

**STATEMENT OF
ASHTON R. O'DWYER, JR.**

GIVEN UNDER PENALTY OF PERJURY,

ON OCTOBER 14, 2005,

TO INVESTIGATORS ROLAND LANDREYT AND TRIS LEAR
IN THE OFFICES OF THE LOUISIANA DEPARTMENT OF JUSTICE
LIVINGSTON BUILDING
BATON ROUGE, LOUISIANA

Transcriptionist:

Johnna Barron
c/o U.S. District Court
500 Poydras Street, Room C151
New Orleans, Louisiana 70130

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PROCEEDINGS

(October 14, 2005)

MR. O'DWYER: Date of birth 10/23/47, Social Security Number (omitted for security purposes). I live at 6034 St. Charles Avenue, New Orleans 70118. My home telephone number, which doesn't work right now, is (504)891-8790. My cellular telephone number, which does work, is (504)884-6727. I am married to Katherine Taber O'Dwyer. We have four children. They are all grown or in college right now.

I, until a few weeks ago, was a partner with the law firm of Lemle & Kelleher, where I've been for 35-plus years. I'm an admiralty and maritime attorney and in good standing with the Bar as far as I know. I was admitted in September 1971.

I'm here to report a series of crimes which were perpetrated on me under color of state law commencing at approximately 1205¹ hours on Tuesday, September 20, 2005. I am charging the Louisiana State Police, and more particularly, an officer by the name of State Trooper -- I believe it is John Nelson -- but that can be verified from the police report which I'm going to provide you-all later or which you can obtain independently, Badge No. 2777, with the following: No. 1, criminal trespass upon my property; No. 2, kidnapping; No. 3, illegal detention; and No. 4, turning me over to the custody, illegally, of the Louisiana State Department of Corrections when he knew or should have known that there was no valid reason for doing so. Let me give you the circumstances.

At approximately 1147 hours on Monday, September the 19th, 2005, I filed a class-action lawsuit against the United States of America, among others. The

¹ Technically, an error. The actual time was 0005 hours or 12:05 o'clock A.M.

lead plaintiff's name is my sister's name, Maureen O'Dwyer, who lost her home and possessions in Lakeview, on Vicksburg Street, as a result of the aftermath of the storm.

And there are many, many victims in the post-Katrina events that occurred. All of us are victims and suffered in one way or another, but my lawsuit identified a variety of categories of claimants that include the following:

Number 1, people who died as a result of not being evacuated before the storm by our Governor and Mayor, who should have evacuated critical care patients and people in nursing homes, and, by not doing so, sentenced them to death. People who suffered bodily injury or exacerbation of preexisting injuries for the same reason;

Then flood victims: Either people who suffered death or personal injury as a result of flooding, or people who lost everything or had their immovable or movable possessions destroyed or damaged as a result of the post-storm flooding;

People who suffered property losses due to something that I identified in my lawsuit as "government-sponsored urban terrorism," which I believe is an innovative and new tort unheard of before in the annals of law. It's something I created. By not declaring martial law and allowing bands of armed Negro males to maraud through the streets of New Orleans, our Governor condemned our citizenry and their property to "government-sponsored urban terrorism," I respectfully submit;

Then there are other people in my class of claimants, people who lost homes or had their homes damaged by the fires which raged out of control because of government's failure to secure the water supply in New Orleans after the storm;

And then lastly, there's a group of people who suffered emotional distress either as a result of living through the aftermath or even being away from the city and

watching on television the looters and the flooding and fearing for their property, possessions, and loved ones who may have still been in the city. So those are emotional distress claims.

In addition to the United States of America, acting by and through its -- its agency and instrumentality, the United States [Army] Corps of Engineers, who I maintain defectively designed the levee systems in the Industrial Canal, the London Avenue Canal, and the 17th Street Canal, I named as parties defendant: Governor Blanco, who I call *Governor "Bunco"* because her self-professed competency to protect the lives and property and quality of life of its citizenry -- of the citizenry is -- is a fraud on the public; the State of Louisiana; the Mayor; the City of New Orleans; Police Chief Eddie Compass; District Attorney Eddie Jordan; Levee Board president, James Huey; the Levee Board; the Sewerage and Water Board; Ray Nagin, who is president pro tempore of the Sewerage and Water Board; the Clerk of Criminal District Court; and the Warden for Orleans Parish Prison, I think the Criminal Sheriff.

