

**IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF LOUISIANA
New Orleans Division**

**NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., *et al.*,**)

Plaintiffs)

v.)

C. RAY NAGIN, Mayor of New Orleans, and)

**WARREN RILEY,
Superintendent of Police, New Orleans**)

Defendants)

**CIVIL ACTION NO. 05-4234
Hon. Carl J. Barbier
Section "J"
Magistrate 2**

**MOTION TO HOLD DEFENDANTS C. RAY NAGIN
AND WARREN RILEY IN CONTEMPT FOR
VIOLATION OF THE CONSENT ORDER**

The plaintiffs National Rifle Association of America, Inc., and Second Amendment Foundation, Inc., move the Court to issue defendants C. Ray Nagin and Warren Riley in contempt for failure to comply with the Consent Order dated September 23, 2005, and to set a hearing date for a trial on whether said defendants should be held in contempt, to include their testimony in open court.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Hold Defendants C. Ray Nagin and Warren Riley in Contempt for Violation of the Consent Order has been forwarded via facsimile, e-mail and hand delivery, this 27 day of February 2006, as follows:

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DANIEL D. HOLLIDAY, III

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**MEMORANDUM IN SUPPORT OF MOTION
TO HOLD DEFENDANTS C. RAY NAGIN
AND WARREN RILEY IN CONTEMPT FOR
VIOLATION OF THE CONSENT ORDER**

The plaintiffs National Rifle Association of America, Inc., and Second Amendment Foundation, Inc., hereby set forth the following facts, reasons, and authorities in support of their motion to hold defendants C. Ray Nagin and Warren Riley in contempt for failure to comply with the Consent Order dated September 23, 2005, and to set a hearing date for a trial on whether said defendants should be held in contempt, to include their testimony in open court.

**I. DEFENDANTS HAVE FAILED TO COMPLY WITH THE
CONSENT ORDER TO RETURN CONFISCATED FIREARMS**

**A. The September 23, 2005, Order that Defendants
Return Confiscated Firearms to Their Lawful Owners**

On September 22, 2005 in the wake of Hurricane Katrina, plaintiffs filed a complaint and a motion for a temporary restraining order and for a preliminary injunction to enjoin the unlawful confiscation of firearms and to require the return of confiscated firearms to their lawful owners. Defendants included Mayor Ray Nagin and Superintendent of Police Edwin Compass (now succeeded in office by Warren Riley¹), referred to below as the "New Orleans defendants," and Sheriff Jack Strain and others, referred to below as the "St. Tammany defendants." Counsel for all defendants received notice and the case was set for hearing the next day.

On September 23, 2005, the Honorable Jay C. Zaney signed a Consent Order which was agreed to and signed by counsel for all parties, including the plaintiffs, the New Orleans defendants, and the St. Tammany defendants. The Order decreed as follows:

[T]hat C. Ray Nagin, Mayor of New Orleans; P. Edwin Compass III, Superintendent of Police for New Orleans; and Jack Strain, Jr., Sheriff, St. Tammany Parish; and the officers, deputies, agents, servants, and employees of all such persons, and upon those persons in active concert or participation with them, are hereby enjoined and prohibited, until further order of this Court:

1. From confiscating lawfully-possessed firearms from citizens, including, but not limited to, Plaintiff Buell O. Teel and members of Plaintiffs National Rifle Association, Inc. and Second Amendment Foundation, Inc.
2. And they are further ordered to return any and all firearms which may have been confiscated from Plaintiffs Buell O. Teel, members of Plaintiffs National Rifle

¹F.R.Civ.P. 25(d).

Association, Inc. and Second Amendment Foundation, Inc., and all other persons who lawfully possessed them, upon presentation of identification and execution of a receipt therefor.

Id. at 3-4.

The text of the Consent Order was preceded by general denials by the defendants of the allegations of the Complaint, denials that it was their policy unlawfully to seize firearms from their lawful possessors, and denials that they had any such firearms in their possession. *Id.* at 2-3. Despite such denials, which defendants typically make for pleading purposes, it was incumbent on the defendants fully to apprise themselves of all relevant facts and to make all reasonable efforts, as the Order states, “to return any and all firearms which may have been confiscated from Plaintiffs . . . and all other persons who lawfully possessed them” *Id.* at 4, ¶ 2.

B. Compliance by St. Tammany Defendants with the Injunction Order

The St. Tammany Parish defendants took immediate steps to comply with the injunction order. Those defendants kept records of the seized firearms and their owners, including contact information, safely stored them, attempted to contact their owners, and made the firearms available for their owners to claim.

