



Tents designed to house 800 prisoners currently under construction



IX. BUSINESS AS USUAL: THE RETURN OF PRISONERS TO OPP

When Hurricane Katrina swept through New Orleans, many parts of the city and the surrounding region were virtually wiped out. In the year since the storm, the city of New Orleans, the state of Louisiana, and the country have engaged in a sometimes heated debate about how and, indeed, whether to rebuild New Orleans.

In a perverse turn of events, some viewed the creation of a temporary jail facility at a Greyhound Bus Station near downtown as the first step to rebuilding New Orleans. Angola's Warden Burl Cain declared the makeshift jail "a real start to rebuilding this city."¹ But the problems endemic to the local criminal justice system certainly were not solved by the storm, nor did the rebuilding of a jail cure them. After the waters receded, Sheriff Gusman quickly began the process of refilling OPP. When much of the city was still assessing whether it was safe to return to flood-ravaged areas, the Sheriff was moving people back into the jail.

A. The Sheriff Prematurely Reopens OPP

On October 17, 2005, Sheriff Gusman reopened HOD, one of the oldest of the twelve OPP buildings. Since October, several others buildings have been reopened to warehouse New Orleans's constant flow of arrestees. The Sheriff reopened these buildings without putting into place the most basic safeguards for the health and well-being of the men and women housed there.

Rather than working with the Mayor and City Council of New Orleans to ensure the prison buildings were safe before they were reopened, the Sheriff hastily moved toward repopulating his jail. The Sheriff recently boasted that in his rush to reopen HOD—a building owned by city, not the Sheriff's office—he "just ignored the city. . . . I just couldn't wait for them."² In doing so, the Sheriff appears to have circumvented essential procedures that were used throughout the city to repair and clean flood-damaged buildings.

In the one year that has passed since Hurricane Katrina, the City Council has not held a single hearing to discuss problems associated with the evacuation of OPP, the apparent absence of an emergency plan at the reopened jail, and

recurrent complaints about current conditions at the jail—including reports of a recent, apparently preventable prisoner death. The ACLU of Louisiana has twice called upon the City Council to hold hearings on the Sheriff’s decision to reopen the prison buildings.³ In both requests the ACLU

reminded the City Council of its “obligation to do what it can to protect the lives and safety of the prisoners and staff at OPP, and to ensure that institutional failures during Hurricane Katrina are not repeated.”⁴

DOING “KATRINA TIME”:

INDIGENT DEFENDANTS LANGUISH IN JAILS AND PRISONS THROUGHOUT THE STATE

Long before Hurricane Katrina hit the Gulf Coast, the indigent defense system in Louisiana was essentially broken. In 1993, the Louisiana Supreme Court concluded that there was “a general pattern . . . of chronic underfunding of indigent defense programs in most areas of the state.”⁵ According to one study issued 11 years after the Louisiana Supreme Court decision, the state’s indigent defense system continued to deliver “ineffective, inefficient, poor quality, unethical, conflict-ridden representation to the poor.”⁶ Recognizing the problems of a systematically underfunded indigent defense system, the Louisiana Supreme Court acted again in April 2005, ordering that any given prosecution may be halted if appointed counsel is not provided with adequate funds.⁷

Following Hurricane Katrina, the entire criminal defense system in New Orleans ground to a halt.⁸ Although public defenders are needed to represent 85% of the individuals arrested in New Orleans, the public defender office was for years funded almost entirely by fees attached to traffic fines.⁹ With no revenue in the months after the storm, the office quickly lost 75% of its attorneys, leaving thousands of New Orleans prisoners stranded in facilities across the state without any access to counsel whatsoever.¹⁰ A study by the U.S. Department of Justice (“DOJ”) concluded that due to the collapse of the indigent defense system in New Orleans:

*[p]eople wait in jail with no charges, and trials cannot take place; even defendants who wish to plead guilty must have counsel for a judge to accept the plea. Without indigent defense lawyers, New Orleans today lacks a true adversarial process, the process to ensure that even the poorest arrested person will get a fair deal, that the government cannot simply lock suspects [up] and forget about them.*¹¹

