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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

LOUIS HAMILTON, et al., : Civil Action No. 69-2443
 : & Consolidated Cases
 Plaintiffs, : Section LLM (5)

 v. :

 ERNEST N. MORIAL, et al., :
 :
 Defendants. :

----- :

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR
AN INJUNCTION FOR ACCESS TO CLASS MEMBERS**

INTRODUCTION

On Monday, August 29, 2005 Hurricane Katrina struck the Gulf Coast of Louisiana near the city of Buras, La. One day before the hurricane hit, Mayor Ray Nagin ordered the first-ever mandatory evacuation of New Orleans. See Jan Moller, [Blanco Tours New Orleans](#), New Orleans Times-Picayune, Sept. 7, 2005, [available in](#) 2005 WLNR 14616091. The Mayor's evacuation order excluded the Plaintiffs, some 6500 prisoners housed at the Orleans Parish Prison (OPP), who were left behind in New Orleans to ride out the storm. See Gordon Russell, [Nagin Orders First-Ever Evacuation of New Orleans](#), New Orleans Times-Picayune, Aug. 28, 2005, [available at](#) www.nola.com/newslogs/breakingtp/indexssf?/mtlogs/nola_Times-Picayune/archives/2005_08_28.html#074564.

By late Monday morning, a large section of the vital 17th Street Canal levee had given way. See Doug MacCash and James O'Byrne, [Catastrophic: Storm Surge Swamps 9th Ward, St. Bernard](#);

Lakeview Levee Breach Threatens to Inundate City, New Orleans Times-Picayune, Aug. 30, 2005, available in 2005 WLNR 14615547. As water began to flood the city, police officers, firefighters, and private citizens continued impromptu rescue efforts, and residents scrambled to rooftops, overpasses, and high ground. Id.

After the hurricane hit New Orleans, the ten buildings that make up OPP began to fill with water. Ex. A, Declaration of Eric Balaban (Michael Perlstein, Prison Became Island of Fear and Frustration, New Orleans Times-Picayune, Sept. 23, 2005 [“Sept. 23, 2005 Times-Picayune”], available at www.nola.com/weblogs/print.ssf?/mtlogs/nola_tporleans/archives/print082074.html), at 1. Corrections deputies, OPP employees, and prisoners have described OPP plunging into chaos. On August 29th, the generators for the OPP failed, leaving the buildings without power, light, circulated air, or working toilets. Id. The next day, the jail ran out of food. Id. Deputies walked off their posts, “toss[ing] their badges down and turn[ing] their shirts inside out.” Id. Prisoners and staff broke out windows to get fresh air, and set fires to signal to those outside the jail that they were trapped inside. Id. at 1-2. Prisoners made makeshift ropes out of blankets and flung them out of broken windows onto the razor wire fences that ring the OPP complex, in apparent attempts to escape the rising water, which reached ten feet in some OPP buildings. Id. The dwindling security force struggled to maintain order, as prisoners broke open cell and security doors. Id. Deputies brandished their weapons and fired beanbags and improvised hot water balloons at prisoners in order to keep them in their cells. Id. at 1-2.

Prisoners housed in Templeman III reported that there were no corrections deputies in the building as of August 29th. See Ex. B, Balaban Decl. (New Orleans: Prisoners Abandoned to Floodwaters, Human Rights Watch report, Sept. 22, 2005 [“HRW Report”], available at

www.hrw.org) at 2. As the water inside the locked building began to rise, prisoners forced open their cell doors, and they attempted to signal for help to people outside the building by setting fire to blankets and shirts and hanging them out of broken windows. Id. These prisoners were not evacuated until Thursday, September 1, “four days after the flood waters in the jail had reached chest-level.” Id.

According to a corrections deputy who was working at the jail, by Tuesday evening some 320 prisoners had to be moved to the second floor of one jail building as the water inside rose above five feet. See Ex. C, Balaban Decl. (Jennifer Smith, Mother’s Great Escape: New Orleans Correction Officer Safe on LI After Harrowing Odyssey, Newsday, Sept. 5, 2005, at A07). There was no electricity, and no phone lines. Id. Prisoners and officers evacuated the jail by joining hands and “mov[ing] together from building until they were loaded on boats and ferried to an overpass.” Id. The deputy stated that, despite the officers’ efforts, she believed “many drowned anyway, including inmates housed on the first floor of the Templeman 3 building, where [the deputy] said that in the chaos, some inmates may have remained locked inside.” Id.

OPP evacuees from Templeman III also reported that prisoners may have been abandoned in that building in locked cells to drown. Two federal detainees who were housed on the federal tier of Templeman III reported that they were moved to a gymnasium after their tier flooded. Ex. D, Balaban Decl. (interview by Amy Goodman with Phyllis Mann, attorney, Democracy Now, Sept. 13, 2005, available at <http://www.democracynow.org/article.pl?sid=05/09/13/1354215>) at 3. Once there, they were abandoned by the deputies. Id. The gymnasium was ringed by locked holding cells that held other prisoners. Id. As the waters rose in the gymnasium to chest-level, the detainees broke the windows and swam out of the jail, leaving the prisoners in the locked holding cells behind. Id.

Templeman III prisoners also stated that they saw bodies floating in the flood waters as they were evacuated from the prison. HRW Report at 2. Sheriff Gusman's office has reported that search-and-rescue teams sent to OPP after the evacuation found no dead bodies, but the sheriff has not completed an inventory of the whereabouts of all OPP prisoners. HRW Report at 2-3.

On information and belief, some 8500 prisoners from five parishes, including Orleans Parish, were evacuated after the hurricane. Though the sheriffs from other parishes began asking for state assistance as early as Saturday, August 27th, Sheriff Gusman did not call for help from state officials to evacuate OPP until midnight on August 29th. HRW Report at 1. The Sheriff's department had only five boats at its disposal, not nearly enough to ferry the thousands of OPP prisoners and staff to safety. Sept. 23, 2005 Times-Picayune at 3. Deputies were forced to improvise, using jerrybuilt craft and stealing car batteries from the police station to repair the sheriff's boats as they broke down. See Sept. 23, 2005 Times-Picayune at 2-3. Several deputies stated that there was no evacuation plan for OPP, even though the facility had been evacuated several times during floods in the 1990s. HRW Report at 2.

The evacuation began in earnest only after officers in charge of the OPP buildings "went over the head of . . . Sheriff . . . Gusman and called Attorney General Charles Foti for state reinforcements." Sept. 23, 2005 Times-Picayune at 1. According to one deputy, "One of the captains called Foti and said, 'We're losing the battle.' . . . They (DOC) showed up with all the things we didn't have: shotguns with beanbag rounds, tasers, rubber bullets, riot gear, bulletproof shields." Id. at 3. The Attorney General sent Louisiana Department of Correction (DOC) guards and SWAT teams, as well as 20 boats from the state wildlife and fisheries department, to restore order and evacuate prisoners and staff. Id. Over the next three days, the prisoners were removed by boat to

an elevated portion of Interstate 10 near the OPP complex, and then were transported by bus to one of 35 DOC facilities and parish prisons throughout the state. Id.

Since September 7, 2005, attorneys and investigators have been conducting screening interviews of prisoners and detainees who were displaced as a result of Hurricane Katrina. See Ex. E, Balaban Decl. (Declaration of Phyllis Mann)¹ ¶ 2. These interviews are designed to locate those persons now scattered among the DOC and parish facilities whose charges or convictions are such that they may be eligible for immediate release from confinement, and to assist the evacuees in locating their families and criminal defense attorneys. Id. One of the coordinators of this effort states that she has either interviewed or oversaw the interviews of over 2400 men and women, many of whom had been evacuated from OPP. Id. ¶ 3. Almost all of these OPP evacuees asked to speak to a lawyer regarding conditions at OPP after the hurricane and during the evacuation. Id. ¶ 4. Also, a handful of OPP evacuees have contacted the ACLU and have asked to speak to an attorney about the evacuation and conditions of their confinement. See Balaban Decl. ¶ 2. They represent a small fraction of the plaintiff class. Given that OPP is a high-intake, high-turnover facility, it is likely that most of the OPP evacuees are unaware that this case exists, and that they are represented by counsel regarding their living conditions while incarcerated.