Accordingly, the plaintiffs and the St. Tammany defendants entered into a Consent Order Granting Permanent Injunction and Dismissal of Remaining Claims, which this Court signed on January 3, 2006. The Order decreed that the St. Tammany defendants “are hereby enjoined and ordered to cease and desist confiscating lawfully-possessed firearms from all citizens” It further

ordered that these defendants “return any and all firearms which may have been confiscated by Defendants, their officers, deputies, agents, servants, and employees of all such persons from Plaintiff, Buell O. Teel . . . ; members of Plaintiff, National Rifle Association, Inc., who lawfully possess firearms; and all other persons who lawfully possess them, upon presentation of identification and execution of a receipt therefor.” Finally, the complaint was dismissed as to these defendants.

C. The New Orleans Defendants Have Failed to Comply with the Injunction Order

The New Orleans defendants, by contrast, have completely failed to comply with the injunction order that confiscated firearms be returned to their rightful owners. Plaintiffs have sought to cooperate with these defendants and to assist them in implementing measures to comply, but the defendants have refused to communicate with plaintiffs on the subject or to take any steps to comply with the order.

The only way for the New Orleans defendants to comply with the injunction order would be to gather comprehensive records on all known firearm confiscations and to inventory firearms being held, to make known and available to the public information on how to enquire whether their firearms are being held by the New Orleans police, to establish procedures to claim the return of firearms, and to provide a place or places where owners may physically retrieve their firearms.² Defendants have

²By letter dated December 6, 2005 (copy attached herewith as Exhibit “A”), plaintiffs’ counsel suggested the following measures to defendants’ counsel, who never answered the letter:

1. Announcement of a telephone number, website address, email address, postal address, and physical address where persons may make enquiries about seized firearms and retrieve them. The announcement should be prominently made in press releases, the New Orleans website,

taken none of these steps. Instead, defendants simply deny that they ever authorized the confiscation of any firearms and deny that the New Orleans police ever confiscated firearms from their lawful owners or have possession of any such firearms.

The Complaint includes pertinent allegations which millions of Americans witnessed on television or read in the newspapers:

14. During and after Hurricane Katrina, beginning in August 2005 and continuing through the present, Defendants Mayor C. Ray Nagin and P. Edwin Compass III, the Superintendent of Police, have pursued a policy of seizing lawfully-possessed firearms from law-abiding residents. Superintendent Compass announced, on or about September 8, 2005, that anyone with a weapon, even one legally registered, will have it confiscated, adding: "No one will be able to be armed. Guns will be taken. Only law enforcement will be allowed to have guns." Some news accounts attribute these statements to New Orleans Deputy Police Chief Warren Riley, but they represent the policies of Defendants Nagin and Compass.

15. During the same period, Mayor Nagin ordered the New Orleans Police and other law enforcement entities under his authority to evict persons from their homes and to confiscate their lawfully-possessed firearms. Police went from house to house and confiscated numerous firearms from citizens at gunpoint.

Complaint at 4.

A videotape of the above Compass-Riley announcement is filed herewith as Exhibit "B".

Newspaper articles on the same subject, together with other reports of firearms confiscations, are also

newspapers, and by other media.

2. Establishing an inventory of seized firearms and a list of persons to whom they belong. Such persons are to be notified via any and all available contact information that their firearms are being held and may be retrieved. Firearms whose owners are unknown shall be listed and published by make, model, caliber, and serial number, and shall be made available so that the owners may claim them.

being filed herewith as Exhibit "C".

By letter dated December 6, 2005, plaintiffs' counsel sent to counsel for the New Orleans defendants a summary of firearm confiscation incidents together with actual witness statements confirming the same. A copy of this letter with witness statements is attached as Exhibit "A". Counsel for New Orleans never responded to this letter, and failed to return telephone messages left on voice mail from plaintiffs' counsel seeking to resolve this matter.

The above information includes incidents such as:

- NOPD officers stopped a vehicle in the French Quarter on September 21 and seized firearms from Jason Klemm and Joseph Lee Hooper, even though they exhibited firearm carry permits. Hooper asked at the 1st District Station for his firearm to be returned. Police on duty told him that they had no firearms and asked him to leave. Through the intervention of a family friend, he was taken to a detective who had his firearm and returned it.

- Robert Edward Zas and four friends evacuated from his home on September 9. New Orleans police stopped his vehicle at a checkpoint at the BellSouth building on Poydras and Barrone St. Upon questioning, he informed NOPD that they had a handgun and a rifle, both of which police seized. Included was a pistol in a suitcase belonging to Lisa Ann Zalewski.