In addition, I amended my suit at a later date to include the United States acting through its agent and instrumentality FEMA. And most recently, I joined Aaron Broussard and the Parish of Jefferson.

Within 12 hours of filing that lawsuit, I am sitting at home in my driveway at 6034 St. Charles Avenue, having one last glass of wine before going to bed. It's about midnight. I had just put a family friend to bed in the hammock on my patio where I had been spending the night in the post-Katrina aftermath, because it was the coolest place to sleep. Indoors was like an oven.

But the family friend stayed for dinner, and he didn't want to violate the curfew, asked permission to spend the night and sleep in my hammock. I consented and I had just put him to bed. He's 73 years old. Jerry Guice is his name. He lives on Hurst Street and is available for interview.

I'm sitting there watching TV -- I had a generator and I could get one channel on the tube -- drinking my glass of wine, when a state police SUV pulls up at high speed and stops at the foot of my driveway, and three or four armed officers dressed in SWAT clothes got out of the vehicle and began approaching where I was sitting, very aggressively.

I immediately stood up, put my hand up, and said, "Halt! Get off my property. You're not authorized to be on this property unless you are coming to make an arrest or to serve a warrant."

They did not like that at all. And I was told in no uncertain terms, "Sir, you are coming with us. Either you are going to come of your own free will or we will remove you from the property by force. What's it going to be?"

I responded, "I will not resist, but you are going to have to remove me by force." And that they did. They handcuffed me behind my back, threw me to the ground, facedown in the ground cover. In the process, I contused at least one, and possibly two, ribs on the right side. I am still suffering pain in that area today as we speak, and today is October 14, 2005.

They told me in response to my repeated requests, "Am I charged with something? Am I under arrest? Why are you doing this to me?" that they wanted to take my fingerprints; to which I replied: "(expletive deleted) you. You're not authorized to take my fingerprints. Charge me with something if you want to take my fingerprints, you no-good, rotten (expletives deleted)."

I probably used some very, very direct language. I felt like I was being treated unfairly. I mean, they were violating my rights being on my property and doing something they were not authorized to do. To make a long story short, I was put in the police vehicle.

I subsequently learned that, while I was laying on the ground, they tried to enter my home, but Mr. Guice stopped them from doing so. I don't know what their

intent was in that regard, but he stopped them from doing that. He also has confirmed to me since my release that at no time did they say to me that "You are under arrest" or that any charges of any type were made against me, and I was not read my rights.

And believe me, I know enough about criminal law to know how to speak to a police officer and ask him what I'm charged with, whether he has placed me under arrest, and how to invoke my right to counsel, which I was doing repeatedly throughout this process. I was trying to reason with the guys. They were acting totally irrational[ly]. I wanted to reason with them, and I was getting nowhere. Okay?

I'm transported to the Union Passenger Terminal in New Orleans where I am brought into a darkened building and, quote, "processed," which means they took my picture and asked me things like my name and where I lived and what my Social Security number was. Again, I asked to know the nature of the charges against me, if any; whether I was under arrest, and I invoke my right to counsel, and I was not responded to with anything.

And I'm quite sure that, in both locales, both at home and at the passenger terminal, I said, "I can't believe this is happening. I can understand this happening in Nazi Germany or in North Korea or the People's Republic of China or Cuba, but certainly not the United States. What is going on here? What is happening and why?" I was totally perplexed.

I was then taken to a dark corner of the building, I thought still in the custody of the Louisiana State Police. Subsequently, the next day, I learned, however, that the State Police departed and I was actually in the custody of the Louisiana State Department of Corrections, or "Goons from Angola" is what I call them.

And there are two individuals in particular, whose names I don't know but who I can identify either in a line-up or from mugshots, and these two individuals do

not belong carrying guns. These two individuals are cruel sadists who deserve to be institutionalized, and if anything comes out of this, I hope that those two people are removed from society and institutionalized.

I got a bad feeling come over me. And I'm still handcuffed, with my hands behind my back. I don't remember at the time whether I was talking or silent, but out of nowhere, a guy comes out of the shadows and pepper-sprays me right in the face. Well, I didn't have a shirt on so the pepper spray is all over my upper body.

And I've never been in combat, but I decided that I was going to resist whatever it was they were going to throw at me; and although I was incapable of physical response to the pepper spray, mentally and verbally, I tried to resist the best way I could.