On information and belief, evacuated prisoners began to be released from DOC facilities and parish prisons on September 16, 2005. Some of these evacuees have been freed as the result of filing habeas petitions for their release, claiming that they have been incarcerated past their maximum sentence or release date. Among those who have filed petitions are 94 women prisoners evacuated

¹ Plaintiffs have submitted a facsimile copy of Ms. Mann's declaration. The original declaration will be filed under separate cover.

from OPP to Angola State Penitentiary. See Ex. F, Balaban Decl. (Penny Brown Roberts, “16 Female Prisoner Released from Angola,” 2 The Advocate News, Sept. 23, 2005, available at http://2theadvocate.com/stories/092305/new_released001.shtml). Judge Zainey ordered the release of 16 of these OPP evacuees late last week. Id. On information and belief, the DOC has either contacted family members to pick up released OPP evacuees, or has provided the evacuees with transportation to one of the many shelters set up after the hurricane. Like many New Orleans citizens, these OPP evacuees are permanently displaced from their homes, and have no fixed address, making it nearly impossible for them to be tracked down once they were released from DOC custody.

Two weeks ago, undersigned counsel called the Attorney General’s office and asked for a list of the current location of the OPP evacuees, so that the ACLU could contact OPP prisoners before they were released. Balaban Decl. ¶ 3. Counsel also requested access to DOC facilities to interview the OPP evacuees housed there, including those who had asked to speak with a lawyer about conditions at the jail during and after the hurricane. Id. Last week, counsel for the state defendants notified undersigned counsel that he would not be permitted access to his clients. Id.

ARGUMENT

I. An attorney-client relationship exists between class counsel and all Hamilton class members.

Once a class is certified, all the class members are parties to the suit. American Pipe & Construction Co. v. Utah, 414 U.S. 538, 550-52 (1974). All class members are represented by class counsel. Fed. R. Civ. P. 23(g)(1)(B); Kincade v. General Tire & Rubber Co., 635 F.2d 501, 508 (5th Cir. 1981) (noting that “the ‘client’ in a class action consists of numerous unnamed class members as well as the representatives”); Parker v. Anderson, 667 F.2d 1204, 1210-11 (5th Cir. 1982) (“[T]he duty owed by class counsel is to the entire class and is not dependent on the special desires of the

named plaintiffs.”)²

In Parker, objectors to a class action settlement argued that class counsel did not represent the class fairly and adequately during negotiations because class counsel did not consult with the individual objectors about their personal claims. The district court rejected this argument; in affirming, the Fifth Circuit noted that “[t]he compelling obligation of class counsel in class action litigation is to the group which makes up the class. Counsel must be aware of and motivated by that which is in the maximum best interests of the class considered as a unit.” 667 F.2d at 1211.

In this case, the current class was certified in 1989, and re-certified several times since to add new OPP buildings and new classes of prisoners.³ Some of the detainees now displaced from Orleans Parish Prison system in the aftermath of Hurricane Katrina are long-standing Hamilton class members and clients of class counsel, and have been communicating with class counsel for many years. Hundreds of the OPP evacuees also asked to speak to a lawyer about conditions at OPP during the storm and its aftermath after they were relocated to DOC facilities and parish prisons throughout the state. Class counsel remain obligated to defend the best interests of these and all

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See also In re Shell Oil Refinery, 152 F.R.D. 526, 528 (E.D. La. 1989) (“[A]n attorney-client relationship exists between [class counsel] and all class members.”) Cullen v. New York State Civil Serv. Comm’n, 435 F. Supp. 546, 560 (E.D.N.Y. 1977) (“in granting class status, the court ... in effect creates an attorney-client relationship between the absentee members and the attorney”), appeal dismissed, 566 F.2d 846 (2d Cir. 1977); Smith v. Josten’s American Yearbook Co., 78 F.R.D. 154, 163 (D. Kan. 1978) (in certifying a class, a court “not only confers upon absent persons the status of litigants, but in addition it creates an attorney-client relationship between those persons and a lawyer or group of lawyers”) (citation, internal quotation marks omitted), aff’d, 624 F.2d 125 (10th Cir. 1980).

3

For example, in 1993 the class was amended to add those prisoners housed in the then-newly constructed Templeman building. See Hamilton v. Morial, Civil Action No. 69-2443 (E.D. La. Jan. 23, 1992) (Order Granting Motion to Amend the Complaint to Expand the Class).

Hamilton class members, and the OPP evacuees continue to expect class counsel to represent their interests, particularly as relates to the conditions of their confinement.

Defendants may suggest that class counsel no longer have any clients in this case because the specific facilities referenced in the Hamilton class definition are currently emptied of detainees. In Glover v. Johnson, 934 F.2d 703 (6th Cir. 1991), a class action on behalf of female prisoners in the custody of the Michigan Department of Corrections, defendant prison officials tried unsuccessfully to make a similar argument. The plaintiffs in Glover sought to represent all female prisoners who were then, or would be in the future, incarcerated at Huron Valley Women's Facility and the Kalamazoo County Jail, the only female prison facilities in the state at the time the action was filed. Years later, after the class had been certified and the case settled, the defendants argued that prisoners being housed at a newly opened women's facility were not entitled to the benefits of the settlement. The Sixth Circuit rejected this argument as contrary to the purpose of the settlement:

At the time the action was filed, [Huron Valley and Kalamazoo] were the only female prison facilities in the state. Thus, the specification by name of the only institutions then housing female inmates as comprising the class of "all female inmates" was redundant and certainly was not intended to exclude those female inmates who, ten years later, would be housed at a new location.

Glover, 934 F.2d at 709. See also Inmates of Allegheny County Jail v. Wecht, 612 F.Supp. 874, 883 (W.D. Penn. 1985) (members of class defined as inmates at Allegheny county jail who were not physically present at the jail were still entitled to minimum conditions of confinement set for the class).

Similarly, the specification of then-existing facilities in the Hamilton class definition does not mean that the class was intended to exclude inmates in the custody of the Orleans Parish Criminal Sheriff who, in the future and for unforeseen reasons, would be housed in unnamed

locations. Indeed, the definition of the class has changed over time to include new and even temporary facilities.⁴ The one constant factor in the class definition is that it has included all persons who are under the custody of the sheriff. The OPP evacuees, though now housed outside Orleans Parish, nevertheless remain in the sheriff's custody.

II. Attorneys have the right to have access to their clients.

“Access is essential to lawyers and legal assistants representing prisoner clients[.]” Thornburgh v. Abbott, 490 U.S. 401, 407 (1989). From the development of the complete facts of the case to strategizing about future litigation, it is crucial that attorneys be able to communicate with their clients. Prisoners, like any other represented party, are entitled to unobstructed and confidential communication with their attorneys and the attorneys' assistants. Accordingly, the Supreme Court has held that “[r]egulations and practices that unjustifiably obstruct the availability of professional representation ... are invalid.” Procunier v. Martinez, 416 U.S. 396, 419 (1974); see also Crowder v. Sinyard, 884 F.2d 804, 811 (5th Cir. 1989) (discussing prisoners' right of access to the courts).

Due process requires that prisoners be afforded access to the courts for the purpose of challenging unlawful convictions “and to seek redress for violations of constitutional rights.” Cruz v. Hauck, 515 F.2d 322, 332 (5th Cir. 1975) (citing Procunier, 416 U.S. at 419). Thus, the constitutional right of access to the courts prohibits prison officials from unreasonably limiting access to counsel who can provide legal advice and representation with respect to unlawful conditions of confinement.

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Among the facilities cited in the 1989 class definition is the “Emergency Detention Center, i.e., Tent City” – a temporary detention facility that no longer exists. See Hamilton v. Morial, Civil Action No. 69-2443 (E.D. La. Oct. 3, 1989).

