

THE IMPACT OF HURRICANES KATRINA AND RITA ON THE LOUISIANA JUDICIAL SYSTEM

A Thesis

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DEDICATION

This thesis is dedicated to my parents, Charles S. McCowan, Jr. and Mary Hebert McCowan, and my wife, Autumn Wilty McCowan, who have encouraged and supported me throughout my continuing education.

I also dedicate this thesis to my children, Charles S. “Mac” McCowan, IV, Mary Gail McCowan, Autumn Mathile McCowan, and Margaret Emelie “Maggie” McCowan with the hope that it will foster in them an understanding that learning is a life-long process.

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ABSTRACT

This thesis is a case study of the impact of Hurricanes Katrina and Rita on the Louisiana court system and the response of the court system to the aftermath of these two hurricanes. Although this thesis focuses on one state's court system's response to two natural disasters, the research, conclusions and recommendations are transferable to other states.

Hurricanes Katrina and Rita struck the Gulf Coast in 2005 devastating large areas in Louisiana, Texas, Mississippi and Alabama. Millions of people, including judges and attorneys, were forced to evacuate their homes, courts and law offices. The Hurricanes caused interruptions to both federal and state courts in Louisiana.

Existing literature, both published and unpublished, was reviewed to determine how courts have responded to natural and man-made disasters in the past. Interviews with court personnel in Louisiana were conducted and available publications were reviewed to determine how courts in Louisiana were impacted by Hurricanes Katrina and Rita and how these courts responded to the aftermath of these two hurricanes.

The broad geographic scope of the damage from the hurricanes created impediments to rapid resumption of court operations; however courts in Louisiana were able to resume most operations within a matter of months. Since Hurricanes Katrina and Rita, both federal and state courts in Louisiana have refined their emergency preparedness plans; however, further improvements are warranted.

This thesis examines the impact of Hurricanes Katrina and Rita on the Louisiana court system and concludes with several recommendations for future emergency preparedness of the courts including implementation of electronic filing and record

management systems, passage of legislation providing for extra-territorial exercise of jurisdiction in civil proceedings and additional training for stakeholders to better prepare for emergency conditions.

I. INTRODUCTION

During late August and early September 2005, Hurricanes Katrina and Rita devastated vast regions of the Gulf South. Although Hurricane Katrina's effects garnered far more media attention due to levee breaches, extensive flooding and resulting subsequent adverse impacts on the city of New Orleans, Hurricane Rita also dealt a severe blow to the citizens and infrastructure of southwest Louisiana.

The aftermath of both of these storms has been well documented in numerous books, manuscripts and government reports.¹ Clearly, these storms had a significant impact not only on those most directly impacted such as the citizens of Louisiana, but also on the nation as a whole. This impact was both financial as well as psychological. The hurricanes of 2005 made the nation realize that even four years after the tragic events of September 11, 2001, neither the state nor federal governments were ready to effectively respond to a large scale disaster.

The judicial system in Louisiana was among the numerous institutions impacted by the aftermath of Hurricanes Katrina and Rita. This thesis examines the impact of Hurricane's Katrina and Rita on the Louisiana judicial system and how the courts, both state and federal, responded following these two natural disasters. Since a variety of large

¹ See e.g., Douglas Brinkley, *The Great Deluge: Hurricane Katrina, New Orleans, and The Mississippi Gulf Coast*, Harper Collins Publishers New York, New York (2006); Ivor van Heerden and Mike Bryan, *The Storm: What Went Wrong and Why During Hurricane Katrina—the Inside Story from One Louisiana Scientist*, Viking Penguin, New York, New York (2006); John McQuaid and Mark Schleifstein, *Path of Destruction: The Devastation of New Orleans and the Coming Age of Superstorms*, Little Brown and Company, New York, New York (2006); Christopher Cooper and Robert Block, *Disaster: Hurricane Katrina and the Failure of Homeland Security*, Henry Holt and Company, New York, New York (2006); *Unnatural Disaster The Nation on Hurricane Katrina*, Betsy Reed editor, Nation Books, New York, New York (2006); The White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (2006) available at <http://www.library.stmarytx.edu/acadlib/edocs/katrinawh.pdf>; "A Failure of Initiative" Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Report No. 109-377, U.S. Government Printing Office (2006).

scale disasters have occurred in the past and will surely occur in the future, it is important to examine this topic.²

Disaster brings with it chaos. Chaos frequently brings not only conflict but an opportunity for those in power to abuse it. It is beneficial to society, in order to build sustainability, that legal rights be protected and conflicts resolved in an expedient fashion following a large scale disaster. Resolution of conflict and protection of individual rights fosters stability, which in turn facilitates recovery within the impacted communities. In many natural disasters, the effects are disproportionately harsh on the poor, infirm and weak including minorities.³ Particular attention to quickly re-establishing an effective judicial system is warranted in order to protect the rights of those who, in many cases, cannot protect themselves.