I first turned my head to the side to avoid more pepper spray in my eyes and said, shaking my head negatively, "You-guys didn't have to do that. You really didn't have to do that," and I got more pepper spray in the face. And then I started resisting with, "Well, you know something? Ashton O'Dwyer has just become your worst (expletive deleted) enemy. I am now a liability issue for you, you no-good, rotten, (expletives deleted). You gutless dogs!" And every time I spewed venom at them, they returned the favor by paying -- spraying pepper spray back in my face. Okay?

Finally, I said to them, "If you think that I am going to cry out or beg or scream, you have another thing coming." With that (indicating) I was hit in the side of the head, on the right side, with the flat of someone's hand. Honest to goodness, it didn't hurt me, and I immediately yelled out: "Is that the best you can (expletive deleted) do? Why don't you hit me in the face, break my nose, break my jaw. Hit me! Hit me! Hit me! Hit me!" Fully expecting blows to begin landing in my face. Fortunately, for me, however, that didn't happen.

I -- I then -- I then can't tell how much time passed between being pepper-sprayed again and the following: Out of another dark shadow or corner of the building comes one of the two guys who I couldn't stand, armed with a 12-gauge shotgun, which had a sling under it -- I know it was a 12-gauge because I have one at home, a Mossberg pump with an 18-inch barrel, with a stock on it. And this was the same type of weapon; although, it may not have been a Mossberg -- and he aims directly at my right thigh and pulls the (expletive deleted) trigger.

Well, I get hit with something, but my leg's still intact and I'm not bleeding from a shotgun wound to the leg. Apparently, it is some type of a round that is used to -- to stop lethal force. I -- I learned this later. And I later learned that the rounds were beanbag rounds. I'm going to get to that, how I learned that, in a minute. But I'm shot repeatedly in the right thigh. And one of the wounds does actually bleed, and you can still see the remnants of it.

I don't remember taking any hits to my right -- I'm sorry, to my left leg at that particular time; but in response to being shot several times in the right leg, my reply was: "You gutless dogs! If you had any (expletive deleted) guts, you'd aim that (expletive deleted) shotgun in my face. And if you were real men, you'd show you had guts by taking out your side arms and putting a bullet through my (expletive deleted) forehead because now you-guys are going to have to kill me, you no-good, rotten, (expletives deleted). You gutless dogs!"

Now, that's how I responded. That's how I fought this. Okay? It helped me keep standing up. They never (expletive deleted) knocked me down, and I was one (expletive deleted) son-of-a-(expletive deleted). Okay?

All of a sudden, the violence towards me stops and I am taken outside through the back of the building, and I pass a number of what I call Guantánamo-style dog cages, and I am taken to an isolated one at the very end of the line in a dark

area of the property. My handcuffs are removed. I'm put into the dog cage. I'm pepper-sprayed again.

Then I yell out: "I am being treated with less rights than people at Guantánamo"; to which the guards replied: "Oh, Guantánamo? Are you a Muslim? Are you a (expletive deleted) Muslim? Do you want a Koran?"

I said, "Yes. Bring me a Koran and I'll (expletive deleted) on it. (expletive deleted)on the Koran." (And I don't give a (expletive deleted)who hears that. My address is 6034 St. Charles Avenue.) "(expletive deleted) on the (expletive deleted) Koran." Okay?²

Then, out of the shadows, they come with the shotgun again, and somebody yells: "Shoot him in the (expletive deleted)! Hit him in the (expletive deleted)!" My hands are free, so I cover my (expletive deleted), and I am shot twice in the left leg. And the reason I know twice is because I found two beanbag rounds in my dog cage the next morning when it turned light. Okay? Those are the only two shots I remember to my left leg, but I know I was hit at least five or six times in the right leg, which makes me say I was hit a total of six to eight times. All right?

Then a fat, tall guard with a pot belly comes over to me and he says, "Oh, we got us a (expletive deleted) here. Are you a (expletive deleted)? You sure look like a (expletive deleted). We're going to have fun with this (expletive deleted)." So all kinds of crazy thoughts are going through my head.³ All right? I'm in darkness. I'm in isolation. I can see other people. I'm yelling things, like, "I'm

² Someone may try to "make" something of this admittedly strident language, which really is irrelevant to the torture inflicted on Mr. O'Dwyer by employees of the State of Louisiana. To keep things in proper perspective, Mr. O'Dwyer avers that he was taught from a tender age by the Marianites of the Holy Cross, and later by the Jesuits, that the human body is "The Temple of the Holy Ghost". The reader is respectfully referred to Exhibits "A" and "B", which are photographs of the wounds inflicted on U.S. Army Soldier Bryan Anderson in Iraq by "Worshippers of the Koran". Remember 9-11. Remember Bryan Anderson.

