

## **HURRICANE KATRINA: THE REMAINING LEGACY**

**A Story of Uninvestigated Police Shootings and Human Rights Deprivations**

A Response to the United Nations Committee Against  
Torture Periodic Report of the United States of America

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## **Introduction**

- The Office of the Independent Police Monitor

The New Orleans Office of the Independent Police Monitor (OIPM) is an independent agency created to provide oversight over the New Orleans Police Department (NOPD). In 2008, more than 70% of the New Orleans Electorate voted the OIPM into existence by popular referendum. This electorate was representative of a community weary of the violence and corruption carried out by the NOPD during the years leading up to Hurricane Katrina and horrified by the police misconduct witnessed during the aftermath of Hurricane Katrina.

The OIPM is independent of the NOPD and the elected officials who govern the City of New Orleans. The mission of the OIPM is to improve police service to the community, civilian trust in the NOPD, as well as officer safety and working conditions. The OIPM works to ensure the accountability, transparency, and responsiveness of the NOPD to the community it serves. Through extensive community outreach, the OIPM encourages constructive, informed public dialogue about systemic issues of police policy and police reform. One of the main functions of the OIPM is to monitor the quality and timeliness of NOPD's investigations on cases of excessive use of force, in-custody deaths and alleged misconduct.

- Hurricane Katrina

Hurricane Katrina made landfall in Louisiana on August 29, 2005. The resulting destruction of the levees and the official response to the storm at the federal, state and local level expanded the destruction exponentially. The response to the storm quickly became known as a “catastrophe in a catastrophe.”<sup>1</sup> Authorities arguably created a human rights crisis by ignoring the United States Constitution and depriving civilians of their constitutional rights. Some examples are a declaration of “martial law” by the mayor<sup>2</sup> based on unsubstantiated information that greatly exaggerated the

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<sup>1</sup> Robert Groome, *The Writing of Catastrophe: From Natural Disaster to Social Psychosis* (2005). Available from [http://www.lituraterre.org/Illiteracy-Writing\\_of\\_catastrophe.htm](http://www.lituraterre.org/Illiteracy-Writing_of_catastrophe.htm) (accessed September 12, 2014).

<sup>2</sup> Sabrina Shankman and others, “After Katrina, New Orleans Cops Were Told They Could Shoot Looters,” July 24, 2012. Available from <http://www.propublica.org/nola/story/nopd-order-to-shoot-looters-hurricane-katrina/>.

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lawlessness of New Orleans<sup>3</sup>, orders by the Governor directing law enforcement to “shoot to kill” looters<sup>4</sup>, and multiple officer-involved shootings and cover-ups.

The official U.S. response to the Fifth Periodic Report of the United Nations Committee Against Torture (CAT), included two paragraphs related to New Orleans, Hurricane Katrina, and the NOPD violence against civilians. The OIPM provides this “shadow report” to supplement the U.S. Response to the Fifth Periodic Report of the United Nations CAT. Although nine years have passed since Hurricane Katrina, for many New Orleanians NOPD violence and misconduct is a persistent and ever-present memory. Due to a lack of investigation into the incidents throughout the storm and in the storm’s aftermath, including Officer Involved Shootings (OIS), questions remain that have eroded public trust in the justice system. Many OIS which occurred during and after the storm were often inadequately investigated or not investigated at all.

### **Recommendations**

- I. Reopen the 2006 investigation conducted by the U.S. Senate Committee on Homeland Security and Governmental Affairs into the emergency response to Hurricane Katrina. The suspension of constitutional rights and the occurrence of Officer Involved Shootings (OIS) were omitted as subjects of the 2006 Senatorial report and should be addressed by the U.S. government.
- II. Invest in local independent monitoring organizations and the Department of Justice Civil Right Division to better protect human rights during times of national emergency.

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<sup>3</sup> Sarah Kaufman, “The Criminalization of New Orleanians in Katrina’s Wake”, June 11, 2006. Available from <http://understandingkatrina.ssrc.org/Kaufman/>. Jim Dwyer & Christopher Drew; “Fear Exceeded Crime’s Reality in New Orleans”, September 29, 2005. Available from <http://www.nytimes.com/2005/09/29/national/nationalspecial/29crime.html?pagewanted=all>.

<sup>4</sup> BBC, “New Orleans Rocked by Huge Blast”, September 2, 2005. Available from <http://news.bbc.co.uk/2/hi/americas/4207202.stm>.