In our nation, the court system is utilized to resolve conflicts and protect individual rights in a peaceful manner. In order for the courts to perform their mandated constitutional and statutory function to uphold and apply the rule of law, it is critical that courts themselves be prepared to resume operations and functions as expediently as possible following large scale disasters. This response is not limited to merely opening

² See, Thomas Birkland, *Disasters and the Court's Agenda*, 37 *The Judges Journal* 6 (Fall 1998); Keith O. Boyum, *Understanding Disasters and Other Impacts on Courts*, 37 *The Judges Journal* 12 (Fall 1998); Theodore B. Pedeliski, *A Case of Judicial Restoration: A Court System Responds to and Recovers from The Red River Flood of 1997*, 37 *The Judges Journal* 17 (Fall 1998); Rebecca Mae Salokar, *After the Winds: Hurricane Andrew's Impact on Judicial Institutions in South Florida*, 37 *Judges Journal* 26 (Fall 1998); Stephen L. Wasby, *Disruption, Dislocation, Discretion and Dependence: The Ninth Circuit Court of Appeals and the Loma Prieta Earthquake*, 37 *The Judges Journal* 33 (Fall 1998).

³ See, William P. Quigley, *Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again*, 81 *Tul. L. Rev.* 955 (2007); Sarah S. Vance, *Justice after Disaster—What Hurricane Katrina Did to the Justice System in New Orleans*, 51 *How. L. J.* 621 (2007-2008); Brandon L. Garrett & Tania Tetlow, *Criminal Justice Collapse: The Constitution After Hurricane Katrina*, 56 *Duke L.J.* 127 (2006); William P. Quigley, *Six Months After Katrina: Who Was Left Behind, Then and Now*, CommonDreams.org, Feb. 21, 2006, <http://commondreams.org/views06/0221-36.htm>.

the courthouse doors.⁴ The courts must also be prepared to resolve, in an efficient manner, the potential deluge of lawsuits that will surely follow a widespread disaster.

Like any system, the judicial system is comprised of component parts. While typically thought of as a single institution, the judicial system is a system comprised of human beings. The component parts of the judicial system include the courts themselves (judges and court personnel), as well as participant “stakeholders” such as attorneys, “justice” partners such as police officers, sheriffs and their deputies and even members of the public who serve the judicial system as jurors in civil and criminal cases. Although this thesis focuses primarily on the courts, where applicable, a brief discussion of the stakeholders in the judicial system will also be included. Although the courts may be operational, if the key stakeholders such as law enforcement personnel, attorneys, litigants and members of the public who serve as jurors cannot perform their respective roles, the judicial system cannot function properly or effectively.

Although the court system includes both a criminal and civil function, the primary focus of this thesis is on the civil function of the courts. Many media accounts following Hurricanes Katrina and Rita discussed the impact of the hurricanes on the justice system. However, most of these accounts focused on the impact of the flooding on the Orleans Parish Criminal Court. It is worthy to make several observations. This particular court was located in a vulnerable area and was inundated with floodwaters. The flooding certainly played a role in the Orleans Parish Criminal Court’s slow recovery from the aftermath of Hurricane Katrina. However, there were pre-existing systemic

⁴ See, Diane P. Wood, *The Bedrock of Individual Rights in Times of Natural Disasters*, 51 How. L. J. 747 (2007-2008)(arguing that in order for the rule of law to prevail following a disaster, the procedural vehicles for administering the rule of law, i.e. the courts, must be available to the citizens) and American Bar Association, *Rule of Law in Times of Major Disaster* (2007).

problems with the criminal justice system in New Orleans that also played a role in the delayed recovery of this component of the judicial system following the hurricanes. Others have identified and discussed many of the pre-existing conditions that independently contributed to the adverse impact on the criminal court in Orleans Parish, Louisiana.⁵ Other significant issues related to a break down of the criminal court system in New Orleans, such as deprivation of constitutional protections to speedy trials, right to counsel, right to trial by jury, the care and housing of prisoners, a continued funding and personnel crisis, missing criminal evidence and inability to locate witnesses for the prosecution, also have been addressed by others and are not the focus of this thesis.⁶ It is worth noting, however that many of the concerns about Hurricane Katrina's impact on the criminal justice system were subsequently addressed by the Louisiana Legislature.⁷

In the wake of Hurricanes Katrina and Rita, the response to and preparation for large scale disasters was examined at the highest levels of the federal government.

⁵ See e.g., William P. Quigley, *Thirteen Ways of Looking at Katrina, Human and Civil Rights Left Behind Again*, 81 Tul. L. Rev. 955 (2007); Brandon L. Garrett and Tania Tetlow, *Criminal Justice Collapse: The Constitution After Hurricane Katrina*; 56 Duke L. J. 127 (2006); Ira P. Robbins, *Lessons from Hurricane Katrina: Prison Emergency Preparedness as a Constitutional Imperative*, 42 U. Mich. J. L. Reform 1 (2008); Pamela R. Metzger, *Doing Katrina Time*, 81 Tul. L. Rev. 1175 (2007); American Civil Liberties Union National Prison Project, *Abandoned and Abused: Orleans Parish Prisoners in the Wake of Hurricane Katrina* 13 (Aug. 2006), <http://www.aclu.org/pdfs/prison/oppreport20060809.pdf>; Sarah S. Vance, *Justice After Disaster—What Hurricane Katrina Did to the Justice System in New Orleans*, 51 How. L.J. 621 (2007-2008).