³ Which renders the recent "broomstick" comment by Paul B. Deal of the Louisiana Department of Justice so offensive and outrageous.

Ashton O'Dwyer. I'm being held here illegally. I invoke my right to counsel. I wish to make a telephone call. If I cannot make a telephone call, will you please call my lawyer. I want someone to work on a writ of *habeas corpus*. I want out of here. I'm being illegally detained." But I -- I just wanted somebody to know where I was. I don't -- I didn't know who knew where I was or not.

And I'm thinking to myself, when I had time to think, when I'm not fighting off physical attacks, that I may have signed my own death warrant by being aggressive with these people verbally because they may decide that it's better for them if I simply disappear and nobody ever hear of me again in the post-hurricane aftermath. You follow me?

So then I embark on a new strategy, and that strategy is to attempt to negotiate with the guards individually. And they make rounds about every 10 or 15 minutes on a little -- I think it was a golf cart. And I request permission to speak to them. I ask them if they'd come over. I'm afraid how I address them initially because I didn't want to get pepper-sprayed or shot again.

But my message to them was, "Look, guys, I know y'all could have hurt me a lot worse than you did. I haven't suffered -- I haven't suffered any debilitating injuries, and for that I thank you. And I really have no beef against you-guys personally. In fact, I will give you a "Hold-harmless, Covenant-not-to-Sue, and Release." Bring me a piece of paper. I'll word it out. You can take it and, on the next shift, decide among yourselves whether it's tightly worded enough for your satisfaction. Just let me out of this (expletive deleted) place. Let me go. Bring me home. I do, however, want to maintain an action for damages against whoever ordered this hit. Okay?"

And I didn't know who ordered the hit. I don't know whether we're dealing with rogue cops. I don't know whether we're dealing with the Governor, the Mayor, or both. I don't know whether we're dealing with my former law firm. All of

which are possibilities. But I have not resolved in my mind even now why this happened to me. That's why I'm asking you-guys and the FBI to investigate.

Anyway, hours of this negotiation lead nowhere. However, the next morning, when it becomes light, I would say around 9:00, after it was light, I was taken from my isolation cell and brought to a cell that contained five other people -- two black guys and three white guys -- only one of whom could articulate the charges against them. All right? The others were like me. They had never been charged with anything, as far as they could tell. But they weren't all there having been apprehended by state police. My impression was that the other people had been brought there by local police. Okay?

Anyway, we spent the next day from about 9:00 in the morning until our release at 5 p.m. that day in this cell, under very, very spartan conditions. You couldn't sit on the ground because the concrete transmits the heat. And I swear it was too damn hot to sit, so you literally had to stand almost the whole time. And we did get one MRE brought to us. We did have water brought to us and I was able to wash my eyes out a little bit.

And then around 3:00 in the afternoon, when I was on fire from the pepper spray, I made a plea for some kind of relief, and they put a hose into the -- into the Port-O-Let that was inside the dog cage, and I was able to at least wash my body off; although, I wasn't able to get all the pepper spray off of my body until I got home and was able to take a decent shower.

During the day, I would say around 11 a.m., they did send two medical personnel to the dog cage. I declined their services saying that I was not in need of any attention for permanently debilitating injuries. Okay? I didn't want to have anything to do with these people. If they really had been intent on watching after my physical well-being, they wouldn't have done what they did to me in the first (expletive deleted) place.

Then, around noontime, we were told that we were going to be released but not until 5 p.m. And, you know, the day was just spent in banter with the guards: "Why are you doing this? What are the charges? I invoke the right to counsel. I want to make a phone call."

At one point in time, they tell me: "You won't get to make a phone call until you get to Angola." That's the first I'd heard I was going to Angola. You don't send people to Angola unless they've committed a felony, and I knew I hadn't committed a felony.

All right. So all of that uncertainty was removed at noon when they said we were going to be released at 5 p.m. And released I was, and I respectfully submit that that may be the biggest mistake of their (expletive deleted) lives. They left me alive, and that is going to be their biggest (expletive deleted) mistake.