Many of the OPP evacuees spent months in prison on minor charges without seeing a lawyer or appearing in court to answer the charges against them—for many of these individuals, by the time their case was brought to the court’s attention, they had already served more time in prison than they ever would have received had they been found guilty. Prisoners also remained incarcerated for months after their release dates had passed, notwithstanding the fact that on September 8, 2005, Sheriff Gusman produced a list of OPP prisoners that contained release dates for them. Through painstaking work, a small group of local defense attorneys worked throughout the year to identify these individuals and file motions and petitions on their behalf seeking their release.¹²

From September 2005 until June 2006 there were no criminal trials in New Orleans.¹³ Once the court building reopened, a new series of problems emerged. Judges often struggle to get witnesses or jurors to appear for trials, and the number of courtrooms available is inadequate to conduct all necessary hearings.¹⁴ Although OPP was reopened shortly after the storm, the Sheriff quickly filled the jail with new arrestees as well as state and federal prisoners. Because there was no bed space at OPP, evacuees who waited nine or ten months to appear in court were stuck in facilities all around the state, unable to return to Orleans Parish to attend scheduled court hearings. While new arrestees often appear in Magistrate Court without an attorney,¹⁵ it has become commonplace in the Orleans Parish Criminal District Court for incarcerated defendants in DOC custody to be the only people missing from the courtroom. According to Calvin Johnson, Chief Judge of the Criminal District Court, New Orleans has “a limited number of jail spaces, and we can’t fill them with people charged with minor offenses such as disturbing the peace, trespassing or spitting on the sidewalk. . . . I’m not exaggerating: There were people in jail for spitting on the sidewalk.”¹⁶

In an effort to open more bed space at OPP so evacuated parish prisoners do not miss court dates, Chief Judge Johnson issued an order on May 17, 2006, requiring that all persons charged with municipal or traffic offenses be released and issued a citation to appear in court on a later date.¹⁷ The New Orleans Times-Picayune’s editorial board calls Johnson’s approach “the proper course.”¹⁸

In March 2006, New Orleans’s population only stood at 155,000.¹⁹ By late May, as many as 150 were entering OPP each day.²⁰ With fewer court dates and almost no public defenders available, the court system is woefully backlogged—approximately 6000 cases have stacked up without any movement, according to the Orleans Parish District Attorney.²¹ The rush to reopen damaged OPP buildings, the high number of continuing arrests, and the lack of trials, have combined to create a prison complex that is an overcrowded, unsanitary, and inhumane human warehouse. “For the vast majority of arrested individuals,” according to the DOJ study, “justice is simply unavailable.”²²

1. No Evacuation Plan Can Be Located

Three days before the Sheriff reopened HOD, the ACLU posed a series of questions to him regarding the reopening of the building. One question was whether there was a current evacuation plan for the jail, and whether the plan had been revised since Hurricane Katrina.²³ At a court hearing on October 17, 2005, the day HOD was reopened for business, the ACLU obtained an order requiring the Sheriff to produce “the current evacuation plan pertaining to the Orleans Parish Prison.”²⁴

After two weeks, the ACLU wrote to the Sheriff asking that he comply with the court order and produce the plan. The Sheriff’s counsel responded by stating that he would “send . . . the current fire evacuation plan when he can locate the officer who maintains the Procedures manual.”²⁵ Having received nothing for ten more days, the ACLU filed a motion to hold the Sheriff in contempt of the court’s order. In response, the Sheriff’s counsel wrote to inform the ACLU that

the fire evacuation plan is in the possession of the Fire Safety Officer for the Sheriff’s Office, Raymond Fitzpatrick (who is a retired district fire chief). Mr. Fitzpatrick has not been seen or heard from since Hurricane Katrina struck New Orleans. In an effort to locate the plan, we intend to break into Mr. Fitzpatrick’s locked filing cabinets at the House of Detention. If it cannot be located there, that means it is instead located in the Community Correctional Center. No one is allowed into the CCC at this time for health reasons.²⁶

With this letter, the Sheriff’s counsel admitted that nearly two months after the Sheriff returned prisoners, staff, and deputies to HOD, there was no Fire Safety Officer assigned to the facility, no accessible fire evacuation plan in place, and there was little expectation that such a plan would be produced in the foreseeable future. Moreover, the Sheriff’s counsel appeared to have made no effort to locate any current evacuation plans aside from the fire evacuation plan. There is no indication whether the patently inadequate two-page Hurricane/Flood Contingency Plan that was purportedly in place at the time of Katrina was revised in any manner.