### **I. Recommendation: Reopen the 2006 Investigation Conducted by the U.S. Committee on Homeland Security and Governmental Affairs into the Emergency Response to Hurricane Katrina to address Officer Involved Shootings (OIS) and the Suspension of Constitutional Rights.**

In 2006, the U.S. Senate Committee on Homeland Security and Governmental Affairs published a bipartisan special report, “Hurricane Katrina A Nation Still Unprepared.” This report was written “to acknowledge what was done well, to identify what was done poorly or not at all, and to recommend changes in our national system for emergency response that will put local, state, federal, and private responders in a better position to provide prompt and effective relief when disaster strikes again.”<sup>5</sup> However, the report failed to address both the incidence of OIS and the widespread suspension of constitutional rights during the storm.<sup>6</sup> Whether the U.S. Senate intentionally omitted these two monumental human rights violations or whether the omission was born out of lack of information, the people of New Orleans were left to wonder whether the U.S. Senate investigation would provide any remedial action for the shocking experiences of the population.<sup>7</sup> By addressing neither OIS nor the deprivation of constitutional rights during the storm, the people of New Orleans, particularly the disproportionately affected African-American community, are unable to move forward to embrace “police reform.” The country is left with the police misconduct of Katrina as a precedent for future U.S. national emergencies.<sup>8</sup>

Chapter 25 of the Senate’s Special Report relates to “Public Safety and Security.” The Report documents well the exaggeration of the public safety problem on the streets of New Orleans in the wake of Hurricane Katrina. Specifically, the Report mentions many instances where stories of armed gangs, lootings, and rape were repeated over and again, only later to be found to not have occurred or to be unsubstantiated. The report also details the failure of the Bush Administration to timely deploy law enforcement based on the Department of Justice’s perception that the State of Louisiana had not given the federal government sufficient authority.<sup>9</sup>

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<sup>5</sup> United States, Committee on Homeland Security and Governmental Affairs, Hurricane Katrina: A Nation Still Unprepared (Washington, U.S. Government Printing Office 2006). Available from <http://www.gpo.gov/fdsys/pkg/CRPT-109srpt322/pdf/CRPT-109srpt322.pdf>.

<sup>6</sup> Ibid.

<sup>7</sup> Allen Johnson, Jr., “Digging Further”, New Orleans Magazine (March 2011). Available from <http://www.myneworleans.com/New-Orleans-Magazine/March-2011/DIGGING-FURTHER/>.

<sup>8</sup> Ibid.

<sup>9</sup> Hurricane Katrina: A Nation Still Unprepared.

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While the U.S. Senate Report mentioned the wild rumors of public safety problems and the failure to timely deploy federal law enforcement personnel, the report did not reveal NOPD excesses later blamed on the exaggeration of the public safety problem. The report neglects to mention the wide-spread NOPD perception that “martial law had been imposed” by Mayor Ray Nagin during the storm. The report does not mention that NOPD commanding officers had authorized NOPD to “shoot looters,” “to take back the city,” or “do what they have to do.” The report does not mention that then-NOPD Chief Riley was quoted as saying: “if you can sleep with it, do it.”<sup>10</sup>

The OIPM does not presume to know that at the time of the writing of “Hurricane Katrina A Nation Still Unprepared,” that the U.S. Senate had any of the information that has become so well-known and public in the aftermath of the storm. In fact, not all of the information provided to the U.S. Senate for the purpose of the 2006 report is publicly accessible<sup>11</sup>, so it is impossible for the OIPM to know what information was provided to the U.S. Senate at the time of the report. It is striking that the NOPD shootings and other constitutional rights violations which have become common knowledge to New Orleanians were not listed as facts or even concerns of the report.

- OIS

Many OIS which allegedly took place during Katrina and thereafter have come to light since the U.S. Senate published its report. Some of them have more recently been investigated and prosecuted by the U.S. Government; many have not. The presence of these OIS, many of them ignored and uninvestigated, cause great pain to victims’ families as well as perpetuating a feeling of lawlessness around police action which impedes any attempt at meaningful reform of the NOPD. Below is a list of OIS known to the OIPM:

1. **Henry Glover**- In June 2010, a grand jury indicted five NOPD officers, in the September 2, 2005 death and subsequent cover-up of Henry Glover. Glover was shot by NOPD Officer David Warren; Warren used his own personal 223-caliber SIG Arms rifle and high powered scope to shoot Glover during Hurricane Katrina. Glover’s body was set afire by NOPD Officer Gregory McRae in a vehicle taken from a civilian by NOPD officers. McRae was convicted and sentenced to 17 years in prison but is appealing. The four other officers tried in federal court have been either acquitted or had the charges against them dropped. Warren, the officer who shot Glover, was

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<sup>10</sup> Sabrina Shankman and others, “After Katrina” (see footnote 2).

