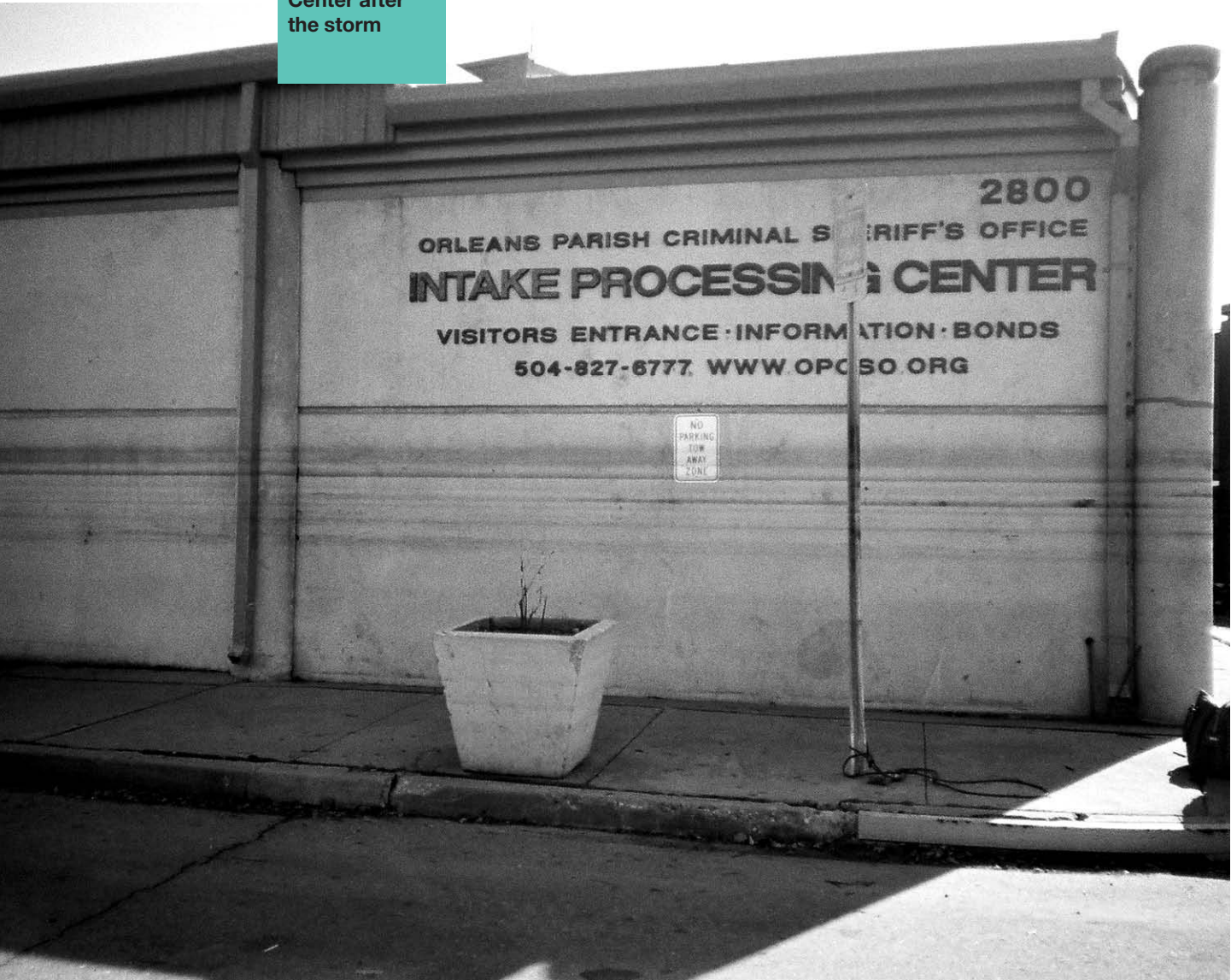


Orleans Parish
Prison Intake
Processing
Center after
the storm



a whole, a country with the highest national incarceration rate in the world.⁴

What makes OPP's massive expansion so surprising is the fact that it happened during a period of time when the population of Orleans Parish decreased by over 100,000 people. During Sheriff Foti's tenure, the capacity of OPP increased nearly 1000% (from 850 to 8500), while the population of Orleans Parish decreased over 18% (from over 593,000 in 1970 to under 485,000 in 2000).⁵