2. Adequate Medical Care Is Not Available for Chronically Ill Prisoners

Prior to the storm, emergency medical services were provided to prisoners by Charity and University hospitals, two public hospitals in New Orleans. However, at the time HOD was reopened, both hospitals remained closed.²⁷ In light of the damage suffered by many of the prison buildings, and given that many health

care staff and officers had not returned to New Orleans, the ACLU asked the Sheriff to explain how the jail planned to provide prisoners with medical and mental health services.²⁸

Those questions were in fact answered several weeks later, when the Sheriff wrote to the New Orleans City Council to propose his new budget. In that letter, the Sheriff admitted that the “limited medical staff and equipment can’t provide all of the services that are needed for dialysis, surgery, and the treatment of AIDS.”²⁹ In light of the Sheriff’s admission, it should come as no surprise that prisoners complain about current medical care at OPP. Prison officials report that serious medical cases are taken to neighboring hospitals several miles away, but one prisoner explains that “you got to be ready to die” to be taken to the hospital.³⁰

One prisoner recently described an incident in which another prisoner who was supposed to be receiving medication:

threw up major beaucoup blood, purple blood, pieces like the size of extra large jolly ranchers. . . . Everyone thought he would die. We called deputies and asked Ms. Thurman to get him out of here and at first Thurman said medical wasn’t coming. She saw the blood and everything and we convinced her we need to get him out of there. He could barely move. Blood around his feet at least 1/2 inch thick. We had to mop it up when he left.³¹

Another man who suffers from epilepsy complains that when he informed deputies of his medical condition and asked to be placed on a bottom bunk, he was beaten and moved to another section of the prison.³²

With the Medical Observation Unit of Templeman I still closed, wheelchair-bound prisoners report they are now held in areas of the jail that are not handicap-accessible. One such prisoner held on the 10th floor of HOD filed a grievance with Warden Pittman regarding problems he has had in navigating through the jail. In his grievance he writes:

Warden Pittman, I’m sending this grievants to you about some serious problems in having, I’m already confined to a wheel chair with one leg. I have been having trouble getting on and off the toilet and when I have to shower I have to try and jump from one chair to another to shower I really can’t help myself is there some where close yall could send me that have handicap rails in the showers and around the toilets where I wouldn’t hurt myself.³³

The curt response provided by Warden Bonita Pittman reads simply: “You are on a medical tier what you are requesting does not exist in the jail facilities.”³⁴

INCOMPETENT DEFENDANTS

By law, a criminal prosecution may not proceed in Louisiana if a court determines that the defendant is not mentally competent to stand trial.³⁵ The state may attempt to restore an incompetent defendant to competence through jail-based treatment, but that treatment may not exceed 90 days.³⁶ At that point, if competency has not been restored, the defendant must be transferred to the Feliciana Forensic Facility (“Feliciana”).³⁷ Even before Hurricane Katrina brought the New Orleans criminal justice system to a halt, mentally incompetent defendants

often languished in local jails for months waiting for a transfer to Feliciana. While in jail they received limited, if any, treatment for their mental health conditions.

Eleven days before Hurricane Katrina hit New Orleans, Tammy Sims was supposed to be released from OPP and transferred to Feliciana.³⁸ Ms. Sims had been arrested earlier in the month on a charge of public drunkenness, and was being held on a one-year old solicitation charge.³⁹ At an August 18, 2005 hearing, the trial judge concluded that Ms. Sims, who suffers from schizophrenia, was mentally incompetent to stand trial; he ordered that she be transferred to Feliciana, where she was to receive treatment to restore her to competency.⁴⁰ On the day of the storm, Ms. Sims was still in OPP, and only a chance encounter with a Tulane law student long after the storm led to her release 10 months later.⁴¹

Ms. Sims's experience is not unique, though it is unknown how many incompetent defendants were, and still are, languishing in prisons and jails throughout the state following Katrina. Many of these men and women may not be receiving adequate treatment, nor is there any reason to expect that they will soon be transferred to a hospital or other treatment facility, or that they will appear in court.

