

## **Critique of Salvatore Followup Report Re Tom Crawford**

I am writing re Jennifer Salvatore's followup report re Tom Crawford. Though Mr. Crawford is no longer employed by the city, I believe that an in-depth analysis of that report should be in the record, particularly since Mr. Dohoney was not present during the time cited in the report. I hope that he and others may find this analysis useful. I regret that this analysis is lengthy, but the numerous flaws permeating the report necessitated that.

**Salvatore's followup report re Tom Crawford, like her previous two reports, is severely flawed.**

The followup report focuses mainly on 2 items: 1) the circumstances of Tom Guajardo's hiring as HRD and eventual compensation package, and 2) a 2019 hiring process re a mid-high level finance position while Crawford was CFO (and John Fournier was assistant city administrator and interim HRD). In both instances, Salvatore concludes Crawford violated the city's non-discrimination policies. However, both of her conclusions are undermined by imprecision and a pronounced lack of diligent investigation and logic. Additionally, she fails to note failings of Fournier. Finally, Salvatore's comments on pay equity issues also ignore Fournier's failure to address that problem during his long tenure as interim HRD.

**Salvatore's conclusion that Crawford acted in a racially biased way in the hiring process re Guajardo in Jan. 2021 lacks evidentiary support.**

The items Salvatore describes as supporting her conclusion do not. She first acknowledges that starting Guajardo at the low end of the pay range was not discriminatory because that is a typical city practice. She then said: "... I am troubled by Mr. Crawford's inclination not to offer Mr. Guajardo the same benefits provided to other executive staff ... While many ... noted that Mr. Crawford comes out of a finance role and is notoriously cost-conscious, I do think that the combination of adverse inclinations ... reflects more than just a desire to save money ... and instead reflects bias." Fn. 1.

**Salvatore claims, essentially, that Crawford was biased because he allegedly didn't support providing 3 benefits to Guajardo** at the time of his hiring: 1) a defined benefit pension plan benefit, 2) a severance benefit, and 3) a parking pass.

**As to #1 (the pension plan), Salvatore's analysis is flawed.** The defined benefit plan was included in Guajardo's written contract; either he was offered it or negotiated for it. Fn. 2. Salvatore's report does not discuss who had what role in negotiating this contract feature. Her report does state, essentially, that Crawford tried to rescind that benefit but was told by the legal department that that could not be done (presumably because the contract had already been signed). Since Guajardo actually received the benefit, he was not economically harmed.

**Next, her comparisons are wrong or misleading.** Salvatore's attempt to support use of the pension plan issue as evidence of bias rests solely on her statement that 1) assistant city administrator Fournier, 2) former HRD Wilkerson and 3) current police chief Cox enjoyed a defined benefit plan benefit. As to Fournier, I believe **she is flat wrong**: Fournier's 2018 contract (attached) shows that he is in the defined contribution plan, and former city administrator Lazarus negotiated that into his contract in 2016 and again in 2018 (contracts attached). (The city's defined contribution plan is pretty generous and is more easily "portable"; so employees sometimes prefer that type of plan.)

Further, former HRD Wilkerson was hired a decade ago. Here, Salvatore fails to even mention, let alone explore, a crucial point known to many city employees and to human resources professionals nationwide (including lawyers like Salvatore): corporate and government organizations, including Ann Arbor, have for some time been trying to wean themselves off the more expensive defined benefit pension plans. Wilkerson was hired years before the the city even began seriously considering alternatives, so **comparing her pension benefit to Guajardo's 2021 benefit is meritless.**

Next, police chief Cox, as are all new hires belonging to the police union, is in the current "hybrid" plan; the city has as yet been unable to negotiate with the union to a less expensive defined contribution plan. Salvatore also fails to compare his contract negotiation with Guajardo's.

The report also states that Crawford told Salvatore that he thought that benefit was higher than "other communities offer comparable employees" now. Salvatore does not even address this point. Yet again, if Crawford is correct, her conclusion is undermined.