<sup>11</sup> Interview with Allen Johnson, Journalist, New Orleans, 9/8/14.

acquitted at a second trial after originally being sentenced to 25 years in prison. Lieutenants Robert Italiano (accused of covering up Glover's killing by authoring a false report) and Dwayne Scheurmann (charged with assaulting civilians who tried to help Glover after he was shot) were acquitted at a 2010 trial. The case against Lieutenant Travis McCabe for perjury, obstruction of justice, and giving false statements, was dropped by the U.S. government after McCabe's conviction was thrown out by the federal judge presiding over the case. McCabe is back on active duty for the NOPD at this time. At some point, Glover's head was separated and removed from his body, a common practice with hired killers to postpone the identification of the body;<sup>12</sup> Henry Glover's head was never found.<sup>13</sup>

2. **Danziger Bridge**- In July 2010, six NOPD officers were indicted in federal court for the September 4, 2005 shooting of six unarmed civilians attempting to flee the flooded city via the Danziger Bridge.<sup>14</sup> Two civilians, 17 year old James Brisette and 40 year old Ronald Madison were killed. Four other unarmed civilians were wounded, including a woman who lost her arm as a result of the shooting. NOPD Officer Robert Faulcon received a 65-year sentence for shooting Ronald Madison in the back with a shotgun. NOPD Officer Kenneth Bowen was sentenced to 40 years for jumping out of the truck and spraying bullets from an AK-47 at a concrete barrier where civilians were hiding. NOPD Officer Robert Gisevius was sentenced to 40 years for firing an M-4 rifle after jumping out of the back of the truck and helping orchestrate a cover-up of the shooting. NOPD Officer Anthony Villavaso II was sentenced to 38 years in prison for jumping out of the truck and firing an AK-47 at the civilians. NOPD Sergeant Arthur Kaufman was sentenced to six years for creating written reports that contained false or fabricated information. Other defendants pled guilty, such as NOPD Officer Michael Lohman for the cover-up, and NOPD Officer Robert Barrios, Villavaso's partner. NOPD Sergeant Gerard Dugue, who conspired with Kaufman in the cover-up, was tried in January 2012, but that trial ended in a mistrial.

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<sup>12</sup> Kamil Hakan Dogan and others, "Decapitation and Dismemberment of the Corpse: A Matricide Case", *Journal of Forensic Sciences*, Vol. 55, No. 2, (March 2010), pp. 542–545. Available from <http://onlinelibrary.wiley.com/doi/10.1111/jfo.2010.55.issue-2/issuetoc>.

<sup>13</sup> Mary Foster, "Hurricane Katrina shooting victim Henry Glover's skull still missing", December 14, 2010. Available from [http://www.nola.com/crime/index.ssf/2010/12/hurricane\\_katrina\\_shooting\\_vic.html](http://www.nola.com/crime/index.ssf/2010/12/hurricane_katrina_shooting_vic.html).

<sup>14</sup> Laura Maggi, "Six New Orleans police officers indicted in Danziger Bridge shootings", July 14, 2010. Available from [http://www.nola.com/crime/index.ssf/2010/07/prosecutors\\_will\\_seek\\_detentio.html](http://www.nola.com/crime/index.ssf/2010/07/prosecutors_will_seek_detentio.html).

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Dugue's new trial was set for 2013 but has now been indefinitely delayed.<sup>15</sup> In 2013, Federal Judge Engelhardt granted a new trial for Faulcon, Bowen, Gisevius, Villavaso and Kaufman, citing prosecutorial misconduct. The case was overturned by Judge Kurt Engelhardt after it was determined that federal prosecutors had made anonymous online comments despite the fact that no juror had actually read any of the online commentary. The U.S. Government appealed Engelhardt's granting of a new trial and the appeal is pending in the U.S. Court of Appeals for the Fifth Circuit.<sup>16</sup>