- Ashton R. O'Dwyer, Jr., during the week prior to September 9, exited his vehicle at his house at Willow and Monticello Streets. As he lawfully carried a revolver from his vehicle toward his house, NOPD officers yelled at him to drop his weapon and put his hands in the air. He complied,

was detained in handcuffs in the back of the patrol car, and later released. Police kept his revolver and refused to give him a receipt.³

Moreover, plaintiffs' investigator interviewed witnesses who are willing to testify as follows:

- A NOPD officer confirmed that NOPD officers at his roll call were given a direct order to seize any guns in possession of a person who could not verify ownership. The officers at the roll call were told to call the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") to pick up any seized weapons. However, this officer stated that the ATF took several hours to come to pick up any seized weapons. Therefore, he and other NOPD officers stopped calling the ATF. Regarding seized firearms, he stated: "I am not real proud of it, but if they were nice, most of the guys kept them, if they were crap, they tossed them in the river or in the canal." At least four (4) additional NOPD officers will verify that they were ordered at roll call to seize any guns in possession of persons who could not prove ownership.

- Two ATF agents stated that they told NOPD that the ATF could not take any firearms that had not been taken in the commission of a crime. When the NOPD insisted that the ATF take the firearms, the ATF again refused. However, because NOPD did not have the space to store the guns seized, the ATF rented, at ATF expense, a POD for the storage of guns seized by the NOPD.

³National television broadcast footage of several policemen assaulting and confiscating a firearm from Patricia Konie in her home, but they included a Louisiana State trooper and several California Highway patrolmen, and it is not known whether the latter were deputized by NOPD. This incident is the subject of *Patricia L. Konie v. State of Louisiana et al.*, Case 2:05-cv-06310-MLCF-DEK (E.D. La.).

As noted, plaintiffs' counsel provided full documentation of the above to defendants' counsel, but defendants have not taken any steps to have the NOPD comply with the order to return confiscated firearms.

Given the devastation and the dispersal of many residents to other places, where they are struggling to rebuild their lives, there can be no doubt that there were numerous citizens who were victims of defendants' gun confiscation policies who have not been identified. Plaintiff NRA has over forty thousand members in Louisiana, and not less than 8,000 in the following Parishes: Orleans, St. Bernard, Plaquemines, Jefferson, St. Charles, and St. Tammany.⁴ Plaintiff SAF has thousands of members and supporters in Louisiana, over 200 of whom have contact addresses in the city of New Orleans.⁵ Needless to say, most NRA and SAF members are gun owners, and those in New Orleans were subject to defendants' confiscation policies.⁶ The Consent Order commands that confiscated firearms be returned to NRA and SAF members and to "all other persons who lawfully possessed them." Defendants have made no effort to do so.

⁴Affidavit of Wayne LaPierre, previously filed in this case in support of motion for TRO/Preliminary Injunction.

⁵Affidavit of Alan M. Gottlieb, previously filed in this case in support of motion for TRO/Preliminary Injunction.

⁶The NRA and SAF have standing to represent their members. *See Familias Unidas v. Briscoe*, 619 F.2d 391, 398 n.7 (5th Cir. 1980) ("The Supreme Court has long recognized that a voluntary association has standing to bring suit on behalf of its members"). An association may have standing even though "it is not possible to state with certainty which of the members in the plaintiffs' associations will be harmed." *American Maritime Ass'n v. Blumenthal*, 458 F. Supp. 849, 855 (D. D.C. 1977), *aff'd* 590 F.2d 1156 (D.C. Cir. 1979), *cert. denied*, 441 U.S. 943 (1979).

II. THE STANDARDS TO FIND CIVIL CONTEMPT ARE MET HERE

Defendants should be found in civil contempt because they have failed to comply with the Consent Decree, a type of injunction order. Since a finding of civil contempt is sought, defendants would need only to comply with the injunction order to purge themselves of contempt.

Southern Railway Company v. Lanham, 403 F.2d 119, 124-25 (5th Cir. 1969), which involved failure to comply with a discovery order, explained:

Civil contempt is 'wholly remedial' serves only the purpose of a party litigant, and is intended to coerce compliance with an order of the court or to compensate for losses or damages caused by noncompliance. . . . Criminal contempt, on the other hand, is punitive, rather than remedial, serves to vindicate the authority of the court, and cannot be ended by any act of the contemnor.

While criminal contempt punishes a party for disobedience to the court, civil contempt awards relief to a private suitor, and permits the violator "to purge itself and remove the sanction by compliance with the court's . . . order." *Id.* at 125.⁷ That is all plaintiffs seek here.

Moreover, a party must make every reasonable effort to comply with an injunction order, whereas here defendants have done nothing to comply. *Harris v. City of Philadelphia*, 47 F.3d 1333 (3rd Cir. 1995), upheld a contempt fine against the City for failure to comply with a consent decree regarding certain prison conditions. "The agreement memorializes the bargained for positions of the parties and should be strictly construed to preserve those . . . positions." *Id.* at 1337 (citation

⁷See *Fireman's Fund Insurance Co. v. Myers*, 439 F.2d 834, 836-38 (3rd Cir. 1971) (upholding issuance of rule to show cause and finding of civil contempt where defendant could purge himself of contempt by depositing certain funds by a deadline).

omitted). Defendants have made no effort to comply here.