Prior to Hurricane Katrina, 60% of OPP's population on any given day was made up of men and women arrested on attachments, traffic violations, or municipal charges⁶— typically for parking violations, public drunkenness, or failure to pay a fine. Most of the prisoners at OPP were pre-trial detainees, meaning they had not been convicted of any crime. Thus, aside from its enormous size, OPP's population made it resemble a local jail rather than a prison, which generally holds individuals convicted of crimes that carry a sentence of more than one year of incarceration.⁷

As OPP's population exploded, the categories of persons held at the jail changed. In 1970 there were only four to ten women in the jail at any given time. At the time of Hurricane Katrina, OPP held approximately 670 women.⁸

Like women, juveniles were also initially held in the Old Parish Prison. Over time, the juvenile population was divided between the Conchetta Youth Center ("CYC"), which was part of the South White Street facility of OPP, and the city-owned Youth Study Center ("YSC"). Children who were being tried as adults were housed alongside adult prisoners.

In the mid-1970s, OPP began to house prisoners on behalf of Louisiana's DOC. These prisoners had already been convicted, and were awaiting bed space in the state's prisons. DOC decided to place some of its prisoners in local jails in response to an April 1975 federal court order concluding that the conditions of confinement at the state's overcrowded prisons violated the United States Constitution.⁹ This arrangement was initially proposed as a short-term solution to the state's overcrowding problems; once new dormitory beds were added to the Louisiana State Penitentiary at Angola, the state prisoners were supposed to be transferred back into DOC custody. This never happened. "Sheriffs became accustomed to the cycle: a new prison would open, most of the state prisoners would be taken from the jails and then, inexorably, like flood waters rising toward the top of the levee, the numbers would begin to inch upward again, each time reaching higher than the time before."¹⁰

The decision to accept state prisoners exacerbated the serious overcrowding that already existed throughout Louisiana's large jails. This was especially true of OPP, which was facing a lawsuit filed several years before the courts ever turned their attention to the problems of the state prison system.¹¹ In April 1980, Sheriff Foti drew attention to the overcrowding caused by housing state prisoners at OPP by driving 147 state prisoners to Elayn Hunt Correctional Center in St. Gabriel, Louisiana, and abandoning them in the parking lot.¹² This would not be the last time that prisoners from OPP would be dumped at Hunt.

Three years later, in order to deal with overcrowding in the jail's buildings, Sheriff Foti constructed the Emergency Detention Center, known locally as "Tent City."³⁴

I. ORLEANS PARISH PRISON

A. The Unchecked Growth of Orleans Parish Prison

Long before Hurricane Katrina changed the landscape of New Orleans, the term "Orleans Parish Prison" referred not to a single jail building, but rather to the set of some twelve buildings: Central Lock-Up, the Community Correctional Center ("CCC"), Conchetta, Fisk Work Release, the House of Detention ("HOD"), the Old Parish Prison, South White Street, and Templeman buildings I through V.

The jail buildings are all located in downtown New Orleans, in an area commonly called Mid-City. Each building is within several blocks of Interstate 10 and the Broad Street Overpass that rises above the Interstate. The Louisiana Superdome is approximately one mile to the southeast of the jail complex, and the Convention Center is approximately three miles away.

Built in 1929, the Old Parish Prison is the oldest of the OPP buildings. Designed to house from 400 to 450 people, the number of prisoners held there increased over time, while the facility remained the same size.¹ In order to deal with the increasing population, other OPP buildings were constructed. In 1974, when Charles Foti was elected Sheriff, OPP had a population of about 800 prisoners. By the time Sheriff Foti left his position 30 years later, OPP's capacity had increased more than tenfold to approximately 8500 prisoners.