Here, hundreds, if not thousands, of OPP evacuees have asked to speak to a lawyer regarding the conditions at OPP both during and after the hurricane. The conditions at the jail following the storm have been part of this case since the National Prison Project became class counsel. See Hamilton, (E.D. La. Mar. 21, 1989) (Amended Complaint) (complaint includes factual allegations that “[f]ire safety violations abound throughout the facilities, posing an imminent risk of harm[; f]ire drills are never held[; p]risoners are not instructed in evacuation procedures [and there are] inadequate numbers of trained, experienced staff [and Defendants] fail[] to adequately train and compensate staff.”). As the OPP buildings began to fill with water, deputies and OPP staff were forced to improvise an evacuation of 6500 prisoners. Deputies reported that they had not been trained in an evacuation plan. Even if a plan did exist, the lack of manpower, training, equipment, and vehicles left thousands stranded at the jail for days, and may have resulted in prisoners being left to drown in locked cells.

There is every reason to believe that OPP will be re-opened in time. In fact, the sheriff has committed to rebuilding the jail as quickly as possible. See Cazenave v. Foti, Civil Action 2000-1246 (E.D. La. Sept 16, 2005) (Motion for Authority to Temporarily Withdraw Settlement Funds) ¶¶ 3-7 (sheriff requests return of escrowed settlement funds to rebuild OPP and pay staff salaries). It is also possible--if not inevitable--that OPP again will have to be evacuated due to a hurricane or other catastrophe. As each day passes, more and more OPP evacuees are released from the DOC facilities and parish prisons where they are now housed. These evacuees have vital information for class counsel regarding the conditions at OPP during the hurricane and its aftermath. Once the evacuees are released, counsel likely will be unable to find them, since they have been displaced from their homes like other citizens of Orleans Parish. It is therefore critical that counsel be allowed

to speak with their clients now, before they are released, so that they can gather evidence that may point to operational problems at the jail that must be remedied before OPP is re-occupied.

While written correspondence will also be used to communicate with class members, it cannot replace face-to-face meetings. Because such meetings “enable the attorney to assess a witness’ demeanor and credibility, they are a necessary means for the establishment of a relationship between the inmate and his or her lawyer.” Young v. Larkin, 871 F. Supp. 772, 783 (M.D. Pa. 1994) (internal quotation marks omitted), aff’d, 47 F.3d 1163 (3d Cir. 1995). Here, potential witnesses with information about the evacuation of OPP are being released every day. Counsel does not have the luxury of waiting for written responses from OPP evacuees to questionnaires.

In addition, some class members may not be literate enough to read and understand written correspondence from counsel or to respond in writing.⁵ Cf. Cruz v. Hauck, 627 F.2d 710, 721 (5th Cir. 1980) (“Library books, even if ‘adequate’ in number, cannot provide access to the courts for those persons who do not speak English or who are illiterate.”). Others may have mental illnesses that would prevent them from writing intelligibly. Many in the Hamilton class may not even know that they are represented by lawyers in a class action suit, given that OPP is a high-intake and high turnover facility. The only remedy for these types of communication difficulties is face-to-face contact. Both written and in-person communication is therefore necessary for Plaintiffs’ counsel to fairly and adequately represent the interests of the class.

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The National Center for Education Statistics reported in 1994 that seven out of ten prisoners perform at the lowest literacy levels. Karl O. Haigler et al., U.S. Dept. of Educ., *Literacy Behind Prison Walls: Profiles of the Prison Population from the National Adult Literacy Survey* xviii, 17-19 (1994).

III. Class counsel have the right to communicate with class members.

The United States Supreme Court has specifically held that counsel for a class has the right to communicate with class members absent clear reasons for interference. Gulf Oil Co. v. Bernard, 452 U.S. 89, 101 (1981). In Gulf Oil the Court considered the authority of district courts under the Federal Rules of Civil Procedure to limit communication by named plaintiffs and their counsel to prospective class members. Id. at 99. The Court held that “an order limiting communications between parties and potential class members should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties.” Id. at 101 (footnote omitted).

In Gates v. Cook, 234 F.3d 221 (5th Cir. 2000), the Fifth Circuit applied the Gulf Oil holding in reviewing a district court’s order barring ACLU National Prison Project attorneys from communicating with class members who had contacted them about substituting as counsel in an ongoing class action related to the treatment of HIV-positive prisoners at the Mississippi State Penitentiary. The Fifth Circuit found that the no-contact order in Gates contradicted the principles enunciated in Gulf Oil because it was not narrowly drawn and was not justified by any factual findings:

The district court is not free to impinge on those rights without weightier findings than those here; the findings in the record below do not establish the necessity for the order issued. Moreover, a limiting order must be narrowly drawn to minimize prior restraints on speech, association, and the inmates’ rights to counsel.

Id. at 227.

State Defendants here--who have made no allegations regarding the potential abuse of such communication by class counsel--may not unilaterally limit class counsel’s right to communicate with class members. Burrell v. Crown Central Petroleum, Inc., 176 F.R.D. 239, 245 (E.D.Tex. 1997)

(“With no evidence of coercion, abuse, or even potential abuse, an order limiting contact is inappropriate.”). Moreover, Defendants’ attempt to limit communication would interfere with class counsel’s ability to obtain evidence that is essential to understand what happened to detainees in the wake of Hurricane Katrina. See Marmol v. Adkins, 655 F.2d 594, 598 (5th Cir. 1981) (concluding that the ban on communication with class members made it impossible for class counsel to discover necessary facts).⁶ Certainly, the state Defendants cannot claim that they are unable to accommodate Plaintiffs’ counsel, since they have been providing scores of lawyers and investigators with access to all of the 8500 evacuees in their custody as part of the screening interviews conducted by the criminal bar. See, e.g., Mann Decl. ¶¶ 2-3.

In McClendon v. City of Albuquerque, 272 F.Supp.2d 1250 (D.N.M. 2003), defendants refused to allow class counsel to visit with their incarcerated clients, and class counsel sought a preliminary injunction allowing them access. McClendon was a class action challenging unconstitutional conditions in a county jail, which had been resolved by a settlement agreement. Id. at 1252. In concluding that the defendants’ ban on visitation was invalid, the court observed that defendants had no legitimate interest in barring class counsel from meeting with their clients:

[T]he only potential harm to Defendants is that inmate allegations of constitutional violations will be brought to the attention of this Court. This is not a legitimate concern. By contrast, the lives of class and sub-members may be at risk if their attorneys are prevented from

⁶ Counsel would be entitled to meet with the OPP evacuees even if this Court were to hold that they are no longer class members. The evacuees would still be witnesses to conditions at the jail during the storm and evacuation, and counsel would have the right to interview them to preserve their potential testimony in Hamilton. Also, many of the OPP evacuees, particularly those facing felony charges, are likely to be returned to OPP once it is re-opened. Counsel has the right to communicate with these prisoners to inform them of their rights under the decrees in Hamilton, even if they are not presently part of the class. Cf. Jean v. Nelson, 711 F.2d 1455, 1508-09 (11th Cir. 1983) (attorneys for Haitian Refugee Center entitled to inform non-client Haitians held at INS detention facilities of their legal rights).

investigating their reports of unconstitutional conditions of confinement.

Id. at 1259. The court added that the “public interest can be served most effectively by allowing the attorneys for Plaintiffs ... access to the [Jail] so that they can gather accurate facts regarding the operation of that facility.” Id. Accordingly, the court granted the preliminary injunction, ordering that defendants “[i]mmediately allow counsel for Plaintiffs ... to have reasonable and unimpeded access to [the Jail] and to the records of residents of [the Jail].” Id. at 1260. This Court should enter a similar order in this case.⁷

CONCLUSION

The prisoners at OPP were the one population of New Orleans citizens over which government officials had complete control to evacuate before the hurricane. Yet, they were left in the city to ride out the storm. The limited news reports regarding OPP after the hurricane hit depict the jail’s rapid descent into chaos. As the OPP building began to fill with water, deputies walked off their posts wholesale, power and communications were lost, and a dwindling security force was left to improvise an evacuation of the facility with insufficient and jerrybuilt vehicles, weapons, and equipment. Apparently, prisoners in Templeman III were abandoned altogether by security staff, and some may have been left to drown in locked cells in this building. The Sheriff failed to call for state assistance for several days, and order was restored to the jail only after on-site line supervisors pled

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Courts have approved fact-gathering methods that are far more invasive than the minimal access plaintiffs seek here. See, e.g., New York State Ass’n for Retarded Children v. Carey, 706 F.2d 956, 960-61 (2d Cir. 1983) (approving an order allowing plaintiffs’ counsel and experts to inspect a mental retardation facility, take photographs, and interview class members and staff outside the presence of defendants or their counsel); Morales v. Turman, 59 F.R.D. 157, 159 (E.D. Tex. 1972) (in challenge to conditions of confinement in juvenile facility, plaintiffs allowed to place two observers in the facility to live with the juveniles for thirty days in order to study the system).

directly to Attorney General Foti for help.

