

3. KATRINA AND THE CRIMINAL JUSTICE SYSTEM

Law Enforcement

Governor Blanco’s “shoot to kill” order was an extreme measure. Many survivors have expressed their bewilderment or dismay at being subject to curfews under armed patrols in the wake of the hurricane. Had there not been a failure of planning and coordination prior to the storm, would this extreme step have been taken? As suggested above, had disaster planning *anticipated* looting, it may have been possible for responding law enforcement officials, including National Guard, to be on the ground to ensure law and order sooner. But the problem in New Orleans goes deeper than that. Attorney Ishmael Muhammed made the following comment about Governor Blanco’s decision during his testimony before the Committee:

We know that there was a shoot-to-kill order given in an environment that already was problematic in terms of black people being killed by authorities. So, just using your common sense—the sense we all got a little bit of, at least—you give someone raring to go, before Katrina, in a disaster situation, a shoot-to-kill order and create an environment where everybody is a potential looter, you are going to have people getting shot down by police, by law enforcement authorities. And then you have account after account after account of people being killed. Then you have statements being made by law enforcement officials and government officials that the only—that all deaths are going to be identified as happening August 29th as the date and no identification is going to be made of what actually killed anyone, what actually made people—what actually was the reason that people died. Why is that? And then you have reports that 10,000 people may be dead, and all of a sudden we have a body count of a little over 1,000.

There were in fact numerous reports of actual and alleged police shootings and police brutality following Hurricane Katrina, including the following:

- “On the street right in front of the Convention Center, I see a circle of chairs around a black tarp. A body lies underneath it. It’s been there since the night before. I pull the tarp back and see a black man lying in a pool of blood... Witnesses tell me what happened. Dwight Williams... says the night before, a New Orleans Police Department vehicle pulled up. ‘For whatever reason, the gentleman made a move to the car,’ he says. ‘It took five seconds, the entire incident. The cop opened the door, shot him, and that was it.’”
- “Near the former St. Thomas housing development, a squadron of police, some in tactical gear, were clustered in an intersection... [A] man who appeared to be dead from a gunshot wound lay on the ground. It was unclear what had occurred. Police said there had been a shootout as they forced a reporter and a photographer out of a passing car at gunpoint... They took away a reporter’s notebook and tossed the photographer’s camera on the ground before returning and telling the pair to leave” (*Times-Picayune*, September 1, 2005).

- “New Orleans police shot and killed four men and wounded one on Sunday after looters fired on officers, a policeman said. The incident on Sunday morning, as the city began to clean up from the devastation of hurricane Katrina, resulted in four fatalities and one person in critical condition, said one policeman who asked not to be named. No police were wounded. ‘Five men who were looting exchanged gunfire with police. The officers engaged the looters when they were fired upon,’ said superintendent of New Orleans police, Steven Nichols. Asked for more details, he said only, ‘The incident is under police investigation’” (Reuters, September 4, 2005).
- “Two New Orleans police officers repeatedly punched a 64-year-old man accused of public intoxication, and another city officer assaulted an Associated Press Television News producer as a cameraman taped the confrontations. After being questioned, officers Stuart Smith, Lance Schilling and Robert Evangelist were arrested late Sunday and charged with battery. They were also suspended without pay, released and ordered to appear in court at a later date, Capt. Marlon Defillo said.” (Associated Press, October 10, 2005).
- “Police shot and killed a 38-year-old man who had been waving a knife Monday in New Orleans, witnesses said. The killing occurred about 4 p.m. on St. Charles Avenue in the south Garden District near downtown, after the man -- who has not been publicly identified -- left a Walgreens pharmacy carrying a knife, witnesses said. Some witnesses said they heard five or six shots, but 10 red cones were placed on the street. The cones are typically used to indicate where shell casings are found. The city's police force has been under increased scrutiny and strain in the wake of last summer's Hurricane Katrina, when some officers left their jobs and others continued to work long hours despite losing nearly everything in the storm. Since then, police have come under investigation for allegations of looting, stealing cars from a Cadillac dealership and the videotaped beating of a man that resulted in two officers being fired last week.” (CNN, December 27, 2005)

The most controversial report involves conflicting stories of what happened on the Danziger Bridge on September 4, 2005. Here are some early accounts:

- “Police shot eight people carrying guns on a New Orleans bridge Sunday, killing five or six of them, a deputy chief said. A spokesman for the Army Corps of Engineers said the victims were contractors on their way to repair a canal.” (Associated Press, September 4, 2005)
- “At least five people shot dead by police as they walked across a New Orleans bridge yesterday were contractors working for the US Defense department, according to a report by the Associated Press. A spokesman for the Army Corps of Engineer said the victims were contractors on their way to repair a canal, the news agency said, quoting a Defense Department spokesman. The contractors [were] crossing the bridge to launch barges into Lake Pontchartrain, in an operation to fix the 17th Street Canal, according to the spokesman” (The Australian, September 5, 2005).

New Orleans Police claim they caught eight snipers on a bridge who were shooting at relief contractors. There was a gun battle and five or six of the snipers were killed. Three months later, however, two families came forward with stories radically different from that of the police:

- “A teenager critically wounded that day, speaking about the incident for the first time, said in an interview that police shot him for no reason, delivering a final bullet at point-blank range with what he thought was an assault rifle. Members of another family said one of those killed was mentally disabled, a childlike innocent who made a rare foray from home in a desperate effort to find relief from the flood. The two families — one from New Orleans East and solidly middle class, the other poorer and rooted in the Lower 9th Ward — have offered only preliminary information about what they say happened that day. Large gaps remain in the police and civilian accounts of the incident.” (*Los Angeles Times*, 11/24/05)

We anticipate additional stories and allegations about shootings to come forward. We have heard from many survivors with missing family members who fear that their loved ones were shot by police, National Guard, other military, or private contractors during the flood. Frank Minyard, Orleans Parish Coroner says: “If you murdered somebody in those days, you are probably going to get away with it.”⁹⁶ In addition, there are countless reports of persons being arrested arbitrarily, or of children as young as twelve being taken off to prison for allegedly being in violation of curfew. This placed enormous strain on families seeking to reunite before evacuation when there was a child unaccounted for who later turned out to be in prison. One of the most egregious arrests was that of a 73-year old church deaconess with diabetes who had never in her long life been charged with a crime. She was charged with attempting to loot \$63.50 worth of groceries at a deli. Eyewitnesses claim that she had paid for her groceries with a credit card and that the OPP officers were tied and frustrated because they were unable to apprehend young looters at a nearby store. “Not even the deli owner wants her charged,” read the story. She was transferred from the parish jail to a state prison and a judge set her bail at \$50,000, “100 times the maximum \$500 fine under state law for minor thefts.” She was released on September 16, 2005 after two weeks in jail, facing a court date in October.⁹⁷

The New Orleans Police Department (NOPD) has a history marred by incidents of racist police brutality:

- In 1980, following the killing of a white police officer, police went on a rampage Algiers, a mostly African-American community, killing four citizens and injuring many more. “Some of the victims were tortured, including two who were dragged to swamps where the officers carried out mock executions.”⁹⁸
- In 1991, a Justice Department ranked citizen complaints of police brutality in New Orleans as the highest in the country.
- Between 1993 and 1998 over 50 NOPD officers were arrested for felonies including homicide, rape, and robberies.

- In 1995, an NOPD officer was convicted of robbery and an execution-style murdering three people at the restaurant: two employees and “an off-duty officer from her precinct working at the restaurant.”
- In 1996 an NOPD officer was convicted of hiring a hit man to assassinate a woman who had filed a complaint of police brutality against him. He is currently serving a life sentence on death row. New Orleans is the only police department in the country with an officer on death row. In fact, two NOPD officers are currently on death row.
- In 1998 two NOPD officers were indicted “for allegedly beating two handcuffed men in custody.”
- In the mid-1990s the pattern of violations by NOPD officers was so apparent that the Justice Department threatened a civil action. A reform process ensued, resulting in the arrest of 110 officers for a variety of criminal charges, the suspension of 600 officers for misconduct, the firing of 117 officers and 18 resignations—all this from a force with just 1,700 active duty officers.
- In 2004, despite attempts at reform, 8 officers were arrested on charges including aggravated assault, extortion and conspiracy to commit a robbery.