⁶ See e.g., William P. Quigley, *Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again*, 81 Tul. L. Rev. 955 (2007); Pamela R. Metzger, *Doing Katrina Time*, 81 Tul. L. Rev. 1175 (2007); American Civil Liberties Union National Prison Project, *Abandoned and Abused: Orleans Parish Prisoners in the Wake of Hurricane Katrina* 13 (Aug. 2006), <http://www.aclu.org/pdfs/prison/oppreport20060809.pdf>; Sarah S. Vance, *Justice After Disaster—What Hurricane Katrina Did to the Justice System in New Orleans*, 51 How. L.J. 621 (2007-2008); Brandon L. Garrett & Tania Tetlow, *Criminal Justice Collapse: The Constitution After Hurricane Katrina*, 56 Duke L. J. 127 (2006); Vera Inst. of Justice, *Proposals for New Orleans' Criminal Justice System: Best Practices to Advance Public Safety and Justice* (2007), available at http://www.vera.org/publication_pdf/399_770.pdf; Bureau of Justice Assistance, Dep't of Justice, *An Assessment of the Immediate and Longer Term Needs of the New Orleans Public Defender System*, 8 (April 2006) available at <http://www.lajusticecoalition.org/doc/DOJ-Orleans-Parish-Study.pdf>; *State v. Citizen*, 898 So. 2d 325 (La. 2005) (finding that a court can halt proceedings until adequate source of funding for indigent defendant's defense is found).

⁷ See e.g. 2005 1st Ex. Session Act 52 (enacting provisions of Louisiana Criminal Code to insure operation of the criminal justice system during times of emergency).

Numerous hearings were held by members of the U.S. House of Representatives and the U.S. Senate. The Speaker of the House of Representatives even appointed a Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina (“Select Committee”).⁸ After an investigation lasting several months, the Select Committee ultimately issued a report titled, “A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina.”⁹

Individuals in multiple disciplines ranging from structural engineering and coastal processes to emergency preparedness testified before the U.S. Congressional committees investigating Hurricane Katrina. The individuals testifying also included high ranking state and federal governmental officials including the Governors of Louisiana and Mississippi, The Lieutenant Governor of Louisiana, the Secretary of the Department of Homeland Security and the former head of the Federal Emergency Management Agency.¹⁰ Representative individuals who were stranded in New Orleans in the aftermath of the storm were also afforded an opportunity to tell their story to members of Congress during the congressional hearings. Hundreds of thousands of pages of documentary evidence were also reviewed in conjunction with the congressional investigations.

In addition to congressional investigations, the White House conducted its own investigation into the preparation for, and response to, Hurricane Katrina. The White

⁸ A partial listing of the Congressional hearings on Hurricane Katrina is included in Appendix “A.”

⁹ See, “A Failure of Initiative” Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Report No. 109-377, U.S. Government Printing Office (2006).

¹⁰ A partial listing of the individuals testifying before Congressional Committees is included in Appendix “B.”

House subsequently released its own report in February, 2006 titled “The Federal Response to Hurricane Katrina: Lessons Learned.”¹¹

The congressional hearings, the Select Committee report, as well as the White House’s report, primarily focused on the federal and state governments’ response to Hurricane Katrina and its aftermath. Despite the generous input from the individuals who testified before Congress and who cooperated with White House investigators, very little in these reports addresses the preparation and response of the judicial branch of government.¹²

The judicial system, inclusive of all of its component parts (the courts and their support components such as the clerks of court, attorneys, and other justice partners such as sheriffs and their deputies) was clearly impacted by Hurricanes Katrina and Rita. However, very little has been written in the academic community concerning the judicial system’s preparation for, and response to, these storms.

Overall, Louisiana’s judicial system responded quite well to the aftermath of Hurricanes Katrina and Rita. The federal judiciary’s response was better than the state’s; however, given the circumstances, both systems ultimately responded to the crisis and resumed operations in a relatively short period of time.

The author submits that one reason that the judicial branch appears to have responded better than other branches is that the judicial system has been impacted by natural and man-made disasters in the past. Lessons from past disasters have not only been learned over the years, but the members of the judiciary and other stakeholders have

¹¹ The White House, “The Federal Response to Hurricane Katrina: Lessons Learned.”

¹² Two paragraphs in the White House report note that Hurricane Katrina forced the temporary closure of courts in the New Orleans area. The White House, “The Federal Response to Hurricane Katrina: Lessons Learned,” pp. 41 and 58.

discussed these lessons and attempted to make preparations for future disasters. However, there is always room for improvement. Despite the judicial systems' successful recovery following Hurricanes Katrina and Rita, additional steps can be taken to better prepare for the future. This thesis concludes by making several recommendations for future action which, if implemented, may better prepare the judicial system to respond to disasters in the future. These recommendations include a recommendation that courts in vulnerable areas consider implementing electronic filing and records management systems to protect vital court records and facilitate operations from remote locations, that the Louisiana Legislature consider passing legislation expressly authorizing courts to conduct extra-jurisdictional civil proceedings during times of emergency and that attorneys, a vital component of the judicial system, periodically receive continuing education on the topic of disaster planning and continuity of operations planning to better prepare for operations following disasters.

Although this thesis focuses on the judicial system in Louisiana following two hurricanes, the lessons learned are transferable and can benefit the judiciary in all states to better prepare for a variety of future disasters, both natural and man-made.

In order to place discussion of Hurricane Katrina and Rita's impact on the Louisiana judicial system in context, an overview of Hurricanes Katrina and Rita and an overview of Louisiana's judicial system will first be provided.