3. The Reopened Buildings Remain Damaged and in Need of Repair

It is not surprising that the OPP buildings were heavily damaged following the storm. Water from the storm destroyed the mechanical, electrical, and plumbing systems necessary to make many OPP buildings habitable. The water ruined surveillance equipment, shorted out electrical systems that manage the locking devices, and otherwise compromised basic safety systems.⁴² Some of the buildings had enormous holes in the exterior walls, through which men, women, and children had escaped the rising floodwaters. Prisoners housed in HOD report that there has been no hot running water since the building was reopened. In his letter to the City Council, Sheriff Gusman admitted that he returned prisoners to two buildings that "still require additional repairs and improvements to be brought to pre-Katrina levels."⁴³

One problem the Sheriff appears not to have addressed is possible mold infestation. Following Hurricanes Katrina and Rita, the Centers for Disease Control warned that untreated mold will exacerbate asthma and can have serious health effects, particularly for those who have other chronic conditions.⁴⁴ The CDC recommended that public officials develop a comprehensive program to identify and repair mold-infested buildings, which include any building that had been water-logged for more than 48 hours, and to implement a coordinated public health response to track and treat persons who suffer health effects from being exposed to mold.⁴⁵ While the rest of New Orleans was becoming expert in mold remediation, Sheriff Gusman said simply that the ground floor of HOD was "kind of mothballed."⁴⁶

In March 2006, several prisoners mailed to the ACLU samples of what they believed to be mold scraped from their cell walls. Once tested, many of the samples were found to contain various types of mold. Although the presence of mold alone is insufficient to declare a health emergency, these samples strongly suggest that additional testing of the air in the buildings and of mold collected from surfaces in the buildings is warranted.

In addition to aggravating asthma, mold can affect the immune system, cause flu-like symptoms and pneumonia, and in some cases can lead to hepatocellular cancer.⁴⁷ Some prisoners report suffering from cold and flu-like symptoms such as headaches, nausea, and body aches most days they remain inside the facility. One person reports nausea, fevers and diarrhea for four days,⁴⁸ while another states that he had migraines

and severe stomach pain.⁴⁹ In March 2006, one prisoner who mailed samples of mold collected from the Templeman V building described his asthma as "increasing in severity."⁵⁰ In his letter he names one prisoner who reportedly "contracted pneumonoma and is on 4 types of inhalers from asma attack's (sent to Hospital for x-rays[.])"⁵¹ The Sheriff refused to turn over this prisoner's medical records to the ACLU.

4. Severe and Sustained Overcrowding

The average floor in the House of Detention contains four tiers (HOD Northside, HOD Southside, CLU Northside, and CLU Southside). Each tier typically holds three ten-person cells, for a total designed capacity of 120. Inside of each 10-person cell are two toilets and five double-stacked bunk beds. Prisoners report that they have been housed with up to 18 people in their cells. According to one man on the 3rd Floor of HOD who was interviewed in June 2006, there are 16 men in his cell, 17 men in cell 1 and 14 men in cell 2. delxi The six men who are sleeping on the floor all have mats, but one prisoner sleeping on a bunk had not had a mattress for two weeks.⁵³ Another prisoner explains that when prisoners are placed in a cell in HOD, "some don't even get mattresses or blankets for a few days."⁵⁴ With people sleeping on the floor, "[i]t is so packed upstairs that everyone has to shift themselves and their mattresses for one person to use the toilet."⁵⁵ In some cells, prisoners are forced to sleep alongside the toilets because of the lack of space.⁵⁶ Several prisoners report that the floors are still filthy and soiled with urine from when the toilets overflowed during the storm.⁵⁷

Most of HOD is not air-conditioned. The building, which is ten stories high and has small windows in the walkways outside each cell, becomes oppressively hot during the summer. Across from most cells there is a small window fan that circulates hot air. For the men who are crammed into a cell at nearly double capacity, the heat affects every aspect of their lives. According to one man, "[i]t is so hot up there with all of those people that it gets hard to breathe. Tensions run high and deputies don't care because they don't have to live up there. It is an animal house up there."⁵⁸ Another prisoner, an insulin-dependant diabetic living in a non-air conditioned medical tier, reports that there is "[n]o air at all. Mad hot. The fans work but don't really blow nothing."⁵⁹ Prisoners faced the opposite problem in the winter, when they were returned to a building with windows that were broken in the days after Katrina.⁶⁰ One prisoner reports that in February it was "too cold to shower."⁶¹

THE DEATH OF KERRY ANTHONY WASHINGTON



Kerry Anthony Washington, 39 years old, was arrested on April 25, 2006 by the Jefferson Parish Sheriff's Office. According to Mr. Washington's wife, Cheryl, the two of them were engaged in an argument and, although no violence had occurred, Mrs. Washington contacted the local police.⁶² Upon their arrival, Jefferson Parish Sheriff's deputies discovered that Mr. Washington had an outstanding Orleans Parish warrant for failing to appear in court to answer a charge of first-offense possession of marijuana. They arrested Mr. Washington and turned him over to the Sheriff's office.