3. ***Matthew McDonald*** - McDonald, a Connecticut native, was shot just days after Hurricane Katrina in the Marigny area of New Orleans.<sup>17</sup> Contradictory police reports assert that a NOPD officer came upon McDonald holding a bag that the officers believed to contain a gun. The police report doesn't explain how the police could tell the bag contained a gun. Allegedly, when commanded to stop, McDonald instead reached inside the bag for the gun and Lt. Bryant Winger shot McDonald. It is unclear if McDonald was shot as he lay on the ground or in another position. McDonald's family said police told them he died in a shooting and that the evidence had washed away. In 2009, the family first learned from a reporter that the NOPD had shot McDonald. While the FBI announced that it was investigating the McDonald shooting and death in 2010, no indictments or any other information from the federal government or state government has been offered to provide closure for the family.<sup>18</sup>
4. ***Danny Brumfield*** - One of thousands of people at the Morial Convention Center awaiting rescue after Hurricane Katrina, Danny Brumfield was shot and killed by NOPD. According to his family, Brumfield spotted a police cruiser and ran out to flag the officers after a woman was shrieking for help nearby. Instead, of stopping to help Brumfield, the police car sped up,

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<sup>15</sup> Ramon Vargas, "Danziger Bridge defendant Gerard Dugue's retrial delayed indefinitely", March 21, 2013. Available from

[http://www.nola.com/crime/index.ssf/2013/03/danziger\\_bridge\\_defendant\\_gera\\_2.html](http://www.nola.com/crime/index.ssf/2013/03/danziger_bridge_defendant_gera_2.html).

<sup>16</sup> Corrected and Redacted Brief for the United States, United States v. Bowen, No. 13-31078 (5th Cir. Aug. 29, 2014).

<sup>17</sup> A.C. Thompson and others, "Police shootings after Katrina: Was a gun inside a bag a threat to 5 officers?", August 5, 2010. Available from [http://www.nola.com/crime/law\\_and\\_disorder/index.ssf/2009/12/was\\_a\\_gun\\_inside\\_a\\_bag\\_a\\_threat\\_to\\_5\\_officers.html](http://www.nola.com/crime/law_and_disorder/index.ssf/2009/12/was_a_gun_inside_a_bag_a_threat_to_5_officers.html).

<sup>18</sup> Brendan McCarthy, "FBI confirms two new investigations into conduct of New Orleans police after Katrina", April 5, 2011. Available from [http://www.nola.com/crime/index.ssf/2010/03/fbi\\_opens\\_two\\_new\\_civil\\_rights.html](http://www.nola.com/crime/index.ssf/2010/03/fbi_opens_two_new_civil_rights.html).

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- rammed into Brumfield, stopped, and then quickly accelerated into him several more times. Brumfield was shot either as he landed on the hood of the police car or as he was sliding off the hood of the police car. Officer Ronald Mitchell and Officer Ray Jones were not tried for the shooting death of Brumfield but instead were charged with perjury and obstruction of justice associated with litigation around the shooting. Officer Jones was acquitted of all charges and Officer Mitchell was sentenced to 20 months in jail.<sup>19</sup>
5. ***Keenon McCann*** On September 1, 2005, McCann was shot near a water truck near downtown New Orleans.<sup>20</sup> According to civilian reports, many people had come upon a water truck and were taking water for their survival when two NOPD officers approached and told them to disperse. They allegedly began taking aim at and fired on McCann. Officers claim that McCann had a gun but no gun was ever recovered. McCann survived the shooting and filed a civil suit; however, he was killed (in an unsolved homicide) before his suit could go to trial. The two officers involved in the McCann shooting, Captain Jeff Winn and Lt. Scheuermann were later targets of the federal investigation into the death of Henry Glover. The NOPD investigation of the McCann shooting was six pages long without any interviews from other officers or civilian witnesses. The interviews with Winn and Scheuermann formed the core of the investigation, and lasted eleven minutes and seven minutes, respectively.<sup>21</sup> In 2010, the FBI announced it was investigating the McCann shooting and death; however, no indictments or other information which could provide closure for the family have ever been offered.<sup>22</sup>
6. ***Anthony Hayes***- Anthony Hayes was shot and killed by police in January 2006. Hayes who had a history of mental illness was waiving a small pocket

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<sup>19</sup> A.C. Thompson and others, “New Orleans Police Department shootings after Katrina under scrutiny”, August 5, 2010. Available from [http://www.nola.com/crime/law\\_and\\_disorder/index.ssf/2009/12/nopd\\_acts\\_under\\_fire.html](http://www.nola.com/crime/law_and_disorder/index.ssf/2009/12/nopd_acts_under_fire.html).