The 6500 OPP evacuees who remain incarcerated are now housed throughout the state in DOC facilities and parish prisons. Hundreds, if not thousands, of these men and women have asked to speak to a lawyer about the conditions at OPP during the storm and evacuation. The evacuees need the protections afforded by this lawsuit now more than ever. However, undersigned counsel, as these evacuees' attorneys, have been barred from speaking with their clients by the state Defendants in this case.

For the reasons set forth in this memorandum, Plaintiffs' Motion for an Injunction for Access to Class Members should be granted. The Court should enter an order directing Defendants to allow class counsel, as well as lawyers, paralegals and law students working under their supervision, to conduct confidential attorney-client interviews with class members confined in DOC facilities.

Respectfully submitted,



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DECLARATION OF ERIC BALABAN

Eric Balaban, pursuant to 28 U.S.C. § 1746, hereby makes the following declaration:

1. I am a staff counsel with the National Prison Project of the ACLU, and am one of Plaintiffs' counsel in the above-entitled action. I make this declaration in support of Plaintiffs' Motion for an Injunction for Access to Class Members, filed herewith.
2. Since the Orleans Parish Prison (OPP) was evacuated three weeks ago, a handful of OPP evacuees have contacted the ACLU and have asked to speak to an attorney about the evacuation and conditions of their confinement. They represent a small fraction of the plaintiff class. Given that OPP is a high-intake, high-turnover facility, it is likely that most of the OPP evacuees are unaware that this case exists, and that they are represented by counsel regarding their living conditions while incarcerated.
3. Two weeks ago, I called the Attorney General's office and asked for a list of the current location of the OPP evacuees, so that the ACLU could contact OPP prisoners before they were released. I also requested access to DOC facilities to interview the OPP evacuees housed

there, including those who had asked to speak with a lawyer about conditions at the jail during and after the hurricane. Last week, Patricia Bowers, counsel for the state Defendants, notified me that I would not be permitted access to my clients.

4. Attached to this declaration are true and correct copies of the following documents:

- a. Michael Perlstein, Prison Became Island of Fear and Frustration, New Orleans Times-Picayune, Sept. 23, 2005. as exhibit A;
- b. New Orleans: Prisoners Abandoned to Floodwaters, Human Rights Watch report, Sept. 22, 2005, as exhibit B;
- c. Jennifer Smith, Mother's Great Escape: New Orleans Correction Officer Safe on I.I After Harrowing Odyssey, Newsday, Sept. 5, 2005, as exhibit C;
- d. interview by Amy Goodman with Phyllis Mann, attorney, Democracy Now, Sept. 13, 2005, as exhibit D;
- e. Declaration of Phyllis Mann, as exhibit E;
- f. Penny Brown Roberts, "16 Female Prisoner Released from Angola," 2 The Advocate News, Sept. 23, 2005, as exhibit F.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 27, 2005.


Eric Balaban



Orleans Breaking News

Friday, September 23, 2005

Prison became island of fear and frustration

As floodwaters rose, inmates and guards were in it together

'It was a wild ride,' chief deputy says

By Michael Perlstein
Staff writer

When New Orleans plunged into darkness and spiraling chaos in the days after Katrina passed, Orleans Parish Prison, a 6,400-inmate city-within-a-city, plunged even deeper, bringing the complex of concrete lockups perilously close to a security and humanitarian meltdown.

Interviews with more than a dozen deputies and employees, many of whom didn't want to reveal their names for fear of losing their jobs, depict a five-day struggle to keep destructive and desperate inmates at bay. The ordeal was marked by escapes by inmates and wholesale job walk-offs by deputies. But when officers in charge finally went over the head of Criminal Sheriff Marlin Gusman and called Attorney General Charles Foti for state reinforcements, the ensuing rescue operation was nothing short of heroic. Everyone escaped by boat as nearly every Sheriff's Office vehicle had been quickly and completely submerged.

Signs of the pandemonium can be seen throughout the sprawling complex of 10 concrete lockups, all of which took on 6 to 10 feet of water in the low-lying wedge of land off Broad Street between Interstate 10 and Tulane Avenue: tied-together blankets hanging from broken cell windows, scorch marks from fires, rescue boats scattered on streets and sidewalks.

Next to one smashed jail cell window, taped to the outside of the building, is a sign scrawled by an inmate, "We Need Help." On the perimeter of the same building, slung over razor-wire atop a 16-foot fence, a cluster of thick blankets marks an apparent escape.

Chief Deputy Bill Short said Thursday he could confirm only four escapes, but the Sheriff's Office computer system was fished out of floodwaters just a couple of days ago and a full head count by the state Department of Corrections is still under way. The four escapees were transfers from the St. Bernard lockup, Short said, and they bolted shortly after the storm by breaching the roof of the Intake Processing Center.

"They made it to the roof and decided they had to get out. As far as others, I just don't know," said Short, who was promoted to his new position a week ago in acknowledgment of his steely command of the 800-inmate House of Detention during the storm and its aftermath.

Other deputies said they knew of more than a dozen escape attempts. One inmate, an Australian tourist who rode out the storm in Parish Prison after getting arrested on Bourbon Street for criminal trespassing, said he saw some inmates get away from once-secure areas, although he didn't know how far they made it.

"We had no food, no power, no air-conditioning, no toilets," Ashley McDonald, the Australian tourist, said in earlier published reports. "A lot of people started breaking out and escaping and that's when attention was brought to the jail."

One thing Short said he knows for certain is that there were no deaths, not among the inmates, not among the 900 or so employees who reported to work, not among the scores of residents who floated or waded in from the surrounding neighborhood to the relative safety of the veranda of the high-rise Community Correctional Center. One group from the area, a woman and two men, used 2-by-6-foot boards to row a hot tub to the impromptu gathering point, Short said. Others who were stranded were fished out by deputies.

"Did we know exactly what to do?" Short asked. "Nobody did. It was a wild ride, but we must have done some good things because nobody died."

Separating fact from storm-spawned fiction about the prison's inundation has been difficult, especially since the prison complex was plunged into a virtual communications blackout and each of the 10 lockups became islands surrounded by toxic water. Rumors of massive jail breaks, Gusman being taken hostage and large-scale riots have proved false. Gusman was not available for comment for the past two days because of meetings, a spokeswoman said.

But first-hand accounts from three of the largest facilities - Community Correctional Center, the House of Detention and Old Parish Prison - revealed a harrowing five days before everybody was evacuated. All of the sources told about multiple resignations, deputies who tossed their badges to the ground and turned their shirts inside out, only to find themselves in the awkward position of being stuck by floodwaters alongside their former colleagues. Short estimated that if he tried today to reassemble the agency's 900 sworn deputies, he could probably scrounge up 700.

The shrinking security presence made it only more difficult to deal with the prison's most pressing problems: keeping order and ferrying people to dry ground. Deputies said the mission was carried out despite losing power the day after the storm passed, running out of food the following day and finding nearly all entrances blocked by water when help finally arrived.

"Typical panic, that's what it was, longtime deputy Monte Davis said. "People just get disturbed when they don't know what's going on. It was a mess."

The earliest sign of inmate unrest was heard, not seen, deputies said: the sound of splintering glass as prisoners smashed the buildings' narrow exterior windows.

"They were hungry, they were thirsty and most of all, they were hot," a Community Correctional Center deputy said. "We saw them just hanging from the windows."

Short said deputies eventually sanctioned the destruction.

"The inmates did break out windows," he said. "In some cases, our staff helped them. If you didn't break the windows, you didn't breathe."

Deputies said they repeatedly calmed inmates by telling them that food, water and rescue were on the way, but the message began wearing thin. In the Community Correctional Center, two commanders and a deputy said, inmates breached several layers of security, smashing visitor center security windows and breaking through stairwell doors.

The worst damage was done by inmates who broke off metal shower rods and dayroom benches, then used them as battering rams, they said.