Before Katrina, OPP housed nearly 6500 individuals on an average day. Although New Orleans is only the thirty-fifth most populous city in the United States, this made OPP the ninth largest local jail.² OPP housed even more people than the notorious Louisiana State Penitentiary at Angola ("Angola"), which at 18,000 acres is the largest prison in the United States.³ With a pre-Katrina incarceration rate of 1480 prisoners per 100,000 residents, New Orleans had the highest incarceration rate of any large city in the United States—the incarceration rate was double that of the United States as

“[S]urrounded by a 10-foot chain link fence topped with rolled barbed wire,” Tent City was “a military-like compound of canvas tents” that exposed prisoners to the elements year-round and was both unsanitary and overcrowded.¹⁴ Although Tent City was supposed to stay open for only 60 to 90 days (hence, the use of the word “emergency” in the name), the tents remained in use for ten years.¹⁵

To compensate local jails for the costs of housing state prisoners, DOC makes a per diem payment to local sheriffs based upon the number of state prisoners housed locally. Initially, the state paid local sheriffs \$4.50 per day per prisoner, but this number has steadily increased over time.¹⁶ At present, the state reportedly pays Sheriff Gusman \$24.39 per day per state prisoner housed at OPP,¹⁷ \$2.00 more than the City of New Orleans pays Sheriff Gusman for housing its own prisoners.¹⁸ Because state prisoners represent a source of income, local sheriffs have an incentive to make bed space available to them, either through expansion of prison buildings, or creative housing arrangements.

At the time of the storm, OPP housed nearly 2000 state prisoners.¹⁹ Some of these men and women were enrolled in drug and alcohol treatment programs as a condition of probation.²⁰ These men and women were eligible to be released once they completed their rehabilitation programs, and therefore they were more akin to patients than prisoners.

OPP also rents bed space to the U.S. Marshal’s Service to house federal prisoners. Some of these prisoners are charged with violations of federal criminal law. The remainder are federal immigration detainees who are not charged with any crimes. Over 200 federal detainees were housed in OPP when Katrina struck.²¹

B. A Brief History of Problems at OPP

The problems at OPP did not begin with Hurricane Katrina. OPP has a long history of cruelty and neglect toward its prisoners.²⁹ In 1969, a prisoner named Louis Hamilton filed a class action lawsuit on behalf of all of the individuals in OPP

regarding their living conditions at the jail. By 1970, the Old Parish Prison was routinely housing from 800 to 900 people at a time, despite the fact that the building was designed to hold half that number.³⁰ In June 1970, a federal court concluded:

*the conditions of confinement in Orleans Parish Prison so shock the conscience as a matter of elemental decency and are so much more cruel than is necessary to achieve a legitimate penal aim that such confinement constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.*³¹

The court’s conclusion was based on a set of findings regarding horrific conditions at the jail too numerous to list here. Among them, the court found that due to overcrowding, many prisoners were given filthy mattresses, and were told to sleep either on the floor of their cell, or in the aisles between beds in the jail’s dormitory units.³² The court also found that medical care was “woefully inadequate,” and that the “combined effects of the fearful atmosphere and crowded and sordid living conditions has a severe effect on psychotics, often causing those transferred to the prison from mental hospitals to be returned to the hospitals.”³³ Mentally ill prisoners were occasionally shackled to the bars in a hallway by the main gate.³⁴ Interestingly, the court also found that “[a]ll of the inmates are in constant danger of losing their lives should a fire occur in the prison.”³⁵

Since 1969, the *Hamilton* class action has been modified to address continuing problems that have arisen at each of OPP’s new facilities. The ACLU entered the case as class counsel in 1989, and obtained court-ordered consent decrees addressing several of the biggest ongoing problems at the jail, including substandard medical care and environmental hazards. In 1994, women prisoners filed a separate lawsuit regarding their living conditions at OPP. They complained

FINES AND FEES

Under Louisiana’s Code of Criminal Procedure, any defendant who is convicted of a crime is liable for all costs incurred in the trial, even if the court does not assess the costs.²² Where a court imposes a sentence that includes payment of a fine or costs, a defendant faces additional incarceration for failure to pay.²³ In many cases, indigent defendants charged with petty offenses agree to plead guilty to minor charges in exchange for time served. As part of the sentence, they are assessed fines and fees, which may total \$40 per month for up to five years.²⁴ According to one local attorney, this “creates a cycle of incarceration where poor people are routinely sent back to jail for no other offense, except that they couldn’t pay their fines and fees.”²⁵