A. Overview of Hurricanes Katrina and Rita¹³

The story of Hurricane Katrina begins on August 24, 2005 when Tropical Depression 12 strengthened into Tropical Storm Katrina in the Caribbean Sea.¹⁴ The National Weather Service promptly issued a hurricane warning for the southeastern Florida coast. The following day, August 25, 2005, Hurricane Katrina struck Florida's southeastern coast as a Category 1 hurricane between Hallandale Beach and North Miami Beach.¹⁵ On August 26, 2005, Katrina weakened over land into a tropical storm before entering the warm waters of the Gulf of Mexico.¹⁶ In its brief traversal of Florida, Katrina dealt a heavy toll—more than a dozen deaths.¹⁷

On August 26, 2006, President George W. Bush declared an impending disaster along the Gulf Coast and ordered the Federal Emergency Management Agency and the Department of Homeland Security to prepare for a second landfall along the Gulf Coast. At approximately 11:00 p.m. on August 26, 2005, Louisiana Governor Kathleen Blanco declared a state of emergency in Louisiana.¹⁸

¹³ The timeline that follows was compiled from a number of sources including reports of testimony before various committees of the Congress. Information from various websites was also utilized including: "Hurricane Katrina Timeline" by CBC News compiled on September 4, 2005 available at www.cbc.ca/news/background/katrina/katrina_timeline.html (last visited March 17, 2010); Hurricane Katrina Timeline, The Brookings Institute, www.brookings.edu; Hurricane Rita Timeline: Dallas Star-Telegram.com www.dfw.com/mld/startelegram/news/state/12744426.htm?templet; The Federal Response to Hurricane Katrina: The White House, Lessons Learned; and Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Katrina, August 23-30, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, December 2005).

¹⁴ The Federal Response to Hurricane Katrina: Lessons Learned p. 22 (February 2005); Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Katrina, August 23-30, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, December 2005).

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ The Federal Response to Hurricane Katrina: Lessons Learned p. 23.

¹⁸ State of Louisiana, Executive Department, *Proclamation No.48 KBB 2005: State of Emergency-Hurricane Katrina* (Baton Rouge, August 26, 2005).

The initial belief was that Katrina would make secondary landfall along the central or western Florida panhandle. However, during the evening of August 26 and early morning hours of August 27, strong steering currents and the warm Gulf Stream Loop in the Gulf of Mexico caused the storm to move further to the west.¹⁹ Forecasters predicted that a secondary landfall along the Louisiana/Mississippi coast would occur within the next forty-eight to fifty-six hours.²⁰

By this time, Hurricane Katrina had grown to a Category 2 hurricane and was forecasted to strengthen into a major hurricane within the next twenty-four hours.²¹

On Saturday, August 27, 2005, Katrina strengthened to a Category 3 hurricane and a strike in the vicinity of New Orleans/Biloxi/Gulfport was becoming more certain.²² Hurricane watches and warnings were issued for Louisiana's southeastern coast, including New Orleans and Lake Pontchartrain.²³ At approximately 5:00 p.m., New Orleans Mayor Ray Nagin declared a state of emergency and urged residents in low-lying areas to voluntarily evacuate.²⁴ By 6:00 p.m. the National Weather Service estimated that there was a 45% chance that Katrina would directly hit New Orleans as a Category 4 or 5

¹⁹ Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Katrina, August 23-30, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, December 2005).

²⁰ Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Katrina, August 23-30, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, December 2005); U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Hurricane Center, *Hurricane Katrina Advisory No. 11* (Washington D.C., August 26, 2005); The Federal Response to Hurricane Katrina: Lessons Learned p. 23-24.

²¹ Ibid.

²² Ibid.

²³ Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Katrina, August 23-30, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, December 2005); U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Hurricane Center, *Hurricane Katrina Advisory No. 15A* (Washington D.C., August 27, 2005).

²⁴ The Federal Response to Hurricane Katrina: Lessons Learned p. 26; City of New Orleans, "Mayor Nagin Urges Citizens to Prepare for Hurricane Katrina," News Release, August 27, 2005.

Hurricane. President Bush signed a Federal emergency declaration for the State of Louisiana in response to Governor Blanco's earlier request.²⁵

By early morning on Sunday, August 28, 2005, Hurricane Katrina had grown into a strong Category 5 storm.²⁶ A direct strike on New Orleans appeared more certain. At 8:00 a.m., the Louisiana Superdome was opened as a shelter.²⁷ At approximately 11:00 a.m., Mayor Nagin appeared on television telling the public that, “[o]ur worst fears are realized,” and that there was a strong probability that the storm would strike New Orleans within the next twenty-four hours. He also warned that there was concern that the levees would not fully protect the city. Mayor Nagin therefore ordered a mandatory evacuation for New Orleans (President Bush had previously suggested a mandatory evacuation of New Orleans before Mayor Nagin made this public statement).²⁸ By 3:00 p.m. on Sunday afternoon, the Superdome population had grown to 10,000 people with others waiting outside.²⁹

It was later revealed in hearings before the Senate Commerce, Science and Transportation Committee; Disaster Prevention and Prediction Subcommittee hearing on September 20, 2005, and in the House Select Committee on Hurricane Katrina on September 22, 2005, that Dr. Max Mayfield, Director of the National Hurricane Center in Florida had, since August 24, 2005, held regular briefings with FEMA and other state and

²⁵ Louisiana Emergency and Related Determinations, 70 Fed. Reg. 53,238 (August 27, 2005).