Salvatore's mistake as to Fournier's contract, her use of Wilkerson's benefit as a comparison without even considering the city's consideration of phasing out of defined benefit plans, and her failure to even consider the veracity of Crawford's comment re benefits provided by other communities are all too typical of Salvatore; crucial points which negate her conclusion are just ignored. **Bottom line: the pension issue does not support her conclusion of bias.**

**As to #2** (the severance package), as part of his response, Crawford stated that **executives other than the police chief and city administrator typically did not get the severance package until they had been at the city for a significant time.**

Crawford is clearly correct. Five high-level executives in the last few years (virtually all hires comparable to Guajardo) were not offered the severance package until well after they started, if ever. Fn. 3. Once again, Salvatore failed to even attempt to check out an obvious and crucial point, despite the ease of doing so. **The lack of a severance**

**package offer to Guajardo until July 2021 provides no support for Salvatore's bias conclusion;** in fact the timing supports the opposite.

As to #3 (the parking pass), Salvatore claims that a benefits person told Guajardo that Crawford had "changed his mind" and denied Guajardo a parking pass (after presumably offering one). Crawford denies this and said when he learned that Guajardo didn't have a parking pass, he remedied the situation. Salvatore doesn't even say who provided her claim; a benefits person? Guajardo? No matter, as she has done virtually every time, she disbelieves Crawford. And she doesn't bother to even discuss whether or not other comparable execs have parking passes, or when they got them.

**To sum up, there is no substantial evidence supporting Salvatore's conclusion that Crawford was guilty of bias in the Guajardo hiring process.**

**And compare Salvatore's attempt to show that Crawford acted with bias in the Guajardo hiring process with her glib "exoneration" of Fournier.** Recall that during that process, Guajardo objected to being subjected to background checks which contained questions which could discriminate against minorities. Salvatore acknowledged that Guajardo's concerns were legitimate and noted that after he became HRD Guajardo stopped their use. Amazingly, Salvatore said Fournier wasn't "responsible" for those background checks, even though he had been the interim HRD since May 2019. However, given Guajardo's prompt rejection of their use, the HRD was clearly "responsible" for use of the background checks and could eliminate their use. Apparently, Fournier either failed to realize that the background checks were discriminatory or allowed them anyway. Salvatore attempted to gloss over this problem. First, she noted that the checks had been in use for a long time in the city's executive hiring. This is a "so what", particularly re long-time interim HRD Fournier. Next, she makes the blanket assertion that because white executives were also subjected to the background checks, their use with minority applicants was not discriminatory. Salvatore is correct that this fact negates a claim that there was the "disparate treatment" typically needed for an individual claimant to prevail under current employment discrimination law. However, use of a discriminatory process, even if applied to everyone, is clearly inconsistent with our purported commitment to anti-racism/diversity/inclusion embodied in city policies, and those policies should not be viewed as strictly limited by current jurisprudence. Salvatore's failure to discuss this issue is disappointing. Fn. 4.

**Simply put, 1) there is very little support for Salvatore's conclusion that Crawford acted discriminatorily against Guajardo in his hiring process, and 2) Salvatore shows a complete lack of objectivity on this subject by her weak defense of Fournier in her report on Guajardo's complaint against Fournier.**

**Salvatore's conclusion that Crawford violated the discrimination policy in the 2019 hiring process of the finance employee also lacks evidentiary support. In fact,**

**any discrimination in that process resulted from discriminatory policies employed by then interim HRD/assistant city administrator Fournier.**

Let's review some facts. A mid-high level finance opening hiring process involved a hiring committee headed by a male finance employee (recently interviewed by Salvatore, "E1"); Crawford supervised the process. The salary range posted, mistakenly, was the full range of \$76-97k, rather than the low to mid-point (\$76-86k). Fn. 5. The committee chose a female candidate whose current job paid \$66-67k plus a good benefits package. Crawford enthusiastically agreed with the choice and offered her \$85k. She then asked for \$90-95k. E1 told Salvatore that Crawford had told him that HR (then headed by Fournier) would only go to \$86k, and Salvatore, after interviewing Fournier extensively, says nothing disputing the accuracy of what Crawford said to E1. Fn. 6.

