; Howard L. Rodgers, III; and Rev. Dr. Donald Frampton. The ERB’s 2014 annual report (March 4, 2015) also listed Rev. Brandon Boutin as Dillard University’s recent appointee to fill the seventh board member opening; he was welcomed to his first ERB meeting in March 2015.

\(^{123}\) See city code sec. 2-86 (“Diversity in Composition”), stating strong public policies in favor of diversity on all of the city’s boards and commissions.

\(^{124}\) See city code sec. 1120.

\(^{125}\) See city code sec. 2-86: “It is the policy of the city that the mayor and all other appointing authorities and nominating organizations for boards, commissions, and other legal entities performing functions for or on behalf of the city should consider the demographic composition of the board or other entity in proposing or making appointments to the board or other entity to ensure that the board’s composition will be reflective of the city as a whole.”
the ERB withdrew from local ethics enforcement, but it did embed in members’ minds several misguided perceptions that explained why they turned away from local ethics enforcement.

Why did they do so? Because counsel’s January 2012 memorandum presented a dim, discouraging view of the ERB’s power to pursue local ethics enforcement; because the ERB uncritically accepted at its retreat the need to choose between ethics enforcement and ethics education; because the ERB acquiesced in a steady reduction of legal resources that were essential to properly understand and implement its local ethics enforcement authority; because of animus toward rules-based compliance among some ERB members—for all of these reasons, the ERB eschewed ethics enforcement. At any moment they could have reassessed their legal options and turned back toward enforcement; they can do so still.

The ERB’s wayward direction demonstrated how easily enforcement of the city ethics code could be subverted—not by design but by inattention. Its decision to abandon local ethics enforcement was a poorly-informed policy choice, not legally compelled. The decision should be reconsidered and reversed, fulfilling the ERB’s enforcement responsibilities.

**CONCLUSIONS AND RECOMMENDATIONS**

All three ethics entities faced start-up challenges. The OIG experienced problems in transition from its initial inspector general to his successor, but the new inspector general

126 The ERB’s inadequate understanding of its legal authority over local ethics enforcement surfaced almost a year earlier in minutes for June 7, 2011, which reported “that the ERB, pursuant to a recent opinion by the Louisiana Board of Ethics, is not able to enforce ethics laws.” Emphasis added.

127 The ERB general counsel’s starting salary in November 2009 was $134,776 plus benefits. See the Ethics Depository for an April 29, 2015 email response to the author’s public records request. Over the next three years, the general counsel steadily reduced the availability of legal services for the ERB, dropping to 75% of time in October 2010, then 50% of time a month later, and in 2012 to 25% of a 35-hour week. See ERB minutes of August 17, 2010 and April 3, 2012. The part-time position continued to receive some benefits (though not health coverage after a certain point) and longevity increases of 2.5 percent. When the general counsel left altogether at the end of 2014, diminished expectations for legal support led the ERB to seek a replacement as contract counsel for $40,000 per year and to consider consolidating the legal and executive director roles. See ERB minutes of December 8, 2014. Some might characterize these events as “good stewardship” of public funds; others, as abandoning ethics enforcement and redefining the ERB’s mission by reducing its access to legal services through sub silentio decisions made without the benefit of an informed public debate.

128 The ERB 2012 Annual Report at 9-10 disparaged “rules-based ethics” as “a set of don’ts” and discerned little value in ethics codes because they do “not assure that public servants will choose ‘proper behavior’ or ‘good conduct.’”

righted the ship and steered a course toward productivity. To minimize transition problems in the future, the OIG should prepare (and the ERB should confirm) a written succession plan providing for sudden, unanticipated vacancies. Additionally, the ERB should adopt a standard protocol for the national IG search and hiring process, and departing IG’s could give generous notice of six months or more.