²⁶ Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Katrina, August 23-30, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, December 2005); Select Bipartisan Committee on Hurricane Katrina (Testimony of General David Johnson, Director, National Oceanic and Atmospheric Administration, National Weather Service), 109th Congress, First Session, September 22, 2005.

²⁷ The Federal Response to Hurricane Katrina: Lessons Learned p. 29.

²⁸ Select Bi-Partisan Committee on Hurricane Katrina (Testimony of Mayor Ray Nagin), 109th Congress, First Session, December 14, 2005,.

²⁹ The Federal Response to Hurricane Katrina: Lessons Learned p. 29; Senate Committee on Homeland Security and Governmental Affairs (Written Statement of Marty Bahamonde, Regional Director for External Affairs, Region One, FEMA), 109th Congress, First Session, October 20, 2005.

federal emergency agencies at noon each day. President Bush participated in at least one of these conferences by telephone from his ranch in Crawford, Texas.³⁰ On the evening of Saturday August 27, Mayfield personally called the governors of Alabama, Mississippi and Louisiana, as well as Mayor Nagin, to make sure that they understood the threat. Mayfield testified that, “[p]oliticians can be very isolated. I told them that I wanted to go to bed that night knowing I had done everything I could do.” Mayfield also testified that he did not make any recommendations with respect to evacuations, since such decisions were not within the authority of the National Weather Service.³¹

The National Weather Service did, however, begin issuing statements late on Sunday, August 28, 2005, which made the situation perfectly clear. These statements declared that Katrina would be “potentially catastrophic” and “extremely dangerous” and that once the storm hits New Orleans, “most of the area will be uninhabitable for weeks...perhaps longer.”³²

On Monday, August 29, 2005, at approximately 6:10 a.m., Hurricane Katrina made landfall near Buras, Louisiana as a strong Category 3 hurricane.³³ Over the course of the next four hours, Katrina’s winds and storm surge pummeled southeast Louisiana. At 8:14 a.m. the National Weather Service issued a flood warning due to a levee breach

³⁰ The Federal Response to Hurricane Katrina: Lessons Learned p. 22-28; Senate Commerce, Science and Transportation Committee, Disaster Prevention and Prediction Subcommittee hearing on “The Lifesaving Role of Accurate Hurricane Prediction,” (Testimony of Dr. Max Mayfield), 109th Congress, First Session, September 20, 2005 and House Select Committee on Hurricane Katrina hearing on “Predicting Hurricanes: What We Knew About Katrina and When,” (Testimony of Dr. Max Mayfield), 109th Congress, First Session, September 22, 2005.

³¹ Ibid.

³² U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, New Orleans/Baton Rouge Forecast Office, Slidell, Louisiana, “Urgent Weather Message,” August 28, 2005.

³³ Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Katrina, August 23-30, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, December 2005); The Federal Response to Hurricane Katrina: Lessons Learned p. 33.

along the Industrial Canal in New Orleans' Ninth Ward and Arabie area.³⁴ The National Weather Service warning estimated 3 to 8 feet of flooding in the area.³⁵

The storm progressed throughout the morning making a secondary landfall at approximately 10:00 a.m. near the Louisiana/Mississippi border.³⁶ At this time, Katrina was reported to be a Category 3 storm with sustained winds of 125 miles per hour.³⁷ Winds and storm surge (estimated between 20-30 feet) damaged a 125 mile wide stretch of the Gulf Coast between Louisiana and Alabama.³⁸ Major population centers in Pass Christian, Biloxi and Gulfport, Mississippi were, in large part, destroyed.³⁹ Mobile Bay, impacted by an estimated 20 foot storm surge, caused flooding in the city of Mobile and along the eastern shore of Mobile Bay in and around Pointe Clear, Alabama.⁴⁰

By 2:00 p.m., New Orleans officials confirmed that there had been a breach at the 17th Street Canal and that approximately 20% of the city has flooded. At approximately 1:45 p.m. President Bush declared Louisiana and Mississippi national disaster areas.

In the afternoon hours, after the worst of the storm had passed New Orleans, it became evident that the Superdome and other infrastructure including oil refineries, roads, and bridges were damaged or closed. Access to New Orleans via Interstate 10 traveling west was impossible due to the collapse of the twin span bridges across Lake Pontchartrain. In the late afternoon as weather conditions in New Orleans improved, the Coast Guard began rescue missions. Over 1200 persons were plucked from flooded areas

³⁴ U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, *Flash Flood Warning for Louisiana, August 29, 2005* (New Orleans, La., August 2005).

³⁵ *Ibid.*

³⁶ Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Katrina, August 23-30, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, December 2005).

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

of the city within the first hours of rescue operations. Rear Admiral Robert Duncan, Commander of the Eighth Coast Guard District, would later tell the U.S. Senate Homeland Security and Governmental Affairs Committee that despite their own personal losses of 579 homes, Coast Guard personnel successfully rescued 33,544 people stranded during the aftermath of Hurricane Katrina.⁴¹ The Coast Guard's performance was later lauded as one of the success stories of the response to Hurricane Katrina.⁴²

By the evening of Tuesday, August 30, the situation in New Orleans, initially thought to have not been bad, became a catastrophic nightmare. Additional levees failed including the levees at the Industrial Canal, London Street Canal and the 17th Street Canal. Over 80% of the City of New Orleans was soon under water with floods reaching as high as 20 feet in some areas.⁴³ An estimated 50,000 to 100,000 residents who had not evacuated the city were stranded in the attics or on the roofs of their homes, at the Louisiana Superdome and at the New Orleans Convention Center. Interestingly, according to the Brookings Institute Timeline, although the New Orleans Convention Center had been discussed as a possible shelter by New Orleans officials, it was never officially chosen as a place of refuge and was not listed in the New Orleans Comprehensive Emergency Management Plan as a shelter.⁴⁴

⁴¹ United States Senate Homeland Security and Governmental Affairs Committee (Testimony of Rear Admiral Robert Duncan), 109th Congress, First Session, November 9, 2005.

