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MARJORIE R. ESMAN
EXECUTIVE DIRECTOR

September 13, 2010

by fax 202-514-0293
and US Mail
Roy L. Austin, Jr.
Deputy Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

Subject: Open Letter Concerning Violence at Orleans Parish Prison (OPP)

Dear Mr. Austin:

Last year, the U.S. Department of Justice, Civil Rights Division (CRD) notified the Orleans Parish Criminal Sheriff about the results of its yearlong investigation into conditions at the Orleans Parish Prison (OPP). Specifically, the Division found that OPP prisoners are not adequately protected from harm, including physical harm from excessive use of force by staff and inmate-on-inmate violence; that mentally ill prisoners received inadequate treatment; that there were serious problems with the Jail's medication management system; and that prisoners face serious risks posed by inadequate environmental and sanitation conditions. CRD proposed a series of remedial measures the Sheriff should take to remedy the unconstitutional conditions at the jail, and notified him that the Division would consider filing a lawsuit pursuant to CRIPA, 42 U.S.C. § 1997b(a)(1), if the Sheriff failed to correct these violations.

We are unaware of any progress made toward the correction of these violations, despite the passage of a year since the CRD's findings. Indeed, we continue to receive alarming complaints from OPP. Additionally, at the same time as OPP flouts minimum constitutional standards, the Sheriff is seeking to expand an already oversized jail.¹ The expansion is especially troublesome in light of CRD findings that the current jail is understaffed and fails to protect prisoners from violence and the National Institute of Corrections' findings that staff were uninterested in supervising prisoners.

There is ample evidence that the Sheriff has failed to remedy one of the constitutional violations your Division identified last year, namely, OPP's failure to ensure that prisoners are "adequately protected from harm, including physical harm from excessive use of force by staff

¹ Bruce Egler, New prison complex plan approved by New Orleans City Council, New Orleans Times-Picayune, July 1, 2010, available at: <http://tiny.cc/acul2> ("It was unclear, however, whether the vote ultimately will mean much in determining how large the new prison will be and what it will look like. Councilwoman Stacy Head said that before the council votes on an ordinance giving legal force to the zoning docket approved Thursday, Mayor Mitch Landrieu will convene a 'working group' to study the prison's design and operation[.] Council members[...]agree on at least two points: that the city jails too many people for minor offenses and that it can't solve its violent crime problem by simply locking up more and more people.")

and inmate-on-inmate violence.” Letter to Sheriff Marlin Gusman, September 11, 2009, Page 2 available at: http://www.justice.gov/crt/split/documents/parish_findlet.pdf.

The Sheriff has long known about the problems of excessive force and prisoner-on-prisoner violence at OPP. One year before CRD issued its findings letter, the National Institute of Correction issued a report entitled “An Operational Review of the Orleans Parish Jails” by Jeffrey A. Schwartz and Rod Miller, October 10, 2008. Their report concluded that:

- “inmates are largely left to fend for themselves in the Orleans Parish jails. Inmate supervision is sporadic” (Page 27);
- “inmate welfare does not appear to be a primary concern” (Page 4);
- “[T]oo many supervisors and managers walk past [...] problems on a daily basis without addressing or correcting them....these include...lack of required security rounds... Complacency toward basic security measures exists in other jails but the breadth and depth of these problems in the Orleans Parish jails is unusual.” (Page 24).

Approximately a year later, CRD found:

- “OPP fails to adequately protect inmates from harm and serious risk of harm from staff and other inmates” (Page 5);
- a lack of investigative policies and procedures (Page 10);
- “The high incidence of inmate-on-inmate violence at the HOD and the Tents demonstrates OPP’s inability to keep its inmates reasonably safe [with a] frequency and serious nature of injuries sustained by OPP inmates [that] represent[s] a systemic level of violence that poses a serious risk of harm to both inmates and correctional staff at the jail” (Page 12-13)
- “Inadequate Staffing and Inmate Supervision.” (Page 13)

Yet another year has now passed, and unfortunately violence still remains pervasive at the jail. Recently we have received numerous complaints about violence in the House of Detention (HOD) and the Tents, which your report notes had “unacceptably high levels of serious inmate-on-inmate violence.” Page 14. We have also been told that staff members arrange and wager on prisoner-on-prisoner fights and that weapons, including shanks, are readily available in the Jail.