Some of the prisoners who were in OPP during the storm were there simply because of unpaid fines and fees. Many still were held for months after the storm, lost in a dysfunctional criminal justice system that was virtually destroyed by Katrina. For example, Greg Davis was in OPP during the storm, and was released in March 2006 only after law students from the Criminal Defense Clinic at Tulane Law School took on his case.²⁶ When the law students met Mr. Davis, he had no idea why he was still being held in prison.²⁷

The reason: \$448 in overdue court fines.²⁸

that they were kept shackled while in labor, and one female prisoner alleged that she was denied a gynecological examination despite the fact that she bled for 30 days after giving birth.³⁶ That case, *Lambert v. Morial*, was subsequently consolidated with the *Hamilton* suit.³⁷

Immigration detainees at OPP have also endured horrific conditions. In a 1998 report by Human Rights Watch, immigration detainees at OPP provided “[s]ome of the most disturbing and consistent complaints of inhumane conditions,” including being subjected to excessive force by deputies, receiving inadequate medical care, and being denied visits with their lawyers.³⁸ Upon arriving at Central Lock-Up, one detainee explained: “I thought I’d gone to hell.”³⁹ An attorney remarked, “it’s easier to visit my clients on death row than it is to visit an INS detainee at Orleans Parish Prison.”⁴⁰

Juveniles housed in OPP’s CYC faced similar problems to the adult prisoners. In 1993, the Youth Law Center filed a lawsuit on behalf of CYC juveniles, alleging that they were physically abused, denied educational programs and medical and mental health care, housed in unsafe environmental conditions, and denied visits.⁴¹ That same year, the Magistrate Judge handling the *Hamilton* case held a hearing to investigate continuing reports that deputies were physically abusing juveniles at CYC. After interviewing several juveniles, the court personally addressed 33 deputies who worked at the facility. “Now, frankly, I am sick of having to come over here and deal with this issue that there has been mistreatment of juveniles in this facility,” she said.⁴² The court went so far as to explain basic principles to the deputies, such as:

*If [juveniles] stand up and bad mouth you and curse you, that does not give you an excuse to hit them in the face. If they do something else that is provocative, that does not give you an excuse to kick them, to hit them, or to do anything other than to bring them to disciplinary, that’s what disciplinary is there for.*⁴³

Ten days later, the court entered an order against all 33 deputies she had chastised, prohibiting them “from, in any way, violating the civil rights of any juvenile inmate either now or in the future to be housed in the Conchetta facility of the Orleans Parish Prison system.”⁴⁴ The Youth Law Center lawsuit later was settled after the first day of trial, resulting in a number of changes, including a 50% reduction of the population and increased educational opportunities for juveniles.⁴⁵

Despite the *Hamilton* court’s order, and the Youth Law Center settlement agreement, both CYC and YSC remained violent and dangerous. Conditions were so poor that in 1997, the *New York Times* called the Orleans Parish juvenile justice system the worst in the nation.⁴⁶ In June 2002, a 16-year-old boy held at CYC complained that that “guards hit kids and threaten to beat them up . . . guards beat kids up every day.”⁴⁷ When interviewed by Juvenile Justice Project of Louisiana (“JJPL”), he was very upset about having had to wear the same underwear for three days in a row.⁴⁸ Children also reported that staff failed to protect them from violence by other children. One 14-year-old boy told JJPL that CYC staff members did nothing to protect him from the threats of other children; he stayed in his cell all day to avoid being

injured.⁴⁹ Among the problems one 15-year-old boy had to endure were routine strip searches and awful food.⁵⁰ He also reported that the rat-infested detention center made his “nerves bad.”⁵¹

c. Recent Deaths at OPP

Many of the problems at OPP in the years preceding Hurricane Katrina were remarkably similar to those found to “shock the conscience” of the trial court judge in 1970. In June 2004, two OPP deputies allegedly beat to death a man named Mark Jones after he was picked up for public drunkenness. According to a lawsuit filed by Mr. Jones’s father, during processing at the jail, one deputy “grabbed Mr. Jones by the neck with sufficient force to result in a fracture of Mr. Jones[’s] thyroid cartilage and other injury to his neck.”⁵² A short time later, a second deputy allegedly punched Mr. Jones in the face, “causing severe head trauma, including the laceration of Mr. Jones[’s] vertebral artery, damage to his brain and bleeding from his nose, mouth and head.”⁵³ Rendered unconscious by these attacks, Mr. Jones was taken to the hospital, where he was declared brain dead just one day after his arrest.⁵⁴ Both deputies were indicted by a grand jury, one on a charge of manslaughter and the other on a charge of battery.⁵⁵