⁴² The White House, "The Federal Response to Hurricane Katrina: Lessons Learned," and "A Failure of Initiative" Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina.

⁴³ The Federal Response to Hurricane Katrina: Lessons Learned p. 36; Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Katrina, August 23-30, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, December 2005).

⁴⁴ See, Brookings Institute Timeline available at <http://www.brookings.edu/fp/projects/homeland/KatrinaTimeline.pdf>

During the day on Tuesday, August 30, mixed messages were being sent to first responders. According to the Brookings Institute, FEMA stopped volunteer firefighters with special rescue expertise from entering the city of New Orleans due to security issues, urging them to wait for the National Guard. State officials were calling for anyone with boats to help with the rescue.⁴⁵ By 6:30 p.m., it was evident that the floodwaters were continuing to rise and that the few pumps that were in operation would soon fail. By nightfall, looting began to spread throughout the city. At the same time the Corps of Engineers was working (unsuccessfully) to fill the breach at the 17th Street Canal.⁴⁶

In the days that followed, the situation in New Orleans grew worse. Early on August 31, 2005, New Orleans Mayor Ray Nagin issued a grim estimate of the potential death toll in New Orleans stating that the fatalities may reach into the thousands. Throughout the day on August 31, 2005, looting in New Orleans increased dramatically. As Governor Blanco asked the White House to send more help, New Orleans Police and available national guardsmen were called off search and rescue missions to combat the looting.

At this time an estimated 25,000 to 30,000 people were at the Superdome where conditions were growing worse by the hour. There were no working toilets, no air-conditioning and insufficient food and water at the massive facility. Rumors of deaths and rapes at the Superdome also began to spread.⁴⁷

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ The Federal Response to Hurricane Katrina: Lessons Learned p. 38-39; Louisiana National Guard, Task Force Pelican, "Hurricane Katrina: Overview of Significant Events," November 28, 2005; Senate Committee on Homeland Security and Governmental Affairs (Written Statement of Marty Bahamonde), 109th Congress, First Session, October 20, 2005.

The U.S. Army Corps of Engineers' preliminary estimate was that it would take a minimum of thirty days to dewater the city of New Orleans. Gasoline prices began to surge to almost \$3 per gallon and there were severe shortages, exacerbated by a massive loss of electrical power in the region and the loss of several refineries and crude oil transportation systems.

In Washington, the Pentagon commenced one of the largest search and rescue missions in history, deploying military aircraft and naval vessels to New Orleans. Despite the fact that significant help was still days away from New Orleans, Homeland Defense Secretary Michael Chertoff declared that his department was pleased with the response. Meanwhile in New Orleans, some city police had abandoned their search efforts in an attempt to control growing violence and others were simply walking off the job, driving their patrol cars out of the city.⁴⁸

On September 1, 2005, civil unrest continued to spread throughout New Orleans with looting, carjacking and other violence increasing. Rumors of rapes, marauding armed gangs and murder spread. The military revised plans and began deploying up to 30,000 troops to New Orleans (this deployment was later increased to 40,000 as members of the National Guard were supplemented with regular military personnel from Army, Navy, Marines and Coast Guard). Outside the New Orleans Convention Center, an estimated crowd of 25,000 waited in the sweltering heat for buses that failed to come. Images of invalids dying in wheel chairs and hungry and thirsty children were transmitted throughout the world by the national and international media. Although rescue and relief had apparently been unable to access New Orleans, ABC, CBS, NBC, CNN and BBC reporters were on site. Incredibly, in a radio interview the same day, Secretary Chertoff

⁴⁸ A Failure of Initiative, Select Bipartisan Committee Report, pp. 241-242.

dismissed reports of the thousands at the Convention Center. Later in the evening on September 1 on the Paula Zahn show, FEMA Director Brown said that the federal government only learned about the Convention Center that day. Hours later on Nightline, Brown was grilled by Ted Koppel about the Convention Center. Brown repeated his earlier statements that the government only found out about the convention center that day. Koppel would sharply respond, “Don’t you guys watch the television?”⁴⁹

Also on September 1, as state officials were preventing the Red Cross from entering the city of New Orleans with food and water, doctors at New Orleans hospitals, text messaged colleagues and broadcast to the media that they were still at local hospitals desperately in need of help. These messages were saying that food, water and emergency power were almost gone and that greater numbers of people would soon die unless immediate help arrived.