"The knocked out some cinder blocks and breached some visitation booths," the deputy said. "It was like the movie 'Attica.'"

Until the cavalry showed up Wednesday in the form of SWAT teams from the state Department of Corrections, the deputies said they were forced to scare inmates back into cells by brandishing

their pistols and occasionally firing off beanbags.

Several deputies and commanders said there were periodic reports throughout the complex that sounded like gunfire, but Short said he didn't hear much about the use of lethal force.

"I used my shotgun a couple of times to break a window," Short said. "At first I tried my flashlight, but I broke it."

One deputy with military experience rigged up makeshift hot water bombs by using the heating element in the prefab military meals distributed by the National Guard. "We threw the water bombs through the broken windows to keep them back," the deputy said.

While the security situation was growing more and more tense, rising waters forced deputies to move inmates from lower floors to higher floors, in some cases mixing hard-core inmates with municipal offenders, teenagers with career criminals. Short said deputies gave in to agitated inmates by giving them full access to the sixth-floor rooftop.

Short said his staff was able to quell most of the inmate unrest, and in some cases, older inmates stepped in to calm the more volatile prisoners.

"I hate to use the word babysat, but they stayed with them and kept them calm," Short said. "There were some inmates who acted out, but I'd say 99 percent acted responsibly."

Even in the areas where the inmates were calm, stress among deputies was rising with each passing hour because the Sheriff's Office had only five boats, not nearly enough to evacuate thousands of inmates and a growing population of civilians. On the Community Correctional Center veranda, the scene resembled a smaller-scale version of the notorious evacuation crises at the Superdome and Convention Center, with hundreds of people living and sleeping on prison cots and chairs, trash and other debris rising in piles around them.

When one of the larger boats was idled with a fried motor, Short said he and his deputies crossed a rooftop and broke into an adjacent parking garage at police headquarters so they could "scavenge" car batteries for the boat's electric trolling motor. During a tour of the jail Thursday, Short showed how they used a downed utility line to lower the batteries to the boat bobbing in the water below.

Still, Short and others said, it took a call to Foti to regain complete security and get everybody out. Foti, Orleans Parish criminal sheriff for 30 years, responded quickly and forcefully by sending state Department of Corrections guards and SWAT teams. They were joined by a flotilla of 20 boats from the state Wildlife and Fisheries Department.

"DOC was a savior," Davis said. "When things weren't going fast enough, the attorney general lit a fire under people and got a lot of things going."

"One of the captains called Foti and said, 'We're losing the battle,' a deputy said. "They (DOC) showed up with all the things we didn't have: shotguns with beanbag rounds, tasers, rubber bullets, riot gear, bulletproof shields."

Once the inmate outbreaks were quelled and enough boats were on hand to carry people out, one of the storm's last and most massive waterborne evacuations began to unfold over three days, from Wednesday until the last employees were fished out of the prison complex Friday.

Most of the civilians were dropped off on the Broad Street overpass, where military helicopters flew them to evacuation points. The inmates were either flown or boated to an elevated portion of Interstate 10, where they were assembled until DOC buses could take them to other prisons around the state.

During the building-by-building rescues, the lines between inmates and deputies, deputies and commanders, commanders and civilians grew invisible, Davis said.

"Position doesn't mean much in those situations," Davis said. "I worked side-by-side with the sheriff and, other than him being my boss, everybody was in the same boat. It was just regular people trying to survive."

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HUMAN RIGHTS WATCH

New Orleans: Prisoners Abandoned to Floodwaters

Officers Deserted a Jail Building, Leaving Inmates Locked in Cells

(New York, September 22, 2005)—As Hurricane Katrina began pounding New Orleans, the sheriff's department abandoned hundreds of inmates imprisoned in the city's jail, Human Rights Watch said today.

Inmates in Templeman III, one of several buildings in the Orleans Parish Prison compound, reported that as of Monday, August 29, there were no correctional officers in the building, which held more than 600 inmates. These inmates, including some who were locked in ground-floor cells, were not evacuated until Thursday, September 1, four days after flood waters in the jail had reached chest-level.

"Of all the nightmares during Hurricane Katrina, this must be one of the worst," said Corinne Carey, researcher from Human Rights Watch. "Prisoners were abandoned in their cells without food or water for days as floodwaters rose toward the ceiling."

Human Rights Watch called on the U.S. Department of Justice to conduct an investigation into the conduct of the Orleans Sheriff's Department, which runs the jail, and to establish the fate of the prisoners who had been locked in the jail. The Louisiana Department of Public Safety and Corrections, which oversaw the evacuation, and the Orleans Sheriff's Department should account for the 517 inmates who are missing from the list of people evacuated from the jail.

Carey spent five days in Louisiana, conducting dozens of interviews with inmates evacuated from Orleans Parish Prison, correctional officers, state officials, lawyers and their investigators who had interviewed more than 1,000 inmates evacuated from the prison.

The sheriff of Orleans Parish, Marlin N. Gusman, did not call for help in evacuating the prison until midnight on Monday, August 29, a state Department of Corrections and Public Safety spokeswoman told Human Rights Watch. Other parish prisons, she said, had called for help on the previous Saturday and Sunday. The evacuation of Orleans Parish Prison was not completed until Friday, September 2.

According to officers who worked at two of the jail buildings, Templeman 1 and 2, they began to evacuate prisoners from those buildings on Tuesday, August 30, when the floodwaters reached chest level inside. These prisoners were taken by boat to the Broad Street overpass bridge, and ultimately transported to correctional facilities outside New Orleans.

But at Templeman III, which housed about 600 inmates, there was no prison staff to help the prisoners. Inmates interviewed by Human Rights Watch varied about when they last remember seeing guards at the facility, but they all insisted that there were no correctional officers in the facility on Monday, August 29. A spokeswoman for the Orleans parish sheriff's department told Human Rights Watch she did not know whether the officers at Templeman III had left the building before the evacuation.

According to inmates interviewed by Human Rights Watch, they had no food or water from the inmates' last

meal over the weekend of August 27-28 until they were evacuated on Thursday, September 1. By Monday, August 29, the generators had died, leaving them without lights and sealed in without air circulation. The toilets backed up, creating an unbearable stench.

"They left us to die there," Dan Bright, an Orleans Parish Prison inmate told Human Rights Watch at Rapides Parish Prison, where he was sent after the evacuation.

As the water began rising on the first floor, prisoners became anxious and then desperate. Some of the inmates were able to force open their cell doors, helped by inmates held in the common area. All of them, however, remained trapped in the locked facility.

"The water started rising, it was getting to here," said Earrand Kelly, an inmate from Templeman III, as he pointed at his neck. "We was calling down to the guys in the cells under us, talking to them every couple of minutes. They were crying, they were scared. The one that I was cool with, he was saying 'I'm scared. I feel like I'm about to drown.' He was crying."

Some inmates from Templeman III have said they saw bodies floating in the floodwaters as they were evacuated from the prison. A number of inmates told Human Rights Watch that they were not able to get everyone out from their cells.

Inmates broke jail windows to let air in. They also set fire to blankets and shirts and hung them out of the windows to let people know they were still in the facility. Apparently at least a dozen inmates jumped out of the windows.

"We started to see people in T3 hangin' shirts on fire out the windows," Brooke Moss, an Orleans Parish Prison officer told Human Rights Watch. "They were wavin' em. Then we saw them jumping out of the windows . . . Later on, we saw a sign, I think somebody wrote 'help' on it."

As of yesterday, signs reading "Help Us," and "One Man Down," could still be seen hanging from a window in the third floor of Templeman III.

Several corrections officers told Human Rights Watch there was no evacuation plan for the prison, even though the facility had been evacuated during floods in the 1990s.

"It was complete chaos," said a corrections officer with more than 30 years of service at Orleans Parish Prison. When asked what he thought happened to the inmates in Templeman III, he shook his head and said: "Ain't no tellin' what happened to those people."

"At best, the inmates were left to fend for themselves," said Carey. "At worst, some may have died."

Human Rights Watch was not able to speak directly with Orleans Parish Sheriff Marlin N. Gussman or the ranking official in charge of Templeman III. A spokeswoman for the sheriff's department told Human Rights Watch that search-and-rescue teams had gone to the prison and she insisted that "nobody drowned, nobody was left behind."