This is a crucial point. Fournier told Salvatore that HR policy was to "post up to the mid-point of the range," and that there could be a higher offer only "if the hiring manager felt it was appropriate." So the mid-point here, \$86k, is consistent with Crawford's statement to E1 that HR would only allow \$86k.

Salvatore makes much of E1's concern re the disparity between the final \$86k offer made to the leading female candidate and the additional \$9k provided to the male candidate. But her report indicates that was a function of an HR policy allowing a higher starting salary only for candidates who had a higher salary at their prior job. This type of policy perpetuates gender and racial discrimination, since women and minorities have historically earned less than men and whites. If Fournier/HR had not been using that discriminatory policy, it seems that the female candidate would have been hired. And the only negative inference against Crawford that can be drawn (even assuming the truth of Fournier's comment that the hiring manager could offer more than the HR limit) was that Crawford should have pushed to override HR to hire the female candidate, this being necessitated due to HR's discriminatory policies. This is a pretty thin reed to support Salvatore's eventual conclusion that Crawford was guilty of gender discrimination, and instead supports criticism of the policies employed by HR under Fournier. Remarkably, Salvatore apparently did not consider this possibility.

**To sum up, it appears that but for Fournier's discriminatory HR policies, the female candidate would have been hired, and no secondary hiring process would have occurred.**

Once the preferred candidate was out of the picture, according to E1, (1) Crawford had reservations re the hiring committee's 2d choice (another female candidate) and (2) Crawford insisted on hiring the male candidate. Salvatore does not say what Crawford's reservations were; either she failed to ask E1 (or Fournier, or Crawford) or decided to not include the answers in her report. Contrast this with the detail she included re the purported deficiencies of the male candidate, who, according to E1, turned out to be a very good hire despite these perceived deficiencies. This shows a

lack of objectivity. Fn. 7. And if Crawford's reservations re the other candidate had a factual basis, that would severely undermine Salvatore's conclusion of gender bias.

**Finally, Salvatore's expression of her reasons for concluding Crawford showed gender bias is flawed too.** She relies heavily on the "detailed recollections of E1, key aspects of which were supported by Mr. Fournier." Well, re the first phase of the hiring process, E1 said Crawford told him that HR wouldn't allow more than \$86k, Fournier did not dispute that, and stated that he "didn't recall the exact details". So there is no support for a conclusion that the first phase of the hiring process shows bias by Crawford.

While the second phase of the hiring process can be viewed as more problematic, Salvatore's failure to explore or explain Crawford's reservations re the second female candidate, or compare her qualifications re the male candidate who was hired, undermines her conclusion. And Fournier provides no support for a bias conclusion via the second phase, because he told Salvatore that "his involvement in the process ended with the \$86k offer to the female candidate."

Salvatore next attempts to support her conclusion by referring to allegedly sexist comments attributed to Crawford in her earlier report. What were they? One was (re during Covid): "be nice to the moms, because they are the ones taking care of the kids while working from home." Wow, expressing the same sentiment as several women commentators I've read, and factually accurate. Calling this sexist is PC being extended to a ridiculous degree. Next, "the City's sick leave policy affects female employees differently because women tend to be the ones who take the kids to the doctor." Anyone want to challenge the factual accuracy of this statement? The third was: "Mr. Crawford is alleged to have expressed concern that female employees were benefitting disproportionately from that credit because women had to take care of the kids and female employees were the ones responsible for the domestic work." Salvatore's report says "[Crawford] denied that his comments about the childcare credit suggested that women were benefitting unfairly. Rather, Mr. Crawford said that he supported the credit and simply was noting the unfairness of the reality that women tend to have more caregiving responsibilities in our society than men do." But Salvatore of course assumed the worst, that Crawford was just another sexist liar. If there was significant evidence that Crawford had acted in a sexist manner, these alleged comments could perhaps help tip the scales a bit in support of that conclusion. But given the lack of that significant evidence, these comments do very little to support her conclusion; in fact, they support the conclusion that Salvatore is grasping at straws because she has no significant evidence.