In the late afternoon, frustration and anger reached a peak during WWL Radio host Garland Robinette’s live interview of Mayor Nagin. The Mayor pulled no punches stating that conditions in New Orleans were dire and that federal and state officials needed to “stop the goddamned press conferences” and “get off their asses”.⁵⁰

On the morning of September 2, President Bush left the White House to travel to Louisiana. In apparent response to negative publicity and growing criticism of the federal response to the crisis on the Gulf Coast, the President acknowledged on the White House lawn that, “the results [of the relief effort] are not acceptable.”⁵¹ The President

⁴⁹ Video of Nightline Interview, available at <http://www.youtube.com/watch?v=jKtuTV3hNdM> (last visited March 17, 2010); copy of transcript available at <http://www.american-buddha.com/katrina.nightlinekoppelbrowninterview.htm> (last visited March 27, 2010).

⁵⁰ Transcript of September 1, 2005 interview of Mayor Ray Nagin by WWL’s Garland Robinette. See <http://www.cnn.com/2005/US/09/02/nagin.transcript/>

⁵¹ Statement of President George H.W. Bush, The South Lawn, The White House, September 2, 2005.

then flew first to Alabama then Biloxi, Mississippi, where he called the damage “worse than imaginable.” In Biloxi, the President clarified his earlier statement regarding the federal response by stating that he was “satisfied with the response...not the results.”

By mid-morning on September 2, 2005, thousands of national guardsmen begin to arrive in New Orleans with supplies and needed reinforcements to quell the civil unrest. In a scene reminiscent of the Academy Award winning movie Patton, Lt. General Russell Honore was shown on the television newscasts directing military vehicle traffic and shouting instructions to troops outside the Superdome. The image of a cigar chomping three-star general in control on the streets of New Orleans was somewhat reassuring to the public. Throughout the day on September 2, the situation in New Orleans began to improve. In the afternoon, President Bush arrived in New Orleans to survey the damage and to meet with Governor Blanco and Mayor Nagin. Aboard Air Force One, the President proposed to Governor Blanco that she request that the local police and National Guard be put under federal control to establish a more firm chain of command and to have better coordination in operations.⁵² Governor Blanco reportedly told the President that she had to think about the proposal.⁵³ By this time, individuals with different political agenda begin to jockey for position in light of the situation in New Orleans. On September 3, Governor Blanco decided that she would not relinquish control of state and local forces to the federal government.⁵⁴ Despite this decision, an immense federal presence descended upon New Orleans over the next few days and an alphabet soup of federal agencies, authorized to carry weapons, was present in the Crescent City. New Orleans began to be depopulated and the city became more secure as search and rescue

⁵² Brinkley, *The Great Deluge*, pp. 562-565

⁵³ *Ibid.*

⁵⁴ *Ibid.*

efforts were transformed into recovery missions. Temporary disaster mortuaries were established with the central facility being housed in a vacant warehouse in St. Gabriel, Louisiana.

By Sunday, September 4, the Superdome had been fully evacuated; however, there were still individuals who refused to leave their homes. On Tuesday, September 7, Mayor Nagin ordered a “forced” evacuation of New Orleans.⁵⁵ That same day as political pressure mounted with respect to the response to Katrina’s aftermath, both the White House and the Congress pledged separate investigations.

On September 7, President Bush called for an additional \$52 billion in aid in addition to the \$10.5 billion already approved. The Congress responded by approving the request the following day.

On the evening of September 15, President Bush delivered a prime time address to the nation from Jackson Square in New Orleans. In his speech, the President acknowledged the tragedy in New Orleans and pledged the support of the federal government in recovery operations stating, “we will do what it takes” to achieve recovery. In an attempt to comfort the nation and in particular the people of the Gulf Coast, the President stated; “There is no way to imagine America without New Orleans, and this great city will rise again.”⁵⁶

⁵⁵ See generally, Michael Cook, “*Get Out Now or Risk Being Taken Out by Force*”: *Judicial Review of State Government Emergency Power Following a Natural Disaster*, 57 Case W. L. Rev. 265 (2006).

⁵⁶ Transcript of Speech of President George Bush from Jackson Square, New Orleans, Louisiana on September 15, 2005.

Two days following the President's speech in New Orleans, Tropical Depression 18 developed 95 miles east of the Bahamas.⁵⁷ The following day Tropical Storm Rita became the seventeenth named storm of the 2005 hurricane season.⁵⁸

By Tuesday, September 20, Hurricane Rita was a Category 2 hurricane and delivered a glancing blow to the Florida Keys.⁵⁹ Although some areas lost power, damage was minimal. The storm was, however, headed into the warm waters of the Gulf of Mexico, where Katrina had rapidly developed into a Category 5 hurricane. Indeed, Hurricane Rita quickly followed suit. By Wednesday, September 21, Hurricane Rita reached Category 5 status with winds of 175 miles per hour.⁶⁰

By September 22, the Bush Administration declared Hurricane Rita a national emergency.⁶¹ Preparations and evacuations began in the Houston/Galveston area. Evacuees from Louisiana were once again forced to flee. This time they left in a greater exodus from southwest Louisiana and Texas. Gasoline supplies, already stretched thin by Hurricane Katrina, were further limited. The nation was preparing for the potential of \$4-5 per gallon gasoline with the threat that Hurricane Rita might further disrupt oil and gas operations in the Gulf of Mexico and the refineries and petro-chemical facilities in the vicinity of the Houston ship channel, Texas City, Baytown, Beaumont and Lake Charles. As a result of this concern, oil passed the \$68/barrel mark. These concerns were probably justified in light of the destruction to energy infrastructure from Hurricane Katrina.