The standard for whether it is possible to comply is high. “The City may escape contempt by showing that it *could not possibly comply* with the court's order *despite making all reasonable efforts to do so.*” *Id.* at 1340 (emphasis added), citing *United States v. Ryan*, 402 U.S. 530, 534 (1971). A finding of contempt is appropriate where the record is “‘devoid of any evidence’ that defendants exhausted all reasonable efforts” to comply. *Id.* at 1342 (citation omitted).

Nor have defendants sought further review of the injunction order. If a defendant believes the injunction order is incorrect, “the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal.” *Maness v. Meyers*, 419 U.S. 449, 458 (1975).

O’Sullivan v. City of Chicago, 396 F.3d 843 (7th Cir. 2005), involved a suit to enforce a consent decree that required the City to make employment decisions without regard to political affiliation. The plaintiffs sought a rule to show cause why defendant should not be held in civil contempt for failure to comply with the decree, and an order to adhere to the decree in the future. *Id.* at 851.

Ruling in favor of plaintiffs, the court noted that “federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, a consent decree may be enforced.” *Id.* at 867, quoting *Frew v. Hawkins*, 540 U.S. 431, 124 S.Ct. 899, 905 (2004). “A party may not simply ignore the decree because it believes that factual or legal changes since the decree's entry renders continued enforcement illegal or inequitable.” *Id.* at 868.

Here, the injunction order is binding on the named defendants Mayor Ray Nagin and Superintendent of Police Warren Riley and the entire NOPD acting under their supervision. Fed. R. Civ. P. 65(d) provides that an injunction order “is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” Thus, “a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control.” *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945). Persons in “active concert or participation” include “nonparties who are successors in interest to parties named in the injunction” as well as persons who “aid or abet the named parties in a concerted attempt to subvert” the injunction. *Rockwell Graphic Systems, Inc. v. Dev Industries, Inc.*, 91 F.3d 914, 919 (7th Cir. 1996).

In *Rockwell Graphic Systems*, defendant was enjoined from disclosing certain trade secrets. Plaintiff moved for a rule to show cause why defendant’s successor and former president should not be held in civil contempt for violation of the injunction. The court held that both parties had a due process right to have the court resolve factual disputes:

There is no reason to suppose that this due process protection accrues only to the benefit of those alleged to be in contempt. A party who seeks enforcement of an injunction through the medium of civil contempt is likewise entitled to the resolution of genuine issues of material fact that bear upon the allegations by which it seeks to support a finding of contempt.⁸

⁸Accordingly, the district court’s order denying the motion for a rule to show cause why persons acting in concert should not be held in contempt was reversed. *Id.* at 921.

91 F.3d at 920. Here too, the plaintiffs are entitled to be heard and to have the benefit of the court's resolution of genuine issues.

In sum, in the absence of evidence that defendants have exhausted all reasonable efforts to comply with the injunction order, the standards here are met for the defendants to be held in contempt.

**III. PLAINTIFFS ARE ENTITLED TO A TRIAL AT WHICH DEFENDANTS
NAGIN AND RILEY MAY BE CROSS EXAMINED TO DETERMINE
WHETHER THEY SHOULD BE HELD IN CONTEMPT**

Plaintiffs are entitled to a trial of the issue of whether defendants should be held in contempt, including testimony in open court by the defendants. F.R.Civ.P. 43(a) provides in part that "in every trial, the testimony of witnesses shall be taken in open court," and the rule in the Fifth Circuit is that one is entitled to a trial on whether a consent order has been breached.

In *Sanders v. Monsanto Co.*, 574 F.2d 198, 199 (5th Cir. 1978), plaintiffs-appellants in a civil rights action filed a motion to hold defendants in contempt of a consent order. The Fifth Circuit held that they were entitled to have their motion heard on oral testimony, not just affidavits. The court explained:

Appellants argue, however, that because a civil contempt action is more in the nature of a trial on the merits of a breach of the consent "contract" Rule 43(a) should control. As provided by Rule 43(a), a trial requires a full hearing complete with oral testimony. We agree with appellants. *Id.*

The court reasoned that "a contempt proceeding from a court order is highly factual,

approximating a trial on the merits.” *Id.* Moreover, “testimonial evidence has the highest reliability because the credibility of the witness can be evaluated, and the factual issues narrowed by cross-examination. Because the contempt proceedings depend so heavily on complex facts not readily perceivable from the record, an oral hearing within the scope of Rule 43(a) is necessary.” *Id.* at 200. Finally, the court held that “the court must make findings of fact and conclusions of law in its decision on a motion for civil contempt”

Accordingly, this Court should set a hearing date for a trial on whether defendants Nagin and Riley should be held in contempt, to include testimony in open court by said defendants.