After his arrest, Mr. Washington's wife telephoned or visited the jail every one or two days to determine the status of her husband's case. Unsatisfied with being told that Mr. Washington was being held on a warrant, she visited the clerk's office of the criminal court, where she was told that her husband had a court hearing sched-

uled for May 12. On May 12, Mrs. Washington went to the House of Detention, where her husband's court hearing was supposed to occur. Upon her arrival, she was told that the hearing was not open to the public. In the hopes of catching a glimpse of her husband, Mrs. Washington stayed around for a little while. Eventually she went home. Later that night, Mrs. Washington called Central Lock-Up and was informed that her husband had been released from the jail at 5:30 pm.

After some time had passed without hearing from her husband, Mrs. Washington drove to the jail, thinking that her husband was waiting for her to pick him up. When she found that he was not there, and she confirmed that he had not called her, his mother, or any of their friends, she drove to

several bus terminals around the city in search of him.

On Saturday morning, Mr. Washington's mother—a Hurricane Katrina evacuee now living in Georgia—flew to New Orleans to help locate her son. Melvina Washington went to Central Lock-Up, where she met her daughter-in-law. Both women again were told that Mr. Washington had been released the previous evening.

When Melvina Washington asked to speak with someone else in Central Lock-Up, and Cheryl Washington asked to see documentation of her husband's release, a high-ranking official in the Sheriff's Office informed the two women that Kerry Anthony Washington had died two weeks earlier, on April 29, 2006, just four days after his arrest.

According to the Sheriff's spokesper-

son, Mr. Washington failed to provide emergency contact information, and the addresses they had on file did not produce results. This response does little to explain why Mrs. Washington was not told her husband had died during her daily calls and visits to jail, nor has the Sheriff explained why jail personnel repeatedly misinformed Mrs. Washington about her husband's well-being and his whereabouts.

In May 2006, family members and supporters assembled outside the jail to remember Mr. Washington's life and mourn his death. The crowd shared in prayer and song, and listened to testimonials from Mr. Washington's wife, mother and children about how much he meant to them and how deeply his loss will be felt. The exact circumstances of Mr. Washington's death remain unclear. According to the Orleans Parish coroner, Mr. Washington died "following a scuffle with guards at the prison."⁶³ ■

Overcrowding is also a problem in the South White Street jail, where most prisoners sleep in open dormitories filled with row upon row of bunk beds. Prisoners estimate that each dorm is equipped to hold approximately 90 prisoners, but they now house in excess of 110 people. One man explains: “The living conditions here are overcrowded. I’m in a 90 man cell with maybe 115 to 120 people. I don’t think it would pass the fire department code.”⁶⁴ Another prisoner reports that there are people sleeping on the floor.⁶⁵ “Food it’s bad, man. It’s bad in there. Food comes up short every day.”⁶⁶

Rather than look to viable alternatives that would allow New Orleans to maintain a smaller, safer jail, Sheriff Gusman returned to a solution from yesteryear to alleviate his overcrowding problems. Directly across from HOD, construction has begun on a series of eight tents that are intended to house 100 prisoners each.⁶⁷ If history is any indication of what is to come, there is no telling how long this “temporary minivillage of barracks-style jails” will remain in use.⁶⁸