A number of OPP prisoners have also died in recent years from medical conditions that appear to be entirely treatable. In October 2004, an OPP prisoner died of a ruptured peptic ulcer. According to the Orleans Parish coroner, the man probably writhed in agony for twelve hours before his death.⁵⁶ Members of the public organized a rally to highlight the problems with medical services at OPP after another prisoner died in February 2005 of tuberculosis, and an OPP deputy died of pneumonia two weeks later.⁵⁷ On the same day as the rally, an OPP prisoner died of bacterial pneumonia.⁵⁸ In April 2005, a 64-year-old prisoner with health problems died nine days after his attorneys complained that he was not receiving his proper medications, and the following month a prisoner with a history of health problems died at Charity Hospital while receiving kidney dialysis.⁵⁹ In the two months preceding Hurricane Katrina, two more prisoners died while under medical observation at OPP.⁶⁰ Another prisoner is believed to have died the day before Hurricane Katrina hit New Orleans, although no information is currently known about his death.⁶¹

OPP has also had major problems with the provision of mental health care. In 2001, a young man named Shawn Duncan entered OPP on traffic charges. Identified as suicidal, Mr. Duncan was placed in HOD’s 10th Floor mental health tier. During his seven days at OPP, Mr. Duncan was twice placed in five-point restraints: in a bed, his arms were strapped down at his wrists, his legs strapped down at his ankles, and a leather belt was strapped across his waist, completely immobilizing him. The second time he was placed in restraints, he was left largely unsupervised for 42 hours and died of dehydration.⁶²

THE DEATH OF SHAWN DUNCAN

A prisoner in five-point restraints is secured to a bed by straps on his arms, legs, and across his waist. In five-point restraints, a person cannot eat, drink, move, or relieve himself without the attention and care of correctional and medical staff. Mr. Duncan remained in five-point restraints for nearly 24 hours, during which time he was not properly examined by medical staff, nor given enough water.

Shawn Duncan, a 24-year-old resident of New Orleans, was arrested on August 2, 2001 for various traffic offenses.⁶³ Mr. Duncan notified the arresting officers that he had ingested several valiums and Somas, and was transported to the Medical Center of Louisiana at New Orleans, where he was treated in the emergency room.⁶⁴ He was discharged from the hospital to OPP with a diagnosis of drug overdose and suicidal ideation, and a recommendation for "Psych followup."⁶⁵

Upon entering OPP, Mr. Duncan was housed in the psychiatric ward on the 10th Floor of HOD.⁶⁶ He was immediately placed in four-point restraints, and was later placed in five-point restraints.⁶⁷ A prisoner in five-point restraints is secured to a bed by straps on his arms, legs, and across his waist. In five-point restraints, a person cannot eat, drink, move, or relieve himself without the attention and care of cor-

rectional and medical staff. Mr. Duncan remained in five-point restraints for nearly 24 hours, during which time he was not properly examined by medical staff, nor given enough water.⁶⁸

Two days after being released from restraints, Mr. Duncan was again placed in five-point restraints.⁶⁹ The physician who ordered Mr. Duncan back into five-point restraints never examined him prior to giving this order.⁷⁰ After 12 hours, a second physician ordered that Mr. Duncan remain in five-point restraints for an additional 12 hours; this doctor also did not examine Mr. Duncan.⁷¹ Nine hours later, yet another doctor finally examined Mr. Duncan, but failed to note that he had received no fluids for the past 21 hours, had

not been allowed to use the bathroom, and had not been released from the restraints for range-of-motion or circulation checks.⁷² The doctor ordered that Mr. Duncan's restraints be continued with no time limit specified.⁷³