Finally, and very importantly, even if one were to find that Crawford acted with gender bias, Fournier's account at best shows him to completely acquiesce in a discriminatory hiring, which was his direct responsibility under relevant city policies to prevent. Not surprisingly, Salvatore completely ignores this issue. Fn. 8.

## **The Pay Equity Issues Salvatore Discusses re Crawford Were Fournier's Responsibility, Which He Failed to Timely Address.**

Salvatore's discussion of the gender pay equity issues near the end of her report again illustrates her imprecision and slanted focus. Certain female employees had expressed complaints re pay equity. Salvatore acknowledges that the complaining employees told her that in many cases the problems pre-dated Crawford's tenure as city administrator (interim in Feb. 2020 and permanent in [October 2020] through his forced resignation in August 2021) and "larger than any one person". She then notes that the problems were rectified via a pay equity study done by Guajardo as HRD in July 2021, which was then implemented by Fournier as acting city administrator in [Aug. 2021]. She then states that "... the evidence is inconclusive as to whether these decisions were discriminatory ... and ... I do not find any policy violations." While it is refreshing that Salvatore did not attempt to pin pay equity problems pre-dating Crawford on him, she misses an opportunity to address the actions/inaction of Fournier. Fn. 9.

Fournier was acting HR director from May 2019 until Guajardo's hiring in Jan. 2021, 20 months. Fn. 10. One has to assume in the absence of a specialized DEI officer that pay equity was primarily his responsibility. Based on the complaints from several female employees that there were longstanding pay equity problems which were not addressed until Guajardo's study in July 2021, it would appear that Fournier totally failed to address this problem. Given Fournier's position, and the policy that executives have a responsibility to report and prevent discrimination, I would assert that Fournier violated the city's anti-discrimination policies.

### **The purpose of publicly releasing this report was just politics.**

I understand that the council majority (after accepting the findings of the first report on Crawford) and staff might want a follow-up investigation and report to see if there had been other discriminatory comments or actions by Crawford, or perhaps others. But this follow-up report is, in my and others' view, so lacking in objectivity that it should not have been publicly released without first critiquing it and requesting appropriate revisions. The report is "spun" in an effort to buttress Salvatore's conclusion in the first report, while completely ignoring the questionable actions and inactions of Fournier.

What is the purpose of releasing it? "Transparency"? Not so fast. Crawford and Guajardo are no longer city employees, so there is little if any value going forward in analyzing their interactions. And **the report fails to scrutinize Fournier's behavior, or the HR policies which allowed an inequitable hiring in 2019 and might still be in place now.**

The only remaining possibility is that the report was deemed to be useful in attacking Crawford and the CMs and residents who supported Crawford or have been critical of Fournier. As I've said before, politics. Always politics.

Additionally, despite Salvatore's statement in her first report that she sought to minimize damage and disruption to staff, this report "outs" an employee as a person who shouldn't have gotten the job and "interviewed badly", and outs his manager as saying those things. Was that really necessary, or just a sloppy cheap shot? Salvatore couldn't have just said the female candidate was very strong and left it at that? So much for "minimizing damage".

**Bottom line: This report is so flawed and lacking in objectivity it should not have been released.**

Fn.1. Salvatore uses the pejorative term "notorious" with respect to being "cost conscious"; heaven forbid that a CFO or city administrator would be interested in saving taxpayer dollars.

Fn. 2. This contract is attached, along with several other relevant recent city executive contracts. They were obtained under FOIA.