Human Rights Watch compared an official list of all inmates held at Orleans Parish Prison immediately prior to the hurricane with the most recent list of the evacuated inmates compiled by the state Department of

Corrections and Public Safety (which was entitled, "All Offenders Evacuated"). However, the list did not include 517 inmates from the jail, including 130 from Templeman III.

Many of the men held at jail had been arrested for offenses like criminal trespass, public drunkenness or disorderly conduct. Many had not even been brought before a judge and charged, much less been convicted.

From: <http://hrw.org/english/docs/2005/09/22/usdom11773.htm>

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KATRINA: SURVIVORS REUNITED

Mother's great escape

New Orleans correction officer safe on LI after harrowing odyssey in which she with now homeless relatives

BY JENNIFER SMITH
STAFF WRITER

September 5, 2005

New Orleans correction officer Shantia Barnes has only a handful of things to remind her of the life she led before Hurricane Katrina:

The six-pointed badge she wore to work for the past three years.

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was stranded on an overpass after helping move inmates from the prison, found about 25 family members made homeless.

Safe and dry at her mother-in-law's house in Amityville yesterday after a harrowing escape from her hometown, Barnes told of water rising chin-high inside the jail, of fear and dehydration among evacuees, and of her desperate hunt for a safe haven in a city made lawless by disaster.

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She said swimming lessons top the list of things she is grateful for now. "Out of 11 of us, only two knew how to swim," said the 22-year-old Army reservist, who moved back to New Orleans from an Army base in Colorado to be with family after her husband, Christopher Barnes, a soldier from Amityville, shipped out to the Gulf. Barnes' husband is en route from Iraq for a special two-week leave to spend time with his wife and son.

In the days leading up to the hurricane, Barnes' family - mostly renters who live in the New Orleans East neighborhood - did not leave because having endured previous hurricanes, they did not think this one would be as bad as it was.

That weekend, Barnes left her son in the care of her mother and reported to work because all deputies were supposed to be on hand during emergencies, she said.

As Katrina raged Monday outside the prison on Perdido Street, water began seeping into the building where Barnes worked. Toilets began to back up. By Tuesday, the water inside was about 3 feet high and about 320 inmates had to be moved to the second floor, she said.

As water rose 5 feet high that evening, the situation became desperate, she said. About 40 civilians, including family members of prison workers, had also taken refuge at the jail. Word spread among the inmates that the Ninth Ward neighborhood of New Orleans, where many had family, was underwater. Unfed for days, the inmates began to riot inside their cellblocks, Barnes said.

"We had no phone lines, no electricity," she said. "There was raw gas in the water ... If it wasn't for the deputies, a lot of people would have died."

She believes many drowned anyway, including inmates housed on the first floor of the Templeman 3 building, where Barnes said that in the chaos, some inmates may have remained locked inside.

"We evacuated everybody who was at the jail as far as we know once we got there," said Pam Laborde, a spokeswoman for the Louisiana Department of Corrections, which helped evacuate the prison. Laborde said she could not confirm what may have happened before rescuers from her agency arrived.

Barnes said as the evacuation went on she joined hands with other guards, inmates and civilians. They moved together through the water from building to building until they were loaded into boats and ferried to an overpass on Tuesday evening. From there, prisoners were loaded onto buses, she said.

Barnes and a number of other deputies, including a cousin who also worked at the prison, slept on the overpass that night. By morning, she said, the buses had stopped coming and a supervising officer from the sheriff's department told them "they were only getting inmates out," Barnes said, although civilians who had been rescued from the flood continued to be deposited there.

Laborde said she could not confirm what officers from Orleans Parish may have said.

"Believe me, we would have transported anybody who needed transporting," Laborde said yesterday from Baton Rouge. She said about 6,500 inmates were removed from the jail.

Orleans Parish Prison officials could not be reached last night.

Believing they had been left behind to their own devices, Barnes and 10 other deputies waded out toward the Superdome. Half-walking, half-swimming, they took water from a bottled water distributorship to stay hydrated.

Eventually they ended up at the convention center, where they found food and chaos.

"There were bodies, a woman had been raped, people had stolen trucks," Barnes said, adding that the group decided to leave because it wasn't safe and no buses appeared to be arriving.

An inmate from the prison who escaped during the evacuation recognized the group and gave them a vehicle he had stolen - "a busted-up van" they drove to the city's West Bank, where they saw the deputy's mother's homes and Barnes used a neighbor's phone to contact her mother-in-law, Teresa

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On Thursday the group borrowed an SUV from friends and drove to Jennings, La. There they disbande search of family members.

Barnes used her cell phone to get information from a sister in Baltimore, who told her that her mother, r younger brother had been rescued and taken to Houston. Barnes and her cousin caught a taxi to Lake drove to Houston in a rental car, where on Friday they found most of her extended family at the Astrodc

Fearful for her son's health in the stadium, Barnes took Cristyun and flew to Long Island, arriving at Lor MacArthur Airport late Saturday night.

But the rest of her family remains in Houston. They have nowhere else to go, she said. "My family lost €

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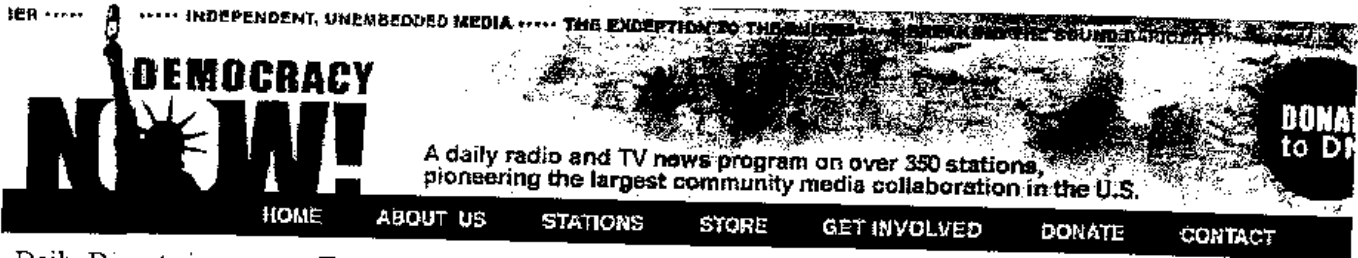
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Tuesday, September 13th, 2005

After Katrina, Where Have All the Prisoners Gone?

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A makeshift prison has been set up in the Greyhound bus and train station in downtown New Orleans. The nearby prison, was flooded after hurricane Katrina. What happened to the prisoners there and in other parish prisons in New Orleans? A writ of habeas corpus was recently filed for an accounting of the prisoners. We speak Louisiana defense attorney Phyllis Mann. [includes rush transcript]

A makeshift prison has been set up in the Greyhound bus and train station in downtown New Orleans. It's being run by the Burl Cain - the warden of Angola prison as well as prison guards from New York.

The nearby prison, the Orleans jail was flooded after the hurricane. What happened to the prisoners there and in other parish prisons in New Orleans? Yesterday, a writ of habeas corpus was filed in Louisiana for an accounting of the prisoners.

- **Phyllis Mann**, defense attorney in Alexandria, LA.

RUSH TRANSCRIPT

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AMY GOODMAN: One woman who has been working tirelessly since the hurricane and flood is Phyllis Mann. She is a defense attorney in Alexandria, Louisiana. She yesterday went to the Angola prison, where it's estimated something like 500 women were brought to this men's prison after the hurricane. We welcome you to Democracy Now!, Phyllis Mann. Can you talk about what happened in Angola?



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PHYLLIS MANN: I and two other female attorneys went to interview -- we interviewed 199 of the 499 women who are currently being housed at a male maximum security prison at Louisiana State Penitentiary at Angola, everyone calls it Angola. And we spent the entire day in the dormitory where these women are being housed. There have never been women housed at Angola before.

These women were moved to Angola from women's facilities in Orleans Parish due to the flooding there. And among the women being held there I met with a 49-year-old woman who was a citizen of Jamaica, who had been arrested on August 16 because she overstayed her visa, but before her deportation could occur, the hurricane came, and so now it has been almost a month, and she would happily return to Jamaica. In fact, what she expressed to me today was not only would she happily return, but she just doesn't have any future plans to ever come back to America again in light of her experiences, that she was housed in a building that they called Concetta, which houses women in Orleans Parish and is part of the Orleans Parish system and was there when the waters began to rise.