We simply lack the capacity or resources to attempt to verify every complaint of violence or death at the jail.² See Laura Maggi, “Orleans Parish jail stabbings leave one inmate dead, one wounded,” *Times Picayune* (March 30, 2010) available at: http://www.nola.com/crime/index.ssf/2010/03/orleans_parish_jail_stabbings.html; Katy Reckdahl, “Woman says she wasn’t told about brother’s injuries in Orleans Parish Jail: He was stabbed 18 times in the back,” *Times Picayune* (June 09, 2010) available at: <http://www.nola.com/news/t-p/neworleans/index.ssf?/base/news-14/1276064539189870.xml&coll=1>; “Inmate dies in Orleans Parish Prison,” *WWL.com* (August 8, 2010) (available at <http://www.wwl.com/pages/7865846.php?>).

² For example: A woman whose uncle recently died in Orleans Parish Prison of a heart attack believes that her uncle may have been the victim of violence at the jail. She possesses the contact information for a person who claims her uncle was in fact the victim of violence at the jail. Again, we cannot investigate this claim. At the Division’s request we can provide her contact information.

(3)

These publicized deaths came at the same time we sent Division officials emails about the increase in stabbings and violence in the jail. See Attached Email from Barry Gerharz, Prison Litigation Fellow, to Regina Jansen and Corey Sanders, U.S. Department of Justice (April 19, 2010, 15:25 CST). In total, there have been at least seven deaths in the Jail this year, and ten since your office issued a letter to Sheriff Gusman.

We are especially concerned that incidents of violence are not investigated properly by OPP officials and may not be documented. We wrote Division officials about one prisoner who was attacked by another prisoner and hospitalized to receive plates and screws in his jaw, but whose attack was reportedly not investigated by jail officials. See Attached Email from Barry Gerharz, Prison Litigation Fellow, to Corey Sanders, U.S. Department of Justice (April 06, 2010 16:09 CST).

A year earlier, we spoke with Mr. Sanders about sexual assaults in the jail. We also emailed Mr. Sanders about a prisoner who—while being apparently overdetailed for days by the jail—was beaten and sexually assaulted. Attached Email from Barry Gerharz, Prison Litigation Fellow, to Corey Sanders, U.S. Department of Justice (April 22, 2010 17:42 CST). Despite being beaten and having physical injuries, he was released without any apparent investigation by either OPP staff or by the New Orleans Police Department (NOPD). *Id.* Later, he returned to the jail to demand they investigate his attack. After his demands, and several well publicized newspaper reports about the increase in sexual assaults at OPP, the District Attorney instituted charges. See State v. Andrews, et. al., Case No. 488-189, Sections F & A, Orleans Parish Criminal District Court. Recently, Fitzroy George—a prisoner repeatedly stabbed by a group of inmate(s) in a closed setting—reported he was not shown a photographic line-up of potential attackers.

While violence permeates the jail, the Sheriff is currently asking the City for the authority to expand the jail to 5,832 beds, large enough for 1 jail bed for every 60 residents. The jail's current per-capita capacity dwarfs all known metropolitan American jails. For a local example, Jefferson Parish—which is larger than Orleans Parish—currently has less than 1,000 prisoners. An unnecessary expansion of a jail that already cannot adequately protect prisoners from harm begs for CRD action.

We plead CRD to take action based on its findings. At a minimum, we request that you update us, the residents of New Orleans, on the status of your investigation. In recent months there have been two more deaths in the jail; the situation is serious. We hope that you will take the time to update us on the status of your negotiations, or, if they have stalled, that you will institute litigation, as you threatened to a year ago.

Sincerely,



Marjorie R. Esman
Executive Director

Encl.

Cc: Sheriff Marlin Gusman, by fax 504-827-7038 and US mail
Mayor Mitch Landrieu; New Orleans City Council

Barry Gerharz

From: Barry Gerharz [bgerharz@laaclu.org]
Sent: Monday, April 19, 2010 3:35 PM
To: 'regina.jansen@usdoj.gov'
Cc: 'Sanders, Corey (CRT)'
Subject: FW: Orleans Parish Prison

Thanks for calling me today. Below is the other email we briefly discussed that I sent Corey.