Fn. 3: 1) Derek Delacourt, hired as Community Services Administrator at a \$120k annual salary in December 2015, did not receive the severance package until October 2017, 2) Fournier, hired as Assistant City Administrator in July 2018, did not receive the severance package until May 2019, 3) Michael Kennedy, hired as Fire Chief in January 2020, did not receive the severance package until March 2021, 4) Missy Stults, hired in May 2018 as Sustainability and Innovation Manager, did not receive the severance package until March 2021, 5) Marti Praschan, promoted to CFO in March 2021 at a significantly higher salary than Guajardo, and well after Guajardo became HRD, has not been offered the severance package, and 6) unlike Guajardo and the 5 executives referred to above, it appears that Police Chief Cox specifically negotiated his severance package as a prerequisite for accepting the job.

Fn. 4. Fournier brags on his website about changing and updating the HR department culture to improve diversity in hiring, starting a DEI program, etc. Given the discriminatory practice of using background checks, along with HR's use of discriminatory policies re salary offers under Fournier (discussed below), and his failure to address long-standing pay equity issues (also discussed below), this bragging rings hollow.

Fn. 5. Most likely, this mistake was made by Fournier's HR department. Given that the preferred female candidate asked for \$90-95k and was only offered the \$86k approved by HR, query the impact this mistake had on the process (for example, perhaps the female candidate might not have asked for as much and would have been hired). Salvatore apparently did not consider this possibility.

Fn. 6. While Salvatore not-so-subtly insinuates that Crawford may have misreported what HR (i.e. Fournier) would allow, Fournier was extensively interviewed by Salvatore and her report does not say that Fournier claimed that Crawford's statement to E1 in

2019 was inaccurate. In fact, Fournier told Salvatore that 1) he did not recall the details re the offer process and 2) had no involvement in this hiring process after the \$86k offer was made, even though at the time he was the HRD and thus likely to be involved in this important hire. While Salvatore stressed her view that Crawford's memory is faulty and thus "frustrating", she makes no comment re Fournier's lack of recall here.

Fn. 7. Salvatore also non-subtly accuses Crawford of cronyism, tacitly rejecting, with no expressed basis, Crawford's statement that the male candidate hired was merely an acquaintance.

Fn. 8. Salvatore says that Fournier told her that (1) Crawford was in the "driver's seat" re the hiring process, 2) Fournier's policy was, *absent a policy/process issue* (emphasis added), to allow the hiring manager to make the ultimate decision, and did so here, 3) city policy was to "post up to the mid-point of the range but could make a [higher offer] if the hiring manager felt it was appropriate." These comments in my view are classic CYA blame-shifting. The difficulty was caused by the discriminatory HR policies, and exacerbated by the mistake in posting the full range. Fournier now insinuates that Crawford should have asked for an exception to the limit Fournier's policy imposed! Isn't this a "policy/process issue" that strongly suggested HR involvement? But Fournier apparently did nothing, doesn't remember the details now, and had no involvement after the final \$86k offer was made to the original leading candidate.

He does recall telling Crawford that 1) "we'll hire who you want to hire, but you're hiring a lot of white men, and you need to find ... more diverse candidates, and 2) we/HR will help you find diverse candidates going forward. Fournier apparently didn't say when these conversations occurred. In my view, these are self-serving recollections from someone who failed to actually do anything to change the outcome in the first phase of the hiring process and by his own admission didn't bother to participate in the second phase. At best, it's hardly a shining moment for the diversity/inclusion champion Fournier claims to be on his website.

More crucially, upper management, obviously including Fournier and then city administrator Howard Lazarus, is required under city policies to not only report discrimination by other employees, but to prevent it. Employment Policy 2.2, section 4.2. So if Crawford was guilty of gender discrimination, Fournier arguably violated that policy. Salvatore did not consider this issue.

Fn. 9. You might respond that this was outside the scope of her investigation. Given the council discussion of this follow-up investigation, Salvatore's own decision to delve into this issue to determine if *Crawford* was guilty of discrimination, and her penchant for going outside the scope of investigation to criticize others, I would disagree.

Fn. 10. Fournier's website contains a resume that says he became interim HRD in April 2018 (this is obviously incorrect, since Robyn Wilkerson was HRD until May 1, 2019), but also contains other material that focuses on a "one-year period."