Over the next 22 hours, no doctor examined Mr. Duncan. The deputies who were charged with checking Mr. Duncan every 15 minutes failed to perform their duties.⁷⁴ They never responded or called for medical attention when Mr. Duncan began "cursing, yelling or screaming."⁷⁵

Mr. Duncan remained in five-point restraints for over 42 hours straight.⁷⁶ On August 10, 2001, another prisoner noticed that Mr. Duncan was not breathing.⁷⁷ That

prisoner notified the nursing staff, and Mr. Duncan was later declared dead at Charity Hospital.⁷⁸ The cause of death was dehydration.⁷⁹ During the autopsy, Mr. Duncan was described as "gaunt in appearance, with his abdomen and eyeballs sunken in."⁸⁰ His weight was 158 pounds. Just three days earlier he weighed 178 pounds.⁸¹ Mr. Duncan received fluids once during the entire 42-hour period when he was in five-point restraints. Logs maintained by the deputies on duty indicate that Mr. Duncan was monitored every 15 minutes, and that he regularly ate food. However, at his autopsy, there was no evidence that Mr. Duncan had ingested any food during this period.⁸² Mr. Duncan's mother and two children filed a lawsuit following his death. The Sheriff's office settled the lawsuit in 2004 with an agreement that the terms of the settlement remain confidential. ■

Less than two years later, another suicidal OPP prisoner died while restrained in the exact same cell where Shawn Duncan died.⁸³ The prisoner, Matthew Bonnette, was placed on suicide watch in HOD's 10th Floor psychiatric unit after he threatened to harm himself during his arrest. Although Mr. Bonnette was on suicide watch, deputies left him in a cell where they could not keep him under close and constant watch.⁸⁴ Mr. Bonnette was confined in four-point restraints, his wrists handcuffed and latched to a waist belt and his ankles shackled.⁸⁵ Twelve hours after Mr. Bonnette was placed in the cell, another prisoner notified deputies and nurses that Mr. Bonnette was hanging from the upper bunk and appeared to be dead.⁸⁶ Mr. Bonnette hanged himself with a leather belt that inexplicably had been left in his cell.⁸⁷ Just over three weeks before Hurricane Katrina hit OPP, yet another prisoner in the mental health tier committed suicide by hanging.⁸⁸

D. Racial Justice and OPP

Hurricane Katrina exposed the deep racial divisions that have long existed in New Orleans. The city is one of the most segregated metropolitan areas in the country,⁸⁹ and its criminal justice system reflects this fact, from the disproportionate targeting of African-American residents by its police department to the over-incarceration of African-Americans in its jail. The New Orleans Police Department ("NOPD") in particular has a longstanding history of racism and brutality. In 1980, a mob of white cops rampaged through a black section of the city in retaliation for the murder of a police officer, killing four people and injuring as many as fifty. According to reports, people were tortured and dragged into the swamps to face mock executions.⁹⁰ In 1990, a black man accused of killing a white officer was beaten to death by officers who had gathered to wait for him at the hospital to which he was transported; no officers were criminally prosecuted or administratively sanctioned.⁹¹

These incidents, which would be termed a race riot and a lynching if performed by private citizens, are merely the most sensational examples of the department's racially discriminatory practices. The NOPD also has faced repeated accusations of racial profiling.⁹² The number of complaints of police violence and unwarranted stops and arrests of black citizens recently reached such proportions that in April 2006, the ACLU of Louisiana filed a state Public Records Act request with the NOPD seeking information on racial profiling and police misconduct, and urged systemic reforms of the department.⁹³

Institutional racism and the targeting of African-Americans by the NOPD have resulted in the over-incarceration of African-Americans in OPP. OPP itself is but one product of a larger pattern of racially differentiated incarceration practices in the United States. For example, while only 12.3% of American citizens are black, they make up 43.7% of the incarcerated population across the country.⁹⁴ In 2005, the incarceration rates for black males of all ages were 5 to 7 times greater than for white males in the same age groups.⁹⁵ Prior to Katrina, an astonishing 12% of all black males in their late twenties were in prison or jail in the United States.⁹⁶ In Louisiana, which has the highest incarceration rate of any state, the black incarceration rate at state prisons

and local jails was 4.7 times higher than the white rate in 2005.⁹⁷ Orleans Parish was no exception: although the parish itself was only 66.6% black prior to Hurricane Katrina, almost 90% of the OPP population was black.⁹⁸

Racial considerations pervade every aspect of the OPP story, from the administrative decision not to evacuate the prison population to the mistreatment of individual prisoners in the weeks that followed. Endemic racial tensions played a central role in the disaster that unfolded following Hurricane Katrina. The testimonials of prisoners, staff, and deputies depict a situation marked not only by chaos and mismanagement, but also by racially motivated hostility on the part of prison officials.