CONCLUSION

This court should grant this motion to hold defendants Mayor Ray Nagin and Superintendent of Police Warren Riley in contempt for failure to comply with the Consent Order dated September 23, 2005, and to set a hearing date for a trial on whether said defendants should be held in contempt, to include their testimony in open court.



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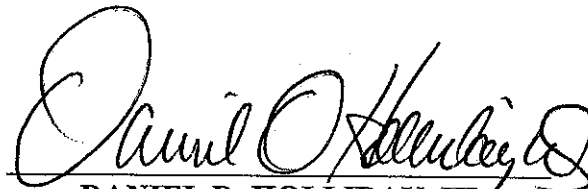
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December 6, 2005

**VIA FEDERAL EXPRESS,
OVERNIGHT DELIVERY
FACSIMILE and E-MAIL**

Joseph V. Dirosa, Jr.
1300 Perdido Street
Room 5E03
New Orleans, Louisiana 70112

Re: National Rifle Association of America, Inc., et al. v. C. Ray Nagin, et al.
LLF File No. 336-001

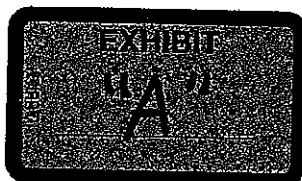
Dear Joe:

I want to update you on recent information our investigation has uncovered in this matter. Hopefully this will open a dialog on what steps the City of New Orleans and the New Orleans Police Department will take to comply with the Consent Order.

I have obtained statements from the following people, copies of which are enclosed. A short summary of the contents of their statement follows:

1. Jason Klemm:

On September 21, 2005, Klemm was a passenger in a vehicle being driven by Joe Hooper, going down Canal Street in downtown New Orleans. Klemm is a roofing contractor from Texas in New Orleans to do an emergency job following Hurricane Katrina. Klemm had an emergency contractor's license from FEMA which authorized him to be in the City of New Orleans. His vehicle was stopped by two (2) male officers who identified themselves as U.S. Marshals (one from Chicago and one from Texas) and two (2) female officers who were wearing shirts with "NOPD" on them. Klemm has a concealed handgun license from the State of Texas, a copy of which is attached to his statement. Louisiana recognizes this license as authorizing him lawfully to carry a concealed handgun in Louisiana. (See Louisiana State Police website, <http://www.lsp.org/handguns.html#recip>). Klemm's 9mm Beretta was seized from him at that time. He later recovered it from the NOPD, 1st District Station.



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2. Joseph Lee Hooper:

Hooper was the driver of the vehicle in which Klemm was a passenger. Although Hooper's statement says that the incident occurred on September 13, 2005, he has since told us that the incident occurred on September 21, 2005. He is sure that is the date because of the date of his emergency contractor's license. Hooper confirms two (2) female NOPD officers were present at the time that they were stopped. Hooper has a concealed handgun permit issued by the State of Florida. Louisiana recognizes this license as authorizing him lawfully to carry a concealed handgun in Louisiana. (See Louisiana State Police website, <http://www.lsp.org/handguns.html#recip>). The police seized his handgun. Hooper confirms Klemm's handgun was also seized. Hooper requested a receipt from the officers but they refused. The officers also refused to give him their identification. His .40 caliber Glock handgun had a \$300.00 laser sight attached.

Through a friend he contacted NOPD who directed him to the 1st District Station in the French Quarter. Once there the NOPD told him that they had no firearms and asked him to leave. He asked for the family friend who took him to the 2nd floor and led him to a detective who had Hooper's and Klemm's handguns in his desk drawer. He stated "I don't know where these came from, I came in and they were on my desk, if they are yours, go ahead and take them." The laser sight was not on Hooper's handgun when it was returned.

3. Robert Edward Zas:

On September 9, 2005, Zas evacuated from his home at approximately 10:00 a.m. with four (4) friends. When they arrived at the BellSouth building on Poydras and Barrone St., Zas was stopped at a checkpoint manned by the NOPD. Upon questioning, he informed NOPD that they had a handgun and a rifle. Both the handgun and the rifle were seized from him.

4. Lisa Ann Zalewski:

Zalewski was one of the passengers in Zas' van. She confirms that the NOPD were manning a checkpoint at Poydras and Barrone St. at which they were stopped. Her grandmother's .22 pistol, which was unloaded and in her suitcase was taken by the NOPD and thrown to the ground breaking the gun grip. The officers told her to go back to New Jersey and that she was the scum bringing New Orleans down.