Experts report that the majority of those killed since Hurricane Katrina were killed by police. Given this pattern, Governor Blanco’s “shoot-to-kill” directive during Hurricane Katrina must be called into question. It created conditions under which complaints against police brutality could be dismissed more arbitrarily than before.

To date, parts of the city are still patrolled by private mercenaries working for Blackwater. About 150 heavily armed mercenaries working for Blackwater made their appearance in New Orleans alongside other military responders after the hurricane. They are still there, and residents complain that their presence is a nuisance and intimidates residents. During her testimony before the Select Committee Governor Blanco denied having authorized the hire of mercenaries to join the relief effort. One Blackhawk employee stated that his company had been contracted by the Department of Homeland Security. He also claimed his comrade had been deputized by Governor Blanco’s office. The report says: “The man then held up the gold Louisiana law enforcement badge he wore around his neck. Blackwater spokesperson Anne Duke also said the company has a letter from Louisiana officials authorizing its forces to carry loaded weapons.”⁹⁹ Blackwater employees have demonstrated explicit examples of racial prejudices.

Blackwater is not alone. As business leaders and government officials talk openly of changing the demographics of what was one of the most culturally vibrant of America's cities, mercenaries from companies like DynCorp, Intercon, American Security Group, Blackhawk, Wackenhut and an Israeli company called Instinctive Shooting International (ISI) are fanning out to guard private businesses and homes, as well as government projects and institutions.¹⁰⁰

All of this office's requests for more information about who hired Blackwater, and for what reason, have gone unanswered. However, one official of the City of New Orleans told Congresswoman McKinney that DHS sent them to the city.

It is nearly impossible to imagine "shoot-to-kill" orders and the hiring of private mercenaries to patrol the streets of wealthy or mostly white cities and neighborhoods. As we saw in some of the testimonials above, unarmed and non-violent African-American residents of New Orleans faced explicit acts of racial discrimination by the very forces sent to oversee their rescue.

Left to Die: The Plight of Prisoners

The now widely-publicized story of prisoners at the Orleans Parish Prison (OPP) who were abandoned in locked cells during the hurricane, with those on the lower floor facing floodwaters up to their necks, is actually just one more chapter to a long and sad story of prisoner abuse. Interviews with prisoners tell of open and pervasive drug use and beatings of prisoners by officers, or indifference by officers to prisoners beating other prisoners. The federal court has been monitoring Orleans Parish Prison ever since the 1969 filing of the lawsuit *Hamilton v. Morial*. Yet the conditions of the prison remain abysmal:

- In 1999, a pregnant female prisoner "reported being left in shackles during labor and another claimed she was denied an examination by a gynecologist despite bleeding immediately after childbirth."¹⁰¹
- In 2001, Shawn Duncan, being held on traffic charges, died of dehydration after he was held in restraints for 42 hours.¹⁰²
- In 2003, two OPP guards were indicted after beating to death a prisoner who had been arrested on charges of public drunkenness.¹⁰³
- "In 2004 OPP was one of the top five prisons with substantiated reports of sexual violence in the nation."¹⁰⁴
- In each of the three months prior to Hurricane Katrina a prisoner died, two while under medical observation, one who committed suicide whilst under suicide watch.¹⁰⁵

The Orleans Parish Prison is exceptional in a number of ways. Averaging around 7,000 prisoners on any given day (pre-Katrina), the OPP is the 8th largest local jail in the country. Only county jails in cities like New York, with populations many times that of New Orleans, house more prisoners. The OPP holds more prisoners than the largest state prison in Louisiana.¹⁰⁶ The cost of housing this many prisoners exceeds \$100,000 *per day*, a bill that is currently being picked up by FEMA, according to experts. The irony of this is that while FEMA is preparing to evict needy survivors on March 1st, it is meanwhile paying top dollar to keep in jail many prisoners whose release dates have passed as well as many more who are only in on petty offenses.