I forgot to mention two cases in Orleans Parish Criminal District court that I wanted to bring to DOJ's attention that stem from violence at the jail. Derek Winding was charged with Attempted 2nd Degree Murder and Aggravated Battery for a stabbing incident at the jail in Case No. 490-830. Section K, Orleans Parish Criminal District Court. Recently a plea bargain was reached where the State agreed to a two year sentence and reduction in charges reportedly based on the defendant's potentially strong self-defense claim, which averred to the level of rampant violence in the jail, particularly HOD, and a lack of supervision. I spoke with an investigator who entered HOD during his investigation in that case. He reports that at least on one floor there was a lack of cameras monitoring prisoners at HOD and he spoke with prisoners who report a lack of supervision at the jail and the pervasiveness of shanks. The investigator's name is Ben Sullivan, (202) 841-5500. I am also aware of another case prosecuted in Orleans Parish Criminal District Court involving violence at the jail, State v. Juda Derouen, Case No. 492-482, Section I, Orleans Parish Criminal District Court.

Please do not hesitate to contact me if you need any more information or have any questions.

Thank You.
 Barry

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From: Barry Gerharz [mailto:bgerharz@laaclu.org]
Sent: Tuesday, April 06, 2010 4:09 PM
To: Sanders, Corey (CRT)
Subject: Orleans Parish Prison

Corey,

The last time we spoke you mentioned that I should contact you regarding any complaints I thought warranted your attention. I have not written you about every complaint our office receives about conditions at Orleans Parish Prison (OPP), but we recently a complaint that highlights several problems at the jail noted in the U.S. Department of Justice-Civil Rights Division's September 11, 2009 letter to Sheriff Gusman and the U.S. Department of Justice-National Institute of Corrections October 10, 2008 report on OPP. Those problems include the jail's inability to keep prisoners safe from inmate-on-inmate violence,

the failure to ensure adequate supervision of prisoners, the failure to track a serious incident of violence, and a poorly executed grievance system.

The prisoner, Thaddeus A. Stovall, gave me written permission to forward the attached letter. In the letter the prisoner alleges that his jaw was fractured by another prisoner in the recreation yard in the presence of numerous witnesses. He claims that his injuries were severe enough that he was taken to University Hospital on October 4, 2009, and received plates and screws in his upper jaw. Despite the severity of the injuries, he claims that the Orleans Parish Sheriff's office did not investigate the matter and he received no response to an ARP he filed last fall. I recently sent the prisoner the mailing address for the Special Operations Division and encouraged him to contact them directly.

Although we regularly receive reports of violence at OPP, I decided to bring this particular complaint to your office's attention because it features OPP staff's apparent failure to report or investigate serious incidents of violence. Stovall's allegations are very similar to a complaint I wrote you about last April 22, 2009. In that instance, a prisoner, Jonathan Michael Moore, was violently sexually assaulted. Despite his medical injuries, Moore was released without the prison investigating the incident. Only after I contacted the jail, our office issued a press release regarding violent sexual assaults at OPP, and Moore went back to the jail to report the incident, did an investigation occur which led to formal charges being brought against his attackers in case number 488-189, Section F/A, Orleans Parish Criminal District Court.

If you have any questions, please do not hesitate to contact me.

Yours truly,
Barry

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Barry Gerharz

From: Barry Gerharz [bgerharz@laaclu.org]
Sent: Wednesday, April 22, 2009 5:42 PM
To: 'Corey.Sanders@usdoj.gov'
Cc: 'kschwartzmann@laaclu.org'
Subject: increase in complaints of sexual abuse at Orleans Parish Prison

Mr. Sanders,

Thank you for recently taking the time to speak with me about recent reports the ACLU of Louisiana has received from gay and transgendered prisoners at Orleans Parish Prison. As we discussed, in the last month the ACLU of Louisiana has seen an uptick in complaints from gay and transgendered prisoners reporting that they are not classified adequately and are often housed with prisoners who repeatedly physically and sexually assault them.

Below is information on one of the prisoners we recently discussed. I have tried to keep this email as brief as possible. The narrative is based on my interviews with the prisoner but does not include all the information he communicated to me. The prisoner's name is Jonathon "Michael" Moore, DOB: [REDACTED], SSN#: [REDACTED], openly gay, white male, approximately 5'3". He goes by the name "Michael" and hereinafter will be referred to as Michael.

Michael was arrested for a violation of La RS 40:1033, Prohibited Drug Paraphernalia, and La RS 14:63, Criminal Trespass. After a first appearance hearing on February 11, 2009, he was held in custody only for the violation La RS 40:1033, as the Court found no probable cause as to La RS 14:63. Michael was formally charged with a violation of La RS 40:1033 within the limitations prescribed by La Code of Criminal Procedure Art. 701. Apparently he was never formally charged with a violation of La RS 14:63. On April 1, 2009, he pled guilty to La RS 40:1033, receiving a sentence of credit for time served. For unknown reasons, he was held in custody until April 7, 2009, when he was released midday.