Upon my release, I was given a form of affidavit -- which I don't have in my car with me but which I can either mail to you or give to you if someone visits my house -- that is an affidavit sworn out -- and I believe the state trooper's name is John Nelson, Badge No. 2777. This can be verified from the form -- charging me with violation of the municipal ordinance that prohibits public intoxication.

Number 1, I deny that I was intoxicated;

Number 2, I was not in public. I was on my property;

Number 3, I respectfully submit that if I wish to get drunk on my own property, I can do so with impunity so long as I do not handle firearms or operate a motor vehicle, and I was doing neither at the time;

Number 4, I question whether a state trooper is even authorized under the Home Rule Charter to make an arrest on a municipal ordinance violation within a municipality like Orleans Parish;

And number 5, even though I was in their custody -- I keep saying 17 or 17

1/2 -- I think it may come out to 16 1/2 hours, no one ever field-sobriety tested me, breathalyzed me, or administered -- drew -- drew blood from me, so how are they going to prove intoxication and how are they going to prove I was in public?

I maintain that this was a criminal trespass and kidnapping, not an arrest. If some finder of fact ultimately determines that I am wrong and Jerry Guice is wrong and that they did say, "You're under arrest for public intoxication," that was a false arrest or illegal arrest under a pretext that they knew to be false. So I think I've got all bases covered here.

When I was released, I was picked up by my friend, Harold Gagnet. He found out about my being apprehended during the night because Jerry Guice, who left my home early in the morning, left a note.

And Harold was my "soulmate" throughout the post-Katrina ordeal. He's a neighbor who I didn't know before the storm. We both stayed and we both helped each other get through it. We were at each other's houses and in each other's company practically all day.

He came to the house the next morning, found Jerry's note, walked across the street to "Jim-Bob" Moffett's house where he spoke to the Chief of Security for Freeport-McMoRan, an ex-NOPD officer named Michael J. Kilbride. Mr. Kilbride immediately went to the Second District, found out that I was being detained at the Union Passenger Terminal, went to the Union Passenger Terminal to obtain my release or posting bail or whatever, and was told, "He won't be released until 5:00 o'clock."

And Officer Kilbride told me that when my name was mentioned, it looked like the individual behind the desk wanted to kill, Officer Kilbride, just for mentioning my name. Okay? I don't know what conclusions you can draw from that, but that's what Mr. Kilbride told me.

The next day, I had Dr. Lutz come evaluate my condition. He wrote a series of three reports culminating in referring me to the CASH unit at the Convention Center. They don't call them MASH units anymore. It's CSH, C-S-H, Combat Support Hospital.

One of my wounds on my right thigh became infected. It had to be lanced and drained, and I had to have the dressing changed every day. I believe I went there for eight days. It's still an open hole that although is -- it's getting better, it's still oozing "stuff," okay, and it still hurts. As does my right ribcage.

I don't know what else I can tell you-all at this point other than I attempted to make contact with the FBI by phone unsuccessfully. No one would ever return my calls. I attempted to make contact with both the United States Attorneys' Office for the Eastern District of Louisiana and the Middle District of Louisiana, leaving voice-mail messages at both offices. No one would ever return my phone call. And I left one on Mr. Dugas' personal voice-mail, at least one. And then I called Mr. Guidry a number of times, and he never returned my calls.

I happened to be in Baton Rouge today on other business and decided to stop by, and Mr. Guidry made arrangements for me to meet with Mr. Lear, and I'm now in you-gentlemen's presence.

I did, in desperation, go out to the FBI's offices on Leon C. Simon and make a report to them. I am aware that making a false statement to the FBI is a felony. I assume that there's some similar state law. And everything that I have told you is the God's honest truth. I'm not embellishing anything.

I did mention the possibility that my former law firm may be involved in this. That is speculation on my part, but it is a possibility that should be looked into, and I'll give you the supporting paperwork for that. That's all I have to say.

SPECIAL AGENT LANDREYT: The preceding was the statement given by Mr. Ashton R. O'Dwyer in the presence of Special Agent

Ronald Landreyt. The statement is concluded at 1:35 p.m. at the Livingston building in the Investigative Conference Room. Thank you, sir.

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability and understanding from the electronic sound recording of the proceeding in the above-entitled and numbered matter.

Johnna B. Barron

Date