<sup>20</sup> A.C. Thompson and others, “Police shootings after Katrina: SWAT team sees armed man, shoots him three times, but where's the gun?”, December 16, 2009. Available from [http://www.nola.com/crime/law\\_and\\_disorder/index.ssf/2009/12/the\\_swat\\_team\\_responds\\_to\\_an\\_armed\\_man\\_at\\_water\\_truck\\_hes\\_hit\\_three\\_times\\_but\\_no\\_gun\\_is\\_found.html](http://www.nola.com/crime/law_and_disorder/index.ssf/2009/12/the_swat_team_responds_to_an_armed_man_at_water_truck_hes_hit_three_times_but_no_gun_is_found.html).

<sup>21</sup> A.C. Thompson and others, “Did New Orleans SWAT Cops Shoot an Unarmed Man?”, December 15, 2009. Available from <http://www.propublica.org/nola/story/did-new-aveorleans-swat-cops-shoot-an-unarmed-man-1215>.

<sup>22</sup> Brendan McCarthy, “FBI confirms two new investigations”.

knife while backing away from officers. The community widely questioned the shooting death, given the availability of less lethal alternatives and the fact that Hayes was backing away from more than a dozen officers who had surrounded him with their guns drawn.<sup>23</sup>

7. ***Ronald Goodman*** – In May 2006, when Ronald Goodman's elderly mother called the Orleans Parish Coroner's Office to temporarily take custody of her son and get him back on his medication for schizophrenia (because of Katrina-related disorder, Goodman had been deprived of his medication since the hurricane), she never imagined her call would result in Ronald's death at the hands of NOPD officers.<sup>24</sup> Officers claim that Goodman fired a shotgun at them after an hours-long standoff. The autopsy revealed that Madison was shot three times in the head. The coroner's report also revealed that Ronald's hands tested negative for gunshot residue. The autopsy file given to the family by the coroner's office contained photos of Goodman's dead body with hands secured in handcuffs. While the NOPD crime scene pictures show Ronald handcuffed and dead on the floor, the majority of blood and body tissue was found on the bed, which led the family to conclude that Ronald died in his bed and not on the floor.<sup>25</sup>
  
8. ***Terrance Harold***- In December 2006, NOPD Officer Kevin Boswell shot and killed 15 year old Terrence Harold in the still Katrina-devastated 9<sup>th</sup> Ward of New Orleans. NOPD officers claimed Harold engaged them in a gun fight and officers returned fire.<sup>26</sup> However, civilian witnesses reported that the same officers frequently harassed Harold, and that he was fleeing in fear for his life. A weapon was allegedly recovered; the weapon was "rusty" in

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<sup>23</sup> Laura Maggi, "Family reaches settlement in police shooting on St. Charles Avenue", September 26, 2011. Available from

[http://www.nola.com/crime/index.ssf/2011/09/family\\_reaches\\_settlement\\_in\\_p.html](http://www.nola.com/crime/index.ssf/2011/09/family_reaches_settlement_in_p.html).

<sup>24</sup> Allen Powell II, "Algiers man dies in standoff after firing on cops outside his house", April 20, 2010. Available from

[http://www.nola.com/crime/index.ssf/2006/05/algiers\\_man\\_dies\\_in\\_standoff\\_a.html](http://www.nola.com/crime/index.ssf/2006/05/algiers_man_dies_in_standoff_a.html)

<sup>25</sup> Interview with Robert Goodman, Community Advocate, New Orleans, 9-22-14.

<sup>26</sup> Harold v. City of New Orleans, CIV.A. 07-9204, 2008 WL 5216223 (E.D. La. Dec. 12, 2008).