Arrests in New Orleans are up from 48,000 per year in 1995 to 114,000 per year in 2004.¹⁰⁷ These numbers do not reflect an increase in violent crime in the city. In fact arrests for violent crimes are below half the rate for cities in the United States. The vast increase in arrests reflects a new policy of stopping at nothing to arrest citizens for petty crimes such as “public drunkenness, drug possession, disturbing the peace,” obstructing a sidewalk, traffic violations or missed child support payments. Already the target of police harassment, most of these petty arrests target young African-American men, who often complain of being arrested on false charges. Under police sentencing rules, the arrested must spend at least 45 days in jail before sentencing. If prisoners are too poor to post bail, they languish in prison, saddled with court costs that can total \$2,400 per year. Although the prison offers little by way of rehabilitation programs, prisoners are put to work for minimum wage at an aquaculture facility built by the prison.¹⁰⁸

When Hurricane Katrina hit, the OPP had just completed a round of street sweeps, picking up people for petty crimes such as loitering. It had also taken in an influx of prisoners evacuated from other jails. When the city flooded, the prison was inundated with water and prisoners were trapped in cells with water up to their necks. Human Rights Watch researcher Corinne Carey commented that “Of all the nightmares during Hurricane Katrina, this must be one of the worst. Prisoners were abandoned in their cells without food or water for days as floodwaters rose toward the ceiling.” Power went out early in the storm, and the toilets backed up, creating an unbearable stench. To let in air, inmates broke jail windows. Some set fire to blankets and shirts to hang outside as a cry for help. Inmates on the first floor had to get up onto the second bunk of their beds, but then the water rose to the ceiling and the female prisoners were then taken to the males’ side of the dorm, but there the smoke from the fires that had been started meant that they remained in smoke-filled rooms for nearly two days.¹⁰⁹ Gas lines also broke and the women became nauseous.¹¹⁰

Some managed to escape, but many who did approached law enforcement officials at sites where people were congregating on bridges and turned themselves in. Some prisoners reported that dead bodies were seen floating in the floodwaters inside the prison. The prison was finally evacuated on September 2nd, five days after the storm. 450 of the inmates were taken to Jena Correctional Facility, and there have been many “extremely credible” complaints that once there they were tortured and abused, and were refused access to telephones.¹¹¹

Corinne Carey researched the prison and at the end of September had reported that 517 prisoners remained unaccounted for.¹¹² It is hoped that further investigations by civil and human rights groups will clarify what became of the missing prisoners, though for some that may never be known.

It is shocking to learn that prisoners were evacuated from other jails prior to the storm into a jail that sat below the flood plain. The failure to evacuate the Orleans Parish Prison put prisoners and guards in serious jeopardy. At our community meeting in New Orleans, we heard from a man who had his jaw broken while being attacked by other prisoners during his ordeal of being caught in the flooded prison. He could barely endure the pain long enough to speak to us.¹¹³ He had been arrested on a petty marijuana possession charge. Experts have reported that the OPP jail population has now swelled to 9,000, with 85 per cent of prisoners being held for petty

offences. Many of these are being held *past their release date*, on the excuse that their paperwork was lost during the storm, or because their case has been backlogged. Anyone who endured the horrors of being trapped inside a flooded prison during a hurricane has already served a penalty far in excess of what any petty offense merits. More than that, their abandonment is an insult to their dignity as human beings.

It is beyond the pale that these prisoners are still incarcerated.¹¹⁴ Six weeks after the storm, Human Rights Watch reported that many of those rounded up in the sweeps before the storm had not yet been brought before a judge.¹¹⁵ OPP funding is based upon prison population, and if they were dismissed, the \$100,000 daily allowance, currently supplied through FEMA, would immediately shrivel, resulting in lay-offs. It has been reported that the Louisiana State Legislature passed a law that sanctioned the detention of prisoners past their release date. Federal officials overseeing disaster relief need to take cognizance of this deplorable situation in which a city now desperate for funds and jobs has allowed its prison to even more pro-actively than before seek to incarcerate massive numbers of young African-American males as a means to the end of contributing to the local job market, and take action to remedy this travesty of justice.¹¹⁶

Let us end this gruesome tale on a positive note of recognition of the heroism of one of the guards. One of the women who suffered through this ordeal writes that “one woman ... stayed with the inmates to the bitter end. Her name is: Colonel Joseph. She was a god sent Angel. So many deputies abandoned us.”¹¹⁷

Recommendation: Future hurricane response plans should include evacuations for prisons susceptible to flooding.