Despite structural problems and fiscal challenges, the OIPM managed to monitor critical incident reports involving use of force by NOPD officers,¹³⁰ engaged with the NOPD consent decree, and launched a well-regarded police-community mediation program. Its productive dialogue with the OIG, ERB, and City Council could soon produce a charter proposition to reform structural problems that have impeded its operations.¹³¹ The same ballot proposition could correct another structural deficit—an inherent conflict in which the IG annually allocates funding for the ERB while ERB members annually approve or disapprove IG salary increases.¹³²

Post-Katrina ethics reforms produced a powerful vehicle for local ethics enforcement, but the ERB idled that engine of reform by improperly convening in executive sessions; foregoing public scrutiny and possible criticism of its decision to abandon local ethics enforcement; routinely dismissing or referring ethics complaints; failing to recommend improvements to the city code of ethics; and abiding a withering away of legal support.¹³³ These decisions eroded ethics enforcement and undermined the vigorous role contemplated in the ERB’s authorizing legislation.¹³⁴

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¹³⁰ The OIPM prepared its reports with less than full compliance by the NOPD in providing agreed-upon access to the scenes of some critical incidents: ‘‘For a police watchdog to not have access, that’s problematic,’’ said Deputy Police Monitor Simone Levine.” See Jonathan Bullington, “Police monitor report questions NOPD probes: Use of force incidents examined,” The Times-Picayune at B-1 (April 26, 2015).
¹³¹ See Matt Sledge, “Watchdog agencies discuss ‘divorce’,” at 4A, The Advocate (May 7, 2015). Minutes of the ERB meeting on March 10, 2015 reported the terms of an offer that was under consideration and recorded comments by IG Ed Quatrevaux, who “hoped an amicable solution was possible,” and IPM Susan Hutson, who was “optimistic that they will reach an agreement.”
¹³² See, e.g., ERB minutes of October 28, 2013, approving an IG salary increase to Step 9 with annual compensation of $186,158; earlier in this same meeting, an ERB member who later voted against the IG salary increase brought up for discussion a recent transfer of ERB funds to offset the OIG’s budget deficit.
¹³³ Within a year after the ERB hired a fulltime general counsel in November 2009, his commitment to provide legal services for the ERB dropped to 50% of time, and in the month after the March 2012 strategic planning retreat, dropped to 25% of a 35-hour week. See ERB minutes of August 17, 2010 and April 3, 2012. Thereafter, for more than two-and-a-half years, the position of ERB general counsel continued as a part-time position consisting of fewer than nine hours a week, until the position became vacant in December 2014.
¹³⁴ See sec. 9-402 of the home rule charter, sec. 2-719(1) of the city code, and the sidebar discussing “Erosion of Enforcement: The ERB’s 2014 Annual Report.”
The ERB is the local ethics enforcement authority. If the ERB won’t do it, nobody else will. If city ethics are enforced elsewhere (e.g., by the state board of ethics, or in court, or before the civil service commission or police integrity bureau, or by the District Attorney or U.S. Attorney), then the ERB need not duplicate the efforts of others. But New Orleans cannot abandon local ethics enforcement—and local enforcement is the ERB’s job.

The ERB’s shortcomings were performance and policy failures, not systemic or structural problems. That’s both the bad news and the good news—good news, because solutions simply depend upon better-informed policy choices and improved implementation:

First, the ERB’s new legal counsel must assure compliance with all “sunshine” law requirements and assist the ERB in coordinating income disclosure and budget control imperatives going forward.

Second, the ERB should exercise its local ethics enforcement authority to the fullest. The ERB can surely do both ethics education and ethics enforcement. If not, the ERB will be little more than an ethics cheerleader.

Third, the ERB should recommend revisions to strengthen the city ethics code and should supplement its more vigorous role in ethics enforcement with written advisory opinions and oral advice that will guide public officials toward proper conduct.

Fourth, the ERB should train staff or competitively select an ethics education expert (or both) to provide rules-based training on compliance with state and local ethics laws.

Fifth, the mayor and university leaders must assure diversity in nominations and appointments to the ERB, starting with summer 2015 appointments.

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135 The ERB initiated a competitive selection process for contract counsel in March 2015, proposing an annual fee of $40,000. See RFP No. 7102-1, which contemplates awarding a contract for legal services by June 20, 2015. The ERB could make better use of counsel’s services in the future to perform the following functions: (1) advise the board in its conduct of disciplinary proceedings; (2) advise the board in interpreting the city ethics code and prepare advisory opinions for their approval; (3) advise the board in requesting additional power and revisions to the city ethics code; and (4) present rule-based training about ethics code compliance to city personnel.