Available from

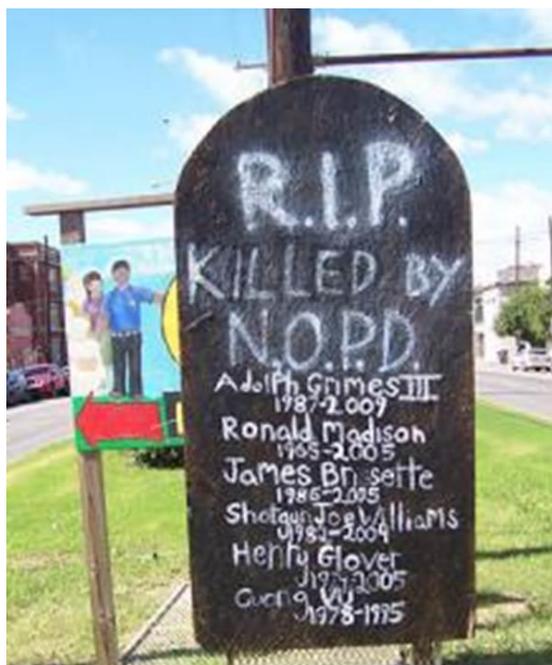
[http://la.findacase.com/research/wfrmDocViewer.aspx/xq/fac.20090427\\_0000662.ELA.htm/qx](http://la.findacase.com/research/wfrmDocViewer.aspx/xq/fac.20090427_0000662.ELA.htm/qx).

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appearance. The OIPM was unable to confirm whether the NOPD performed a firearms functionality test.<sup>27</sup> There were no indictments. A civil suit by the Harold family was dismissed in favor of the City of New Orleans.<sup>28</sup>

9. ***Adolph Grimes***: On a trip to visit his family, Adolph Grimes was shot 14 times while sitting in his car outside his grandmother's house early New Year's morning 2009.<sup>29</sup> Officers report Grimes drawing and firing a weapon on them. Witnesses report that the plainclothes officers approached Grimes violently without identifying themselves. The investigation never clarified if gunshot residue was found on Mr. Grimes. There are also questions about whether any of the casings recovered belonged to Grimes' legally registered gun. Five years after Grimes' death, the family was notified by the U.S. Attorney that it had declined to prosecute the shooting death based upon poor initial evidence collection by NOPD.<sup>30</sup>



A homemade sign in the 9<sup>th</sup> ward listing some of the unresolved civilian deaths at the hands of NOPD.<sup>31</sup>

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<sup>27</sup> Interview with Susan Hutson, Independent Police Monitor, New Orleans, 9/12/14.

<sup>28</sup> Ibid.

<sup>29</sup> Brendan McCarthy, "Police negligence alleged in lawsuit by parents of man shot during traffic stop", December 31, 2009. Available from [http://www.nola.com/crime/index.ssf/2009/12/police\\_negligence\\_alleged\\_in\\_1.html](http://www.nola.com/crime/index.ssf/2009/12/police_negligence_alleged_in_1.html).

<sup>30</sup> Interview with Susan Hutson, Independent Police Monitor, New Orleans, 9/12/14.

<sup>31</sup> Photos:

- The Suspension of Constitutional Rights

The U.S. Senate report goes into great detail about the exaggeration of the public security risk during Katrina<sup>32</sup> However, what is omitted from the report is that NOPD officers were given information which led many of them to believe that certain constitutional rights of the civilian population could be suspended. For example, commanding officers had authorized NOPD to “shoot looters,” “to take back the city,” to “do what they have to do.” The report does not mention that then-NOPD Chief Warren Riley was quoted as saying: “If you can sleep with it, do it.”<sup>33</sup>

Neither does the report or any other federal government investigation make mention of the numerous constitutional rights which civilians lost during Katrina. Without an official investigation into the deprivation of constitutional rights during Katrina, Katrina remains a precedent for law enforcement in future national emergencies. While New Orleans residents were deprived of many constitutional rights, including First,<sup>34</sup> Second,<sup>35</sup> Third,<sup>36</sup> Fourth,<sup>37</sup> Fifth,<sup>38</sup> Sixth,<sup>39</sup> and Eighth<sup>40</sup> Amendment rights, during Katrina, the OIPM is authorized to mention only those for which the NOPD is specifically responsible.

1. The Second Amendment- *“A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall*

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<http://nolaanarcha.blogspot.com/2012/02/fuck-police-new-orleans-protest.html>

<sup>32</sup> Hurricane Katrina: A Nation Still Unprepared.

<sup>33</sup> Sabrina Shankman and others, “After Katrina” (see footnote 2).

<sup>34</sup> <http://billofrightsinstitute.org/resources/educator-resources/lessons-plans/bill-of-rights-in-the-news/hurricane-katrina/>

<sup>35</sup> Allen Johnson, Jr., “Digging Further” (see footnote 7).