Michael reports that when he was first booked he told a female staff member at central lock-up that he was a homosexual and he asked if they OPCS0 still separated homosexuals from the general population. She told him that they did not.

After spending some time at HOD, he was moved with a group of prisoners to the recently reopened Old Parish Prison. His complaints to our office regarding physical and sexual abuse stem from his time at Old Parish Prison. He was housed at Old Parish Prison, C-3, Sussex on Left. Michael reports that he was housed on a tier where he remembers only two other prisoners having orange wristbands (which should reflect that the prisoner is medium risk). Michael remembers the rest of the roughly 56 prisoners having red wrist bands (which should reflect that the prisoner is high risk because they have what the prison has classified as "serious charges") and he believes the majority were violent offenders. He complained that staff would rarely enter the tier other than for the morning and afternoon count and would normally sit at a desk at the end of the tier's hallway, behind a closed door.

During his stay at Old Parish Prison he was repeatedly hit by other prisoners and had prisoners waive their penises in his face. Michael did not file grievances out of fear of retaliation by other prisoners. The culmination of abuse occurred on Monday, April 6, 2009, when he was severely beaten by two tier reps, an Unknown Tier Rep (approximately 6'1," long dreadlocks, African-American with a caramel complexion, muscular) and Donald "Bummy" Myles, (mid-twenties, African-American with a short fade, approximately 5'10," weighing roughly 180 lbs). That afternoon they beat him in front of a group of prisoners after dragging him down a hallway and violently throwing him against a wall. They eventually ripped open Michael's jumper, exposed Michael's back and buttocks, and laughed while fondling his buttocks. Michael fled to his cell and they followed. The Unknown Tier Rep placed a blanket over the cell doorway. Donald Myles then pinned Michael to the wall, repeatedly punching him in the ribs while rubbing his erect penis against Michael's buttocks. Eventually Donald Miles stopped, and the back of Michael's jumper was damp. Michael is not sure if Donald Miles ejaculated. The Unknown Tier Rep reentered the cell with another prisoner named Charles Andrews. Charles Andrews stuck his fingers in Michael's mouth to pry it open as he attempted to put his exposed penis in Michael's mouth. Donald Myles continued to punch Michael in the ribs while this occurred. Apparently there was some commotion outside the cell about a

guard coming. Everyone the three men left the cell. Michael then looked up and saw a deputy (Michael believes his name was Preston) standing at the doorway. Preston called everyone to the day room for roll call, but Michael stayed alone in his cell. Roll call normally occurs at 7pm.

Later, as the cell doors were closing, Michael slipped out to the central hallway and walked up to the deputy (Michael believes his name was Preston) who was in the hallway outside the day room. Michael told the deputy that he couldn't be in that section of the prison. The deputy asked why, and Michael told him he couldn't say why because there were others present, including the Unknown Tier Rep. The deputy told Michael to return to his cell.

Approximately thirty minutes later Michael's cell door opened and the deputy removed him from the cell. The deputy asked him what happened. Then they walked downstairs together, Michael told him the above, and they entered a room where "rank" was present. The rank (older, huskier white man) asked him why Michael didn't say anything before, but before he could tell rank anything, rank ordered the he be placed in A-1.

The next day, Michael noticed he was bruised and still in pain. He asked a different deputy to see a nurse. The deputy (Michael thinks his name was Hamilton) asked why and Michael showed him his badly bruised arm. The deputy led Michael to an office near the control tower. The deputy talked to the ranking officers present. One ranking officer (Michael describes him as shorter male, African-American), asked Michael his charges and Michael told him he should have been released after his court date. After the ranking officer used his computer to apparently look-up Michael, he told the deputy to take Michael back to his cell.

Roughly an hour later Michael was rolled out, not told why and not given any paperwork. He rolled out the afternoon of Tuesday, April 7, 2009.

One Wednesday, April 8, 2009, he went into NO/AIDS. He saw Dr. John Nusser, MD who recommended that Michael contact the ACLU. The doctor took notes, recommended X-rays and prescribed medication. Michael's medical records are held by NO/AIDS.

The following day he emailed our office using his therapist's computer. Her name is Stephanie Nassrah, MSW, her number is 504-821-2601, stephanien@noaidstf.org. Michael can be reached via email at no2ny4now@yahoo.com or at his therapist's office. Michael normally returns my calls within a day.

Please do not hesitate to contact me if I can clarify anything or provide additional information.

Sincerely,
Barry Gerharz

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