136 Among the “sunshine” essentials are open meetings and public records laws, notice-and-comment rulemaking, and local government budget act requirements.

137 In this context, the ERB might also considerably improve its website, which currently invites email inquiries but leaves many pertinent questions unanswered: Are complaints and opinion requests treated confidentially? How long does it take to get a written opinion? Is advice available over the phone?

138 The state board of ethics is required to provide a mandatory hour of ethics training each year for all state and local employees, but there remains ample opportunity for the ERB to make its own significant contribution, since data suggest that state officials face an overwhelming challenge. In 2014 the state ethics board documented that 234,846 people received ethics training—only 10,066 (4%) in live seminars by ethics staff; 16,068 (7%) by ethics liaisons and proctors; and the remaining 208,712 (89%) via online instruction.
Assisted by informed counsel and with vigorous public participation, a reinvigorated ERB should launch community conversations about ethics enforcement, ethics education, ethics code revision, ERB budget control, and annual financial disclosure by ERB members.

With no local ethics enforcement machinery currently in place, the ERB’s wisest course may be to rely on OIG lawyers and investigators to build disciplinary cases rather than attempting to rebuild the ERB’s internal capacity. This strategy would also establish a useful separation of functions with the OIG managing investigations while the ERB handles adjudication.

These improvements are all eminently achievable. The ERB possesses all the power it needs to be a self-correcting mechanism. Will it do so? Time will tell—and public scrutiny will help.

Public scrutiny encourages ethics entities to submit themselves to the same standards of accountability and high performance that they encourage among others. We should expect transparency from these local ethics entities and should remain vigilant observers of their performance, because better-performing watchdogs will produce better-performing municipal government serving all our best interests.

What global conclusions can we draw? The three local ethics entities produced a healthier governmental environment with more systems in place to discourage and detect corruption. But evaluation and oversight are important even for evaluation and oversight organizations—perhaps especially a good idea for them. Of the three local ethics entities, the OIG demonstrated the best record of success. Perhaps not coincidentally, it’s also the only one of the local ethics entities governed by regular evaluations at multiple levels through annual quality assurance and three-year peer reviews. The ERB and OIPM need comparable peer review by external evaluators who understand their mission and share their expertise.

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139 See Wechsler at 55: “An inspector general’s office might do investigations for the ethics commission . . . .”
140 See https://www.ladb.org/ for a description of how the Louisiana State Bar Association Office of Disciplinary Counsel separates the investigative function from decision-making in its disciplinary proceedings. See also Georgia Gulf Corp. v. Board of Ethics for Public Employees, 694 So.2d 175 (La. 1997), requiring investigative-prosecutorial functions to be separate from the state ethics board’s adjudicatory role.
141 The most recent three-year peer review by the Association of Inspectors General unanimously concluded that the OIG “met all relevant Green and Yellow book standards for the period of review.” See letter of April 6, 2015 from Thomas Caulfield, available on the OIG website.
142 In a series of interviews conducted before the 2012 planning retreat, the ERB recognized its lack of measurable performance data, but never corrected the deficiency: “Board members acknowledge that the ERB does not have indicators or measures in place to assess its mission success.” See Public Strategies Group, “Interview Themes” at 2, summarizing interviews conducted during February 22 and March 1, 2012. Consultants also reported “an emerging sense that the approach, breadth and resource commitment to the education effort has been ‘stuck’ in neutral for some time.” Id. But again, the ERB seemed unable to correct and had little more to show for its ethics
Civic sector involvement was essential in creating the three local ethics entities. We’ve accomplished a great deal in the ten years since Katrina. To accomplish even more, we must remain vigilant observers of the local ethics watchdogs created in the aftermath of that devastating storm.

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education efforts three years later. The ERB’s December 11, 2012 agenda referred to an “ERB self-evaluation process,” and two years later the March 11, 2014 agenda and minutes referenced a self-evaluation instrument. Both initiatives proved unavailing: “The Board never engaged in any evaluation process and never developed an instrument or any reports for its self-evaluation process.” See Ethics Depository for April 29, 2015 email reply to author’s public records request. Self-evaluation has not worked; the ERB needs an external evaluation obligation.