<sup>36</sup> James P. Rogers, “Third Amendment Protections in Domestic Disasters”, *Cornell Journal of Law and Public Policy*, Vol. 17. Available from <http://www.lawschool.cornell.edu/research/JLPP/upload/Rogers.pdf>.

<sup>37</sup> Sabrina Shankman and others, “After Katrina”; Interview with Leon Waters, Friday September 19<sup>th</sup> 2014; Mr. Leon Waters reports the ATF forcing an African-American resident at gunpoint, to leave his own home when the resident lived in a predominately white Uptown neighborhood and the ATF accused the African-American resident of looting. Interview with Leon Waters, Historian, New Orleans, 9/21/14.

<sup>38</sup> Cooper & Kirk, PLLC, “Fifth Amendment Takings Cases”. Available from <http://cooperkirk.com/practice-areas/constitutional-litigation/fifth-amendment-takings-cases/> (accessed Sep 16, 2014).

<sup>39</sup> Ira P. Robbins, “Lessons from Hurricane Katrina: Prison Emergency Preparedness as a Constitutional Imperative”, *University of Michigan Journal of Law Reform*, Vol. 42, No. 1 (November 2008). Available from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1300971](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1300971).

<sup>40</sup> Ibid.

*not be infringed.*” In the wake of Katrina, NOPD announced that only police would be allowed to possess firearms and proceeded to seize lawfully-possessed firearms from civilians at gunpoint. Subsequently, suit was filed by the NRA in 2007 alleging that the firearms confiscations violated the right to keep and bear arms under the Federal and Louisiana constitutions, deprived citizens of liberty and property without due process, violated equal protection, and constituted unlawful searches and seizures. The U.S. District court enjoined the mayor and police superintendent from making further seizures and ordered the return of the confiscated firearms. <sup>41</sup>

2. The Fourth Amendment- “*The Fourth Amendment provides “the right of the people to be secure in their persons, houses, papers and effect, against unreasonable searches and seizures...”* A police officer’s use of deadly force constitutes a seizure under the Fourth Amendment of the Constitution. Therefore, a police officer’s use of force must be reasonable and not excessive. The intentional use of deadly force by an officer must satisfy an objective reasonableness inquiry. To determine whether such a seizure is reasonable, the extent of the intrusion on the suspect’s rights must be balanced against the governmental interests in effective law enforcement. <sup>42</sup>

By failing to investigate OIS and constitutional rights violations perpetuated during Katrina by the NOPD, the U.S. government sends the message to New Orleans residents that excessive police force and human rights violations at the hands of the NOPD is standard and will be tolerated. Without investigation and objection, the deprivation of constitutional rights and the OIS committed in the aftermath of Katrina will serve as precedent for other national emergencies.

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<sup>41</sup> Allen Johnson, Jr., “Digging Further”.

<sup>42</sup> Tennessee v. Garner, 471 U.S. 1 (1985).

### **II. Adequately fund police monitoring both by local agencies and by the DOJ Civil Rights Division, on a regular basis and during national emergencies, respectively.**

- **Adequately fund local police monitoring bodies**

The OIPM is made up of three permanently funded staff. Together the OIPM staff monitors over 1100 NOPD officers. Due to the lack of sufficient resources, the OIPM estimates it is unable to perform at least half of its functions as required by its enacting ordinance.

The OIPM is an independent agency which receives police misconduct complaints from the community and the NOPD including allegations of constitutional rights violations and allegations of excessive force. The OIPM monitors all NOPD uses of force involving: the use of deadly force (including OIS), civilian injury requiring hospitalization, head strikes with an impact weapon, and any in-custody death. As part of its monitoring of major uses of force, the OIPM observes NOPD interviews of officers and civilians. During an NOPD OIS investigation in 2012, involving the shooting of a 20 year old unarmed black man, the OIPM discovered video footage, overlooked by the NOPD investigator, which led to the conviction of the NOPD officer on manslaughter charges.<sup>43</sup> So as to avoid future NOPD excesses and violence during hurricanes, the OIPM remains in the City of New Orleans for all hurricanes and national emergencies to monitor the NOPD. The OIPM makes policy recommendations to the NOPD. For example, within a year of the current police monitor's arrival to the OIPM, she made the policy recommendation, subsequently implemented by the NOPD, that the NOPD create a separate unit, outside of the homicide division to investigate all NOPD major uses of force. Before the implementation of the Force Investigation Team (FIT), all officer involved shootings, including those perpetuated during Katrina were investigated by the NOPD Homicide Division.