And she, along with all of these other women, initially were moved from the first floor up to higher floors, and then as those flooded, they had to be evacuated out, and they were taken by boat from the Orleans Parish prisons. But many of them walked for hours through chest-high water, and some were able to be boated out, and then they got to the Causeway Bridge where they were left waiting for buses. And then from there, they were brought to Angola. And these women are being housed in dormitories that hold 100 women.

They -- when they were in Orleans, they were several days without any food or water. Ultimately, they had to -- they put water in trashcans when the water stopped operating at the prison, and then they were subsequently told don't drink the water from the trashcans now; we're afraid it's contaminated. And these are women, by and large just like the woman from Jamaica, who have -- it could be you or I.

I met with another woman who had failed to pay a fine. She was also arrested on August 16, and because she failed to pay a fine, is sitting in a maximum security prison. We don't know when we're going to be able to get these women out of jail. There was another woman who was arrested for sleeping by the ferry. She has a \$600 bond, and she's been in jail since August 3. But because the records for people who are arrested in Orleans Parish are maintained by the Orleans Parish Sheriff, until those records can be reconstructed, we can't get these women out of jail.

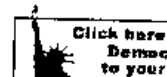
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AMY GOODMAN: Phyllis Mann, can you talk about the men and what happened in the Orleans jail?

PHYLLIS MANN: Sure. Last week, I interviewed 200 men who had been moved to Rapides Parish to the Sheriff's jail here from Orleans Parish. And two of the men, in particular, told me a story that just was almost unbelievable to me. These men were federal detainees, meaning that they had been arrested on federal charges and were being held in the local jail. They had originally been housed in O.P.P., which actually stands for Old Parish Prison there in Orleans on the federal tier.

And as the water began rising, they were moved from that floor up to a higher floor, and ultimately they were placed by the guards in the gymnasium area in the facility, where they were locked in. Once the guards placed them there, they did not see any guards again. Some of the men that were on the same floor where they were, were not in this open gymnasium area, they were in holding cells. And as the water began rising, it got higher and higher. They had been there about a day-and-a-half with no food or water, and they had not seen any guards.

And the water rose until it reached chest level. The men in the gymnasium were able to break the windows out of the gymnasium, and they literally swam out of that room to escape from the prison, but the men that were in the holding cells could not get out. And the men that I spoke to that were able to free themselves were very, very certain that the other men in those holding cells have drowned.

These men that were able to free themselves literally swam out of the building and then found a guard to turn themselves in to. And they were then placed on buses and brought from Orleans to Hunt Correctional Center where they were given blankets, and they basically slept on the hillside for another day or into the following day, when they were placed on buses and brought here to Rapides Parish.

And again, one of the many problems that we're facing and I don't know we have a solution to is until we can reconstruct the records of the Orleans Parish Sheriff's Department, we will not even know who was housed in the various Orleans Parish facilities. We're not going to know how many inmates did not make it out of those facilities.

AMY GOODMAN: Phyllis Mann, what were these men charged with that you interviewed?

PHYLLIS MANN: The two men -- these men that told me the story were both charged with federal offenses. They were

federal drug offenses. But as they were being relocated to higher floors in Orleans Parish Prison, not everyone who was relocated there was charged with a serious crime. Many of these men, just like the women that I talked to today, were arrested on very minor charges. They may have been arrested for public drunk or possession of drug paraphernalia, which could be something as minor as a roach clip. Some of them were charged with trespass. Some of them were on probation and had missed a court date or had missed a drug court hearing and were in jail for seven days to sort of get their attention. Well, my lord, we have gotten their attention now.

AMY GOODMAN: So, what's going to happen to them?

PHYLLIS MANN: Ultimately, we'll get this all sorted out. There are lawyers all over the state, criminal defense lawyers, who are going to all of these facilities. There are 35 facilities that we are aware of all over the State of Louisiana, where over 8,500 people from Orleans jails were evacuated. And we're literally having to go in and meet with these people one by one to figure out when they got arrested, why they were in jail, whether they have been convicted or whether they were waiting for trial, whether it was a misdemeanor or a felony.

I understand that the computers from the Orleans Parish Criminal Sheriff's Office were retrieved from Orleans on Friday, and their information technology people have been working to try to get as much information off of those computers as possible. And eventually what will happen is they're going to start matching the information they can recover from those computers to the information that we have been getting by going in and interviewing these people one by one, so that we can figure out where they're supposed to be. I would say a good half of them are not supposed to be in jail at all. They have served whatever sentence they had received and should be released. But until we can figure that out, they're sitting there.

AMY GOODMAN: Some haven't even been sentenced at all?

PHYLLIS MANN: Many of them not sentenced at all. Many of them not even convicted. They are people who, like all American citizens, when they're arrested are presumed innocent until proven guilty, and they have not even had an opportunity to go to court.

AMY GOODMAN: Phyllis Mann, how do the prisoners reach their families?

PHYLLIS MANN: We have a hotline number that has been established through Hunt Correctional Center. Families can call

in to these numbers. It's area code 225 and the two numbers are 342-5935 or 342-3998. If they had a loved one who was in jail in any of the affected parishes, St. Bernard, Orleans, Jefferson or Plackman, they can call into those numbers and leave a message about where they currently are, where their loved one can call to reach them, and they can also find out from Hunt Correctional Center where their loved one is now being housed. We do finally have a complete list of where everyone was evacuated to, so families can call in for that information.

AMY GOODMAN: Phyllis Mann, thank you very much for being with us. Phyllis Mann, a defense attorney in Alexandria, Louisiana. A writ of habeas corpus has been filed to get accounting of the prisoners, it is believed something like 8,000 of them. Where are they? Have they been moved? Did they survive? What has happened?

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

LOUIS HAMILTON, et al.,	:	Civil Action No. 69-2443
	:	& Consolidated Cases
Plaintiffs,	:	Section LLM (5)
	:	
v.	:	
	:	
ERNEST N. MORIAL, et al.,	:	
	:	
Defendants.	:	

DECLARATION UNDER PENALTY OF PERJURY

Alexandria, Louisiana:

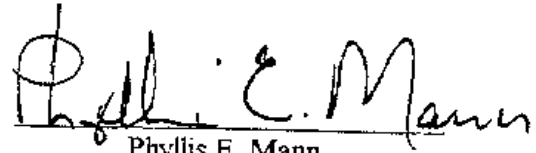
PHYLLIS E. MANN, pursuant to 28 U.S.C. § 1746, hereby makes the following declaration under penalty of perjury:

1. I am a licensed attorney in the State of Louisiana with a criminal defense practice.
2. I have conducted screening interviews with prisoners and detainees who were displaced as a result of Hurricane Katrina. I have also been involved in coordinating these screening interviews. These interviews are an attempt to identify and locate those persons now scattered within the Louisiana Department of Corrections and parish facilities and determine the status of their detention and whether they may be entitled to or eligible for immediate release from confinement, and further to assist them in locating their displaced family members and their criminal defense attorneys.
3. Between September 7, 2005 and September 26, 2005, I have personally interviewed or overseen the interviewing of over 2400 men and women, many of whom who had been confined

within the Orleans Parish Prison ("OPP") at the time that Hurricane Katrina struck New Orleans.

4. Almost every evacuee whom I interviewed asked to speak with a lawyer regarding the conditions at OPP after the hurricane and during the evacuation.

I declare under penalty of perjury that the foregoing is true and correct.


Phyllis E. Mann

Executed on September 26, 2005



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2theadvocate > News > 16 female prisoners released from Angola 09/23/05

theadvocate News

16 female prisoners released from Angola

By PENNY BROWN ROBERTS
proberts@theadvocate.com
Advocate staff writer

A New Orleans federal judge freed 16 prisoners Thursday who had more than served their time.

U.S. District Judge Jay Zainey ordered the release of female inmates evacuated from the Orleans and St. Bernard parish prisons after Hurricane Katrina and housed in the Louisiana State Penitentiary at Angola beyond their scheduled release dates.