5. Ashton R. O'Dwyer, Jr.:

Sometime the week prior to Monday, September 9, 2005, O'Dwyer exited his vehicle at Willow and Monticello Streets. He had a .38 Smith & Wesson Police Special in his vehicle. A reporter from the Wall Street Journal was a passenger in his vehicle. At approximately 3 or 4 o'clock p.m., as he got out of his vehicle at his house, two (2) uniformed NOPD officers yelled at

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Page 3

him to drop his weapon and put his hands int the air. He complied with the officers' instructions. O'Dwyer was detained in handcuffs in the back of the patrol car. O'Dwyer was ultimately released. However, the NOPD kept his pistol and ammunition. The NOPD refused to give him a receipt.

In addition to these statements, our investigator has interviewed numerous other witnesses. They are all willing to testify. The following is a summary of our investigation:

1. At least one (1) NOPD officer has confirmed that the NOPD officers at his role call were given a direct order to seize any guns in possession of a person who could not verify ownership. The officers at the roll call were told to call the ATF to pick up any seized weapons. However, this officer stated that the ATF took several hours to come to pick up any seized weapons. Therefore, he and the NOPD officers he was associated with stopped calling the ATF because of the time delay. When asked what happened to the guns that were seized, he stated "I am not real proud of it, but if they were nice, most of the guys kept them, if they were crap, they tossed them in the river or in the canal." We have at least four (4) additional NOPD officers that will verify that they were ordered at roll call to seize any guns in possession of persons who could not prove ownership.

2. Our investigator interviewed two (2) ATF agents who stated, and are willing to testify, that they told NOPD that the ATF could not take any weapons that had not been taken in the commission of a crime. When the NOPD insisted that the ATF take the guns, the ATF again refused. However, because NOPD did not have the space to store the guns seized, the ATF rented, at ATF expense, a POD for the storage of guns seized by the NOPD. We have a picture of a POD located at an NOPD location.

A time line of events regarding Katrina-related gun seizures is attached for your information.

To date, you have insisted that the NOPD did not have any guns that were seized from anyone during the applicable time period. Given the facts presented here together with your own duty to make reasonable inquiry, any further denials of our factual contentions regarding firearm confiscation policies and actions by the New Orleans Police are clearly unwarranted under the meaning of Rule 11(b) of the Federal Rules of Civil Procedure. The City of New Orleans and the NOPD cannot put their heads in the sand and continue to assert that no guns have been seized simply because the Mayor and the Chief of Police say that they are not aware of this happening.

Please contact me at your earliest convenience to discuss a resolution this matter prior to our having to file a motion to require your clients' to comply with the injunction order. We would particularly like to discuss how your clients could attempt to get into compliance with the injunction order through the following procedures, as well as other methods which may be viable:

1. Announcement of a telephone number, website address, email address, postal address, and physical address where persons may make enquiries about seized firearms and retrieve

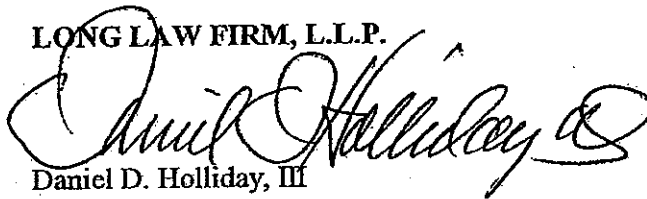
Joseph V. Dirosa, Jr.
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Page 4

them. The announcement should be prominently made in press releases, the New Orleans website, newspapers, and by other media.

2. Establishing an inventory of seized firearms and a list of persons to whom they belong. Such persons are to be notified via any and all available contact information that their firearms are being held and may be retrieved. Firearms whose owners are unknown shall be listed and published by make, model, caliber, and serial number, and shall be made available so that the owners may claim them.

Very truly yours,

LONG LAW FIRM, L.L.P.



Daniel D. Holliday, III

DDH/coe

Enclosures

cc: Christopher Conte (E-Mail Only)
Alan Gottlieb (E-Mail Only)
Stephen Halbrook (E-Mail Only)

AFFIDAVIT

County of Dallas

State of Mississippi Texas

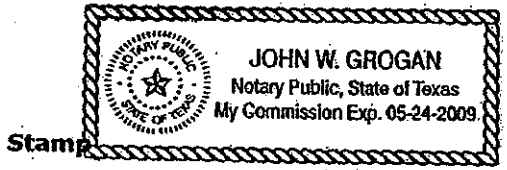
BEFORE me, the undersigned notary, duly commissioned and qualified in and for the aforesaid County and State, personally appeared JASON Klemm, who after being duly sworn did depose and say:

ON Sept, 2005, I was A passenger in a vehicle driven by Joe Hooper, going down Canal St in downtown New Orleans. We are roofing contractors from Texas, and were there to do an emergency job after Katrina. Our vehicle was stopped by an SUV with two male and two female police officers. The males said they were U. S. Marshalls, one from Chicago, one from somewhere in Texas. The two female officers were both wearing shirts that had New Orleans Police Dept printed on it. I asked all of them for their names but no one would tell us. They asked us if we had any weapons in the vehicle, and we showed them we were both wearing a firearm ^{Shoulder Harness} ~~on our belt~~. I told the officers that I had a CHL (Concealed Handgun License) from my home state of Texas, and that it was recognized in Louisiana. The officer could care less, and seized the weapons, mine was a 9mm Beretta. They then let us go into that mess with no protection at all. My gun was returned to me approximately 2 weeks later by NOPD at the First District Station.

[Signature] x initials
Signature Jason Klemm
Print Name

Sworn to and subscribed before this 28 day of Oct, 2005.
[Signature]
Signature John W Grogan
Print Name


Notary I.D. _____



**CONCEALED HANDGUN
LICENSE**

TEXAS

LICENSING DIVISION
DIRECTOR



LICENSE #
05001752
TX DL/D # 10481421
CATEGORY: SA
EXP: 03-09-2008
HAIR: BLN EYES: BLU SEX: M
HT: 5-11 WT: 185 DOB: 03-09-1966
KLEMM, JASON DUFFY
1600 MAPLELEAF DRIVE
WYLIE TX 75098

J. Klemm

AFFIDAVIT

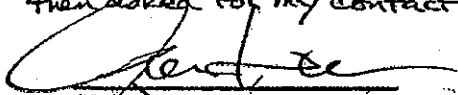
County of Dallas

State of Texas

BEFORE me, the undersigned notary, duly commissioned and qualified in and for the aforesaid County and State, personally appeared Joseph Lee Hooper, who after being duly sworn did depose and say:

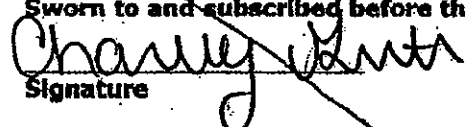
On 13 Sept, 2005, I was driving my work truck for my roofing business down Canal St in New Orleans. My company had a permit to be in the city to do emergency repair work after the storm. We were stopped by a black SUV with 4 police officers in it, two males who said they were US Marshalls and two white females wearing New Orleans Police Dept shirts. They confiscated both my handgun and the one my co-worker Jason Clemm was carrying. His permit is from Texas, mine is from Florida, both are recognized by the State of Louisiana. I asked for their names and badge numbers but no one would tell us. I asked they write down the serial numbers and give us a receipt but they refused. Finally the one Marshal who said he was from Texas got the serial numbers and gave them to me. I had a 40 cal Glock with a \$400 laser sight on it.

I have family in New Orleans, one gave me a name of a police officer that I could get my guns back from, after two weeks of getting the run around from every agency I called. I went to the First District Station in the French Quarter, and told the two officers at the desk I was there to claim my firearm and my co-workers. They both said they had no idea what I was talking about, and told me to leave. I then asked for my contact by name. → continued


Signature

Joseph Lee Hooper
Print Name

Sworn to and subscribed before this 31 day of Oct, 2005.


Signature

Charity Gunter
Print Name

Notary I.D. _____

Stamp

County of Dallas

State of Texas

BEFORE me, the undersigned notary, duly commissioned and qualified in and for the aforesaid County and State, personally appeared Jose Ce Hooper, who after being duly sworn did depose and say:

My contact came down and took me to the second floor, where the detectives were. One of them opened his desk drawer and pulled out both the guns, saying, "I don't know where these came from, I came in and they were on my desk, if they're yours go ahead and take them." He handed them both to me, fully loaded, and then refused to tell me his name, and said there was no paperwork to do, just go. My laser sight had been removed. So someone stole that off the gun. I never would have gotten them back if I hadn't made such a stink and had a friend on the force to help me.

[Signature] initials

[Signature]
Signature

Jose Hooper
Print Name

Sworn to and subscribed before this _____ day of _____, 2005.

Signature

Print Name

Notary I.D. _____

Stamp

AFFIDAVIT

PARISH OF New Orleans

STATE OF LOUISIANA

BEFORE the undersigned witnesses, personally appeared:

Robert Edward ZAS

[Insert Name]

who said the following:

On Sept 9, 2005, I WAS EVACUATING from my home at 10AM with 4 friends and three dogs in a van with as much household stuff as we could cram in the van. When we got to the Bell South Bldg on Poydras & Barrone St., We were stopped by a uniformed officer who was all in black with no badge or ID on his clothes. New Orleans Police Dept was there as well. He asked if we had any weapons in the vehicle. I said yes, my friend LISA had a handgun in her suitcase, there was a rifle packed in the back as well. They made us unpack all our stuff and give them the guns, then let us go escorted to the convention center to be evacuated. I had a legal right to be in possession of this weapon.