None of NOPD's OIS in the immediate aftermath of Katrina were adequately investigated by the NOPD.<sup>44</sup> All of the OIS following Katrina that were adequately investigated by non-NOPD law enforcement and/or prosecuted were only done so after victims' families, community advocates, or the media put enormous energy into bringing attention to those killings.<sup>45</sup> In fact, where NOPD did "investigate" the OIS,

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<sup>43</sup> Nancy Parker, "DA releases police video of deadly narcotics raid", September 13, 2013. Available from <http://www.fox8live.com/story/23364433/da-releases-police-video-of-deadly-narcotics-raid>.

<sup>44</sup> A.C. Thompson and others, "Under scrutiny".

<sup>45</sup> Ibid.

several NOPD officers were charged with perjury and obstruction charges for covering up facts in the investigation. It was these impacted families, members of the media and community advocates that fought so hard in the aftermath of Katrina to ensure that New Orleans has a police monitor. However, civilians worry that the poor resource allocation to OIPM means that the local government is not serious about reforming the police department and ensuring an end to human rights violations perpetuated by the police. These same community members continue to fight to ensure the OIPM has adequate resources to support its community and ensure the NOPD is properly monitored.

It is not unusual for local police monitoring mechanisms to be severely underfunded. Complaints of insufficient resources have been reported at varying times in the cities of: Atlanta, Austin, Miami, Washington DC, Portland, and Philadelphia, and NYC (prior to 2014).<sup>46</sup> Police monitoring agencies serve as the eyes and ears of the community in a manner that the internal affairs division of a police department cannot. Where civilians are ill-treated by the police, the civilians will continue to guard a healthy dose of apprehension in reporting police misconduct to the very same department that perpetuated the misconduct. However, by allowing civilian monitoring agencies to collect complaints, perform audits of police work, analyze statistics from police department databases, and monitor OIS crime scenes, a community will slowly regain the trust that a healthy community needs to maintain toward its police department, even a city as traumatized as New Orleans.

- **Adequately fund the Department of Justice Civil Rights Division so as to allow the DOJ to send representatives down to locations where civil and constitutional rights violation are being perpetuated.**

The OIPM applauds the DOJ Civil Rights Division for sending representatives down to Ferguson, Missouri after the police shooting of Michael Brown. The DOJ is beginning to make an impact in recognizing, exposing and changing law enforcement's perpetuation of civil rights violations. However, the DOJ Civil Rights Division has initiated litigation in over a dozen cities in the last two years. While the DOJ did make a trip to Ferguson, Missouri, it did so many days after the initial shooting of Michael Brown. Without adequate resources the DOJ Civil Rights Division, is unable to respond to the needs for reform which are becoming increasingly abundant in law enforcement divisions across the country.

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<sup>46</sup> Mark Evenson, "Embracing Citizen Oversight: A Police Executive's Guide to Improving Accountability", Working Paper (University of Alaska Fairbanks, 2011). Available from <https://www.uaf.edu/files/justice/EvensonProjFinal311.doc>.

## HURRICANE KATRINA: THE REMAINING LEGACY

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Human rights violations, constitutional law violations, and OIS were abundant during Hurricane Katrina and its aftermath; the police lacked the oversight and the proper command to respond properly to the national emergency unfolding. Where a national emergency or an emerging civil rights crisis is unfolding, the DOJ Civil Rights Division should have the resources to send an adequately resourced rapid response team out to ensure that the situation is observed and adequate remedies are put in place at the time of the crisis or immediately after. If the present administration's DOJ Civil Rights Division was present during Hurricane Katrina or in its direct aftermath, the city of New Orleans would not be facing such a deep legacy of mistrust with its police department.

### Conclusion

We submit this report with the intent of providing “updated information on investigations into alleged ill-treatment perpetrated by law enforcement personnel in the aftermath of Hurricane Katrina” consistent with the request made of the U.S. Government by the Fifth Periodic Report of the United Nations Committee Against Torture (CAT).<sup>47</sup> More must be done in order to uncover police transgressions for the City of New Orleans to heal. The U.S. government must ensure that New Orleans during Hurricane Katrina does not become the precedent for law enforcement in major emergencies in other U.S. cities.

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<sup>47</sup> United Nations Committee Against Torture, *List of issues prior to the submission of the fifth periodic report of United States of America*. Available from <http://www.ushrnetwork.org/sites/default/files/catlistofissues2010.pdf>.