E. Legal Protections for Prisoners

1. Domestic Legal Protections

The state's power to imprison its citizens carries with it the duty to provide for their basic needs.⁹⁹ The Eighth Amendment of the U.S. Constitution, which prohibits the infliction of cruel and unusual punishment,¹⁰⁰ protects prisoners from the deprivation of food, clothing, shelter, medical care, and reasonable safety.¹⁰¹ The Eighth Amendment is violated when the state shows "deliberate indifference" to conditions that pose a substantial risk of serious harm to prisoners.¹⁰²

From the outset, the lack of preparedness demonstrated by OPP officials raises serious constitutional concerns, as does the chaos that followed, both at OPP in the days following the storm and at various receiving facilities in the weeks and months after the evacuation. Prison officials failed to meet their constitutional duty to adopt adequate emergency procedures and evacuation plans to protect prisoners from dangerous conditions or natural disasters.¹⁰³ Prison officials also failed to provide prisoners with adequate food and water,¹⁰⁴ and held them in unsanitary and hazardous conditions that posed a serious risk to their health and safety.¹⁰⁵ Prisoners were subject to unnecessary and wanton infliction of pain by deputies and staff, in violation of the Eighth and Fourteenth Amendments.¹⁰⁶ Prison officials also failed to meet their legal duty to protect prisoners from physical and sexual violence from other prisoners,¹⁰⁷ and failed to provide adequate medical treatment to prisoners during and after the storm.¹⁰⁸ Seriously mentally ill prisoners likewise did not receive adequate mental health care, as the Constitution requires.¹⁰⁹

Prison officials at OPP and at several receiving facilities may have also violated constitutional and statutory prohibitions on racial discrimination. Specifically, the direct participation of prison officials in race-based violence and abuse at several other Louisiana prisons likely constitutes a violation of the Fourteenth Amendment and the 1964 Civil Rights Act. In addition, the brutal mistreatment of black prisoners at several receiving facilities may also have violated state and federal hate crimes statutes.

2. International Legal Protections

The violations of prisoners' rights that are detailed in this

report also implicate several human rights instruments.¹¹⁰ Many of these rights revolve around a tenet of human rights law that is absent from U.S. constitutional law: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹¹¹ This principle was ignored from the very beginning, when the welfare of the prisoners was not given its due, to the present day, when evacuees continue to sit in jail on minor charges—or no charges at all—without any ability to speak with a lawyer or appear before a judge.

In the days before the storm, phones were cut off, preventing prisoners from communicating with loved ones about their plans for evacuation. This problem was repeated at some receiving facilities, when prisoners were prevented for months from using the phones to locate family members. This denial of contact with family contravenes international protections,¹¹² particularly when it comes to the children who were separated from their parents during and after the storm.¹¹³ Additional violations occurred in the mixing of juveniles with adults at several of the buildings during the storm.¹¹⁴

International principles prohibit the denial of food and water that prisoners in OPP experienced for days,¹¹⁵ and require that prisoners receive proper medical attention.¹¹⁶ The unsafe and unsanitary conditions in which OPP prisoners were forced to live inside the jail and at various receiving facilities violate several human rights standards.¹¹⁷ International treaties also prohibit the kind of violence against prisoners that occurred at OPP and elsewhere.¹¹⁸ At no time would the macing or beating of prisoners without instigation be permissible, storm or no storm; these norms cannot be avoided. The racial discrimination that prisoners faced at OPP and at several receiving facilities is universally prohibited by international norms.¹¹⁹

Most OPP buildings remain abandoned nearly one year after Hurricane Katrina