[Signature]

New Orleans, Louisiana this 20 day of October 2005.

Robert Zas

[Signature]

Robert Edward ZAS

[Printed Name]

4112 Dauphine St DRIVER'S LICENSE
New Orleans, LA 004726728
DOB 11-30-62

WITNESSES:

[Signature]

(Signature)

Suzanne McComas

(Printed Name)

20 Oct 05

(Date)

x Anthony Bauer

(Signature)

Anthony Bauer

(Printed Name)

20 Oct 05

(Date)

AFFIDAVIT

PARISH OF New Orleans

STATE OF LOUISIANA

BEFORE the undersigned witnesses, personally appeared:

LISA ANN ZALEWSKI
[Insert Name]

who said the following:

ON Sept 9, 2005, I was evacuating out of New Orleans in a van with friends and family and our 3 dogs AT 10 AM. Our van was stopped at the corner of Poydras & Barrone St. An officer all in black made us get out and give them our weapons. I had a pearl handle .22 pistol (that was so old it belonged to my grandmother), in my suitcase unloaded. A LA state trooper and a New Orleans Police Officer took my gun and threw it on the ground breaking the gun grips; the State trooper searched me and grabbed my breasts with no reason whatsoever. He told me to go back to NJ, that we were the scum bringing New Orleans down.

I have every legal right to possess this firearm, and broke no laws at any time.

[Handwritten signature]

New Orleans, Louisiana this 20 day of October 2005.

Lisa Ann Zalewski
[Signature]

LISA ANN ZALEWSKI
[Printed Name]

1703 St. Rock Ave DOB 2-16-68
New Orleans, LA 70117 SSN 146-52-7926

WITNESSES:

[Signature]
(Signature)

SUZANNE McCOMAS
(Printed Name)

20 OCT 05
(Date)

[Signature]
(Signature)

ANTHONY BRANT
(Printed Name)

20 OCT 05
(Date)

AFFIDAVIT

PARISH OF ORLEANS

STATE OF LOUISIANA

BEFORE the undersigned witnesses, personally appeared:

ASHTON R. O'DWYER, JR.
[Insert Name]

who said the following:


Sometime during the week prior to Monday, Sept. 19th, I exited my vehicle at Willow and Monticello Streets - a "bad" neighborhood with a 38 Smith + Wesson Police Special w/a 4" barrel in my right hand pointed at the ground. This was about 1500-1600 hours in broad daylight. I was in the process of showing a reporter from the Wall Street Journal the remnants of "The O'Dwyer Compound" →

_____, Louisiana this _____ day of _____ 200_____

[Signature]

[Printed Name]

WITNESSES:

— continued — 

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Date)

(Date)

AFFIDAVIT

PARISH OF ORLEANS

STATE OF LOUISIANA

BEFORE the undersigned witnesses, personally appeared:

ASHTON R. O'DUNN, JR.
[Insert Name]

who said the following:

in Southport, La. a suburb of New Orleans. Almost as soon as I exited my vehicle I was yelled at by 2 uniformed NOPD officers to "Drop that weapon; hands in the air!" I complied with the officers' instructions. I was briefly detained, in handcuffs, in the back of a patrol car. To make a long story short,

_____, Louisiana this ____ day of _____ 200__

[Signature]

[Printed Name]

WITNESSES:

_____ continued ARDO

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Date)

(Date)

AFFIDAVIT

PARISH OF ORLEANS

STATE OF LOUISIANA

BEFORE the undersigned witnesses, personally appeared:

ASHTON R. O'DWYER, JR.
[Insert Name]

who said the following:

Nothing further. AKO

New Orleans, Louisiana this 19 day of October 2005.

[Signature]
[Signature]
Ashton R. O'Dwyer, Jr.
[Printed Name]

6034 St. Charles Ave DOB 10-23-87
New Orleans, LA MEMBER, LA BAR ASSOC.

WITNESSES:

[Signature]
(Signature)

Suzanne McComas
(Printed Name)

19 October 2005
(Date)

Barbara Starr
(Signature)

Barbara Starr
(Printed Name)

10-19-05
(Date)

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BATON ROUGE, LA 70809

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(504)000-0000

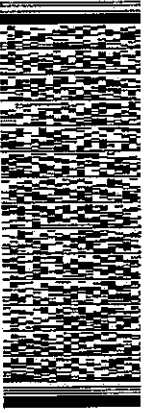
Joseph V. Dirosa, Jr.
City Attorney's Office
1300 Perdido Street
Room 5E03
New Orleans, LA 70112

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