The late afternoon hearing stretched into two hours as the judge and lawyers hatched a plan for finding the convicts transportation or shelter from the approaching Hurricane Rita.

"My job under the Constitution is to not let people stay in jail who are not supposed to be there," Zainey said. "But as a humanitarian, I think we're all concerned about what happens to them once they're let go."

The women were among 94 who filed suit Tuesday against Orleans Parish Sheriff Marlin N. Gusman, Orleans Parish District Attorney Eddie Jordan and other law-enforcement agencies, demanding their freedom.

Most are being held on minor misdemeanor offenses, such as public drunkenness, trespassing, disturbing the peace, prostitution or lewd conduct.

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The state Department of Public Safety and Corrections planned to release the 16 women Thursday night, give each \$10 and buy them bus tickets to the adjoining state of their choice or take them to shelters.



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Zainey also ordered the future freeing of two women whose release dates are approaching. But Zainey declined to free 13 others who still have pending charges against them.

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Two inmates already had been freed by another judge, and the prison records of another woman couldn't be located to determine whether she could be released.

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Still at issue are 60 prisoners, many claiming they've never had the opportunity to post bond or make an initial appearance before a judge. A hearing has been scheduled for Monday to determine their fate.

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All told, Hurricane Katrina forced authorities to evacuate about 8,200 inmates from Orleans and Jefferson parishes to state prisons and parish jails.

The hurricane shut off access to inmate records several weeks ago, keeping many behind bars longer than normal. Prisoners left the flooded jails without identification, delaying their release.

The corrections department already has set free more than 200 inmates from Orleans, St. Bernard, Plaquemines and other hurricane-ravaged parishes whose release dates have passed. It provided cash and transportation or shelter to those people as well.

Zainey said he will "continue to monitor the situation to ensure these people don't fall through the cracks. I don't want people that aren't supposed to be in jail in jail."

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

LOUIS HAMILTON, et al., :
 : Civil Action No. 69-2443
 : & Consolidated Cases
 Plaintiffs, : Section LLM (5)
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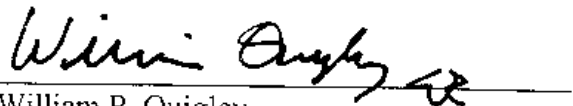
CERTIFICATE OF COUNSEL

Pursuant to Local Rule 37.1, Plaintiffs state that counsel for the parties have conferred by telephone for purposes of amicably resolving the issues raised in the accompanying Motion for an Injunction for Access to Class Members and have been unable to resolve their dispute.

Respectfully Submitted,



Eric Balaban
Elizabeth Alexander
National Prison Project
ACLU Foundation
915 15th St, NW, Seventh Floor
Washington, D.C. 20005
202/393-4930



William P. Quigley
Loyola Law Clinic
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7214 St. Charles Avenue
New Orleans, Louisiana 70118

504/861-5590
Bar Roll #7769

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

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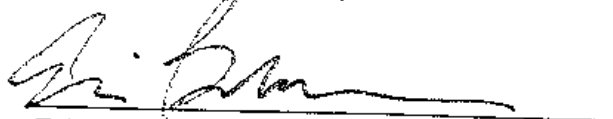
PLAINTIFFS' MOTION FOR EXPEDITED CONSIDERATION

Plaintiffs respectfully move this Court to expedite its consideration of Plaintiffs' Motion for an Injunction for Access to Class Members, filed herewith. Plaintiffs by their Motion seek access to their clients, evacuated Orleans Parish Prison (OPP) prisoners who are now housed in Louisiana Department of Correction (DOC) facilities. The state Defendants are currently barring counsel from interviewing their clients housed in DOC facilities.

As stated in the accompanying motion, on information and belief, evacuated prisoners began to be released from DOC facilities and parish prisons on September 16, 2005. Some of these evacuees have been freed as the result of filing habeas petitions for their release, claiming that they have been incarcerated past their maximum sentence or release date. On information and belief, the DOC has either contacted family members to pick up released OPP evacuees, or has provided the evacuees with transportation to one of the many shelters set up after the hurricane. Like many New Orleans citizens, these OPP evacuees are permanently displaced from their homes, and have no fixed address, making it nearly impossible for them to be tracked down once they were released from DOC

custody. These prisoners may have information regarding the conditions at OPP during Hurricane Katrina and its aftermath that may be relevant to issues and claims in this case. Plaintiffs therefore ask that the Court schedule a hearing on Plaintiffs' Motion for Access as soon as is practicable, so that the parties' dispute over counsel's access to their clients can be resolved.

Respectfully submitted,



Eric Balaban
National Prison Project
ACLU Foundation
915 15th St., NW, Seventh Floor
Washington, D.C. 20005
202/393-4930



William P. Quigley
Loyola Law Clinic
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Bar Roll #7769

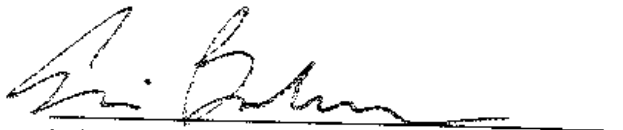
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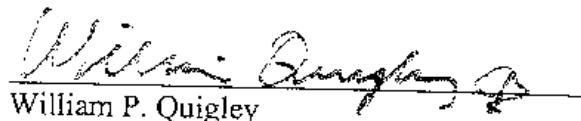
CERTIFICATE OF COUNSEL

Pursuant to Local Rule 37.1, Plaintiffs state that counsel for Plaintiffs attempted without success to reach counsel for Defendants regarding the appended Motion for Expedited Consideration

Respectfully Submitted,



Eric Balaban
Elizabeth Alexander
National Prison Project
ACLU Foundation
915 15th St, NW, Seventh Floor
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202/393-4930



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IN THE UNITED STATES DISTRICT COURT
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 :
 Defendants. :
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ORDER

For good cause shown, Plaintiffs' Motion for Expedited Consideration is GRANTED; and it is hereby ORDERED that a hearing on Plaintiffs' Motion will be held on the _____ day of _____, 2005.

Baton Rouge, Louisiana this _____ day of _____, 2005

ALMA CHASEZ
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

LOUIS HAMILTON, et al., : Civil Action No. 69-2443
 : & Consolidated Cases
 Plaintiffs, : Section LLM (5)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiffs' Motion for an Injunction for Access to Class Members, accompanying Memorandum, declaration and exhibits, and proposed Order, as well as Plaintiffs' Motion for Expedited Consideration, and proposed Order, were sent by Federal Express, electronic mail, or by facsimile copy (where noted), to the following counsel for Defendants:

Patricia Nalley Bowers, Esq. via facsimile copy
1200 S. Acadia Thruway
Baton Rouge, LA 70806
Phone: (225) 346-5383 (Baton Rouge office)
(225) 346-5318 (fax)
(504) 228-4739 (cell)
Email: bowersfirm@hotmail.com

Harry Rosenberg, Esq. via facsimile copy
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Email: rosenbeh@phelps.com

John Weeks, Esq. via electronic mail

Usry Weeks & Matthews

Email: weeks142@hotmail.com

A handwritten signature in black ink, appearing to read "Eric B. Rosen", written over a horizontal line.

LEGAL DEPARTMENT
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AMERICAN CIVIL
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Re: Hamilton v. Morial, C.A. No. 69-2443 (consol.)

P. EARL BEARD, JR.
NATIONAL PRISON PROJECT
515 15TH STREET, NW
7TH FLOOR
WASHINGTON, DC 20005-1112
(202) 393-4930
WWW.ACLU.ORG

Dear Clerk:

Enclosed for filing is the original and one copy of (1) Plaintiffs' Motion for an Injunction for Access to Class Members, accompanying Memorandum, declaration, exhibits, and proposed Order, and (2) Plaintiffs' Motion for Expedited Consideration, and proposed Order, along with a certificate of service on opposing counsel.

Thank you for your attention to this matter. Please feel free to call me at 202/393-4930 if you require any additional information.

ELIZABETH ALEXANDER
DIRECTOR
ATTORNEY AT LAW

NATIONAL OFFICE
135 BROAD STREET, 15TH FL.
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TREASURER

cc: The Hon Alma Chazez
counsel of record

Very truly yours,

Eric Balaban