B. The Decision to Reopen Orleans Parish Prison: The Business of Incarceration

It is not difficult to understand why the Sheriff quickly reopened the facility and returned prisoners to his jail. By agreement, the city of New Orleans pays the Sheriff’s office \$22.39 per day for each local prisoner OPP houses.⁶⁹ Before the storm, this amounted to roughly \$100,000 per day. The state pays the Sheriff \$24.39 for each state prisoner he houses at the jail, with a \$7.00 premium per day for each state prisoner who requires mental health care.⁷⁰ However, he receives nearly twice that amount for housing federal prisoners, including immigration detainees.⁷¹ This may explain why thousands of local prisoners charged with minor offenses languished for months in state facilities without access to counsel, and without any chance of appearing in court, while federal prisoners were among the first to be returned to OPP following the hurricane. These individuals were held in Templeman V, an administrative building that reportedly did not house prisoners before the storm, and was only put into use because the majority of the other buildings were in far worse condition post-Katrina. For 2006, the City of New Orleans projects it will spend over \$50 million to house prisoners, double what it spent just twelve years ago.⁷²

Orleans Parish Criminal Sheriffs have consistently discussed the trafficking of prisoners in business terms. After the number of state prisoners housed at OPP dropped between 2000 to 2002, then-Sheriff Foti remarked: “If you were in the stock market, you would call this a slow-growth period.”⁷³ Noting that the pay from housing federal prisoners was significantly higher than from state or local prisoners, Foti once said he “wish[ed] there were more high-profit prisoners.”⁷⁴ Following Sheriff Foti’s departure, Interim Sheriff Bill Hunter explained the “tight budgetary times” for the Sheriff’s office by noting that “fewer inmates translates into less revenue for the jail.”⁷⁵ In fact, when the Sheriff’s office requests payment from New Orleans for housing city prisoners, the “Invoice” refers to prisoners as units, and lists a “Unit Price” of \$22.39 per day.⁷⁶

Despite the enormous cost to the city of housing all of

these individuals, the finances of OPP are a mystery to local and state officials. In fact, when the Sheriff presented the City Council with his projected 2006 annual budget of approximately \$75 million, the document was a meager two pages—the same length as the Contingency Plan.⁷⁷ The budget failed to breakdown any of the figures, including big-ticket items such as personnel expenditures, which totaled \$39,910,562.⁷⁸

This lack of accountability also allows the Sheriff to have unparalleled control over the city’s largest patronage base. In 2005, the sheriff had roughly 1200 nonunion employees who served at his pleasure, exempt from the civil service protections enjoyed by other city employees.⁷⁹ The *Times-Picayune* remarked that the electoral victory of current Sheriff Marlin Gusman marked “his evolution from political appointee to full-fledged politician with his own patronage base.”⁸⁰ According to Shana Sassoon, a member of the Orleans Parish Prison Reform Coalition (“OPPRC”), “OPP has long been a shameful centerpiece of New Orleans’ broken criminal justice system with its history of human and civil rights abuses, fatal disease, and institutional violence. It’s no coincidence that OPP has also emerged as a centerpiece of political power in New Orleans.”⁸¹

The return of prisoners to OPP also provided the Sheriff with the labor force that his office has long used and abused. In 1989, the *Times-Picayune* reported that private citizens and companies could hire prisoners to perform work at minimum wage.⁸² From these wages, the sheriff would deduct living expenses, travel expenses, support costs of the prisoners’ dependents, and payment of the prisoners’ debts, with any remaining money going to the prisoner. In mid-July 2006, two OPP prisoners were improperly “loaned” to a contractor in order to perform construction work on the home of a local judge.⁸³ Recently OPP built an aquaculture facility—run entirely by prison labor—to raise about 600,000 to 700,000 pounds of tilapia per year.⁸⁴ Prison laborers are often used as political tools. When running for office in 2003, Marlin Gusman told the League of Women Voters: “I will work with the city administration to reduce the burden on the general fund and provide more prisoner labor to augment city services.”⁸⁵ One factor that helped the Sheriff return prisoners to OPP so soon after the storm is his use of prison labor to clean up the facility. Persons charged with municipal offenses following the storm reported that upon pleading guilty, they were ordered to complete 40 hours of community service cleaning up OPP buildings.⁸⁶

If anything, Hurricane Katrina has accelerated the jail’s exploitation of prison laborers who are paid pennies on the dollar. After the hurricane struck, Sheriff Gusman promised to make prisoners available to assist in the recovery. Given the fact that the majority of prisoners had yet to be convicted or were convicted of minor offenses, this use of prisoners amounts to modern slavery—or a throwback to the notoriously racist convict-lease and state-use prison labor systems that proliferated in the South after Reconstruction.