⁵⁷ Richard D. Knabb, Jamie R. Rhome and Daniel Brown, *Tropical Cyclone Report: Hurricane Rita, September 18-26, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, March 2006).

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Disaster Declaration Relating to Hurricane Rita, 70 Fed. Reg. 56,929.

On September 24, Hurricane Rita made landfall near Cameron, Louisiana as a Category 3 hurricane.⁶² The town of Cameron, was almost totally destroyed and the Louisiana cities of Lake Charles and Vinton, and the Texas cities of Orange, Beaumont and Port Arthur were severely damaged.⁶³

B. Overview of the Louisiana Judicial System

The judicial system in Louisiana includes federal, state and municipal courts. At the federal level, there are three judicial district courts: The United States District Court for the Eastern District of Louisiana, The United States District Court for the Middle District of Louisiana and the United States District Court for the Western District of Louisiana. There are also separate federal bankruptcy courts within each district. Geographically, the United States District Court for the Eastern District of Louisiana has jurisdiction over the following parishes: Assumption, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Tammany, Tangipahoa, Terrebonne and Washington. The Eastern District of Louisiana's central courthouse is in New Orleans; however there is also a small courthouse in Houma.⁶⁴ There are 12 active judges who sit on the United States District Court for the Eastern District of Louisiana.⁶⁵

The Middle District of Louisiana has jurisdiction over the following parishes: Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge and West Feliciana. The Middle District courthouse is

⁶² Richard D. Knabb, Jamie R. Rhome, and Daniel Brown, *Tropical Cyclone Report: Hurricane Rita, September 18-26, 2005*, prepared for the National Hurricane Center, National Oceanic and Atmospheric Administration (Miami, Florida, March 2006).

⁶³ Ibid.

⁶⁴ See, 28 U.S.C. § 98.

⁶⁵ See, 28 U.S.C. § 133.

located in Baton Rouge.⁶⁶ There are three active judges in the Middle District of Louisiana.⁶⁷

The Western District is the largest geographical district and has jurisdiction over the following parishes in south Louisiana among others in north and central Louisiana: Acadia, Allen, Calcasieu, Cameron, Jefferson Davis, Saint Martin, Saint Mary, and Vermilion. The Western District has its headquarters in Shreveport, but also has courthouses in Monroe, Alexandria, Opelousas, Lake Charles and Lafayette.⁶⁸ There are seven active judges in the Western District.⁶⁹

The United States Court of Appeals for the Fifth Circuit, which hears appeals from the district courts within the states of Texas, Louisiana and Mississippi has its headquarters in New Orleans.⁷⁰ The Fifth Circuit has seventeen active judges.⁷¹

The district courts of the United States are courts of limited jurisdiction. These courts are only authorized to consider cases that fall within the jurisdiction conferred on the courts by statutes enacted by the Congress. As a general rule most cases that are presented to the federal district courts are cases that “arise under” federal laws or treaties of the United States or are controversies between citizens of different states when the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.⁷² Special

⁶⁶ See, 28 U.S.C. § 98.

⁶⁷ See, 28 U.S.C. § 133.

⁶⁸ See, 28 U.S.C. § 98.

⁶⁹ See, 28 U.S.C. § 133.

⁷⁰ See, 28 U.S.C. § 41.

⁷¹ See, 28 U.S.C. § 44.

⁷² See, 28 U.S.C. § 1331 and §1332.

jurisdictional statutes passed by Congress also extend jurisdiction to the federal courts in other limited circumstances.⁷³

There are three primary levels of courts of general jurisdiction in the state judicial system. Article V, §1 of the Louisiana Constitution of 1974 vests the state's judicial power in "a supreme court, courts of appeal, district courts and other courts authorized by this article." The Louisiana Supreme Court sits in New Orleans. There are seven justices who are elected from seven districts throughout Louisiana. Each Louisiana Supreme Court justice is elected for a ten year term.⁷⁴

Pursuant to the Louisiana Constitution, the Louisiana Supreme Court has general supervisory jurisdiction over other courts. It may "establish procedural and administrative rules not in conflict with law and may assign a sitting or retired judge to any court." The Louisiana Supreme Court also has sole authority to provide by rule for appointments of attorneys as temporary or ad hoc judges of city, municipal, traffic, parish, juvenile or family courts.⁷⁵

Article V, §8 of the Louisiana Constitution provides for intermediate appellate courts. Article V, §8 states that the state shall be divided into "at least four circuits, with one court of appeal in each." The state is in fact divided into five circuits and has five circuit courts of appeal: The First, Second, Third, Fourth and Fifth Circuit Courts of Appeal. The First Circuit Court of Appeals sits in Baton Rouge. The Second Circuit Court of Appeals sits in Shreveport. The Third Circuit Court of Appeals sits in Lake Charles. The Fourth Circuit Court of Appeals sits in New Orleans. The Fifth Circuit

⁷³ Examples include jurisdiction over cases in which the United States is a defendant, when a national banking association is a defendant, certain class action proceedings, patent disputes, bankruptcy cases, cases falling within the courts' admiralty and maritime jurisdiction, and certain civil rights actions.

⁷⁴ Louisiana Constitution, Article 5, §§ 3-4.

⁷⁵ Louisiana Constitution, Article 5, §5(A).

Court of Appeals sits in Gretna. The geographic jurisdiction of the five appellate circuits is shown on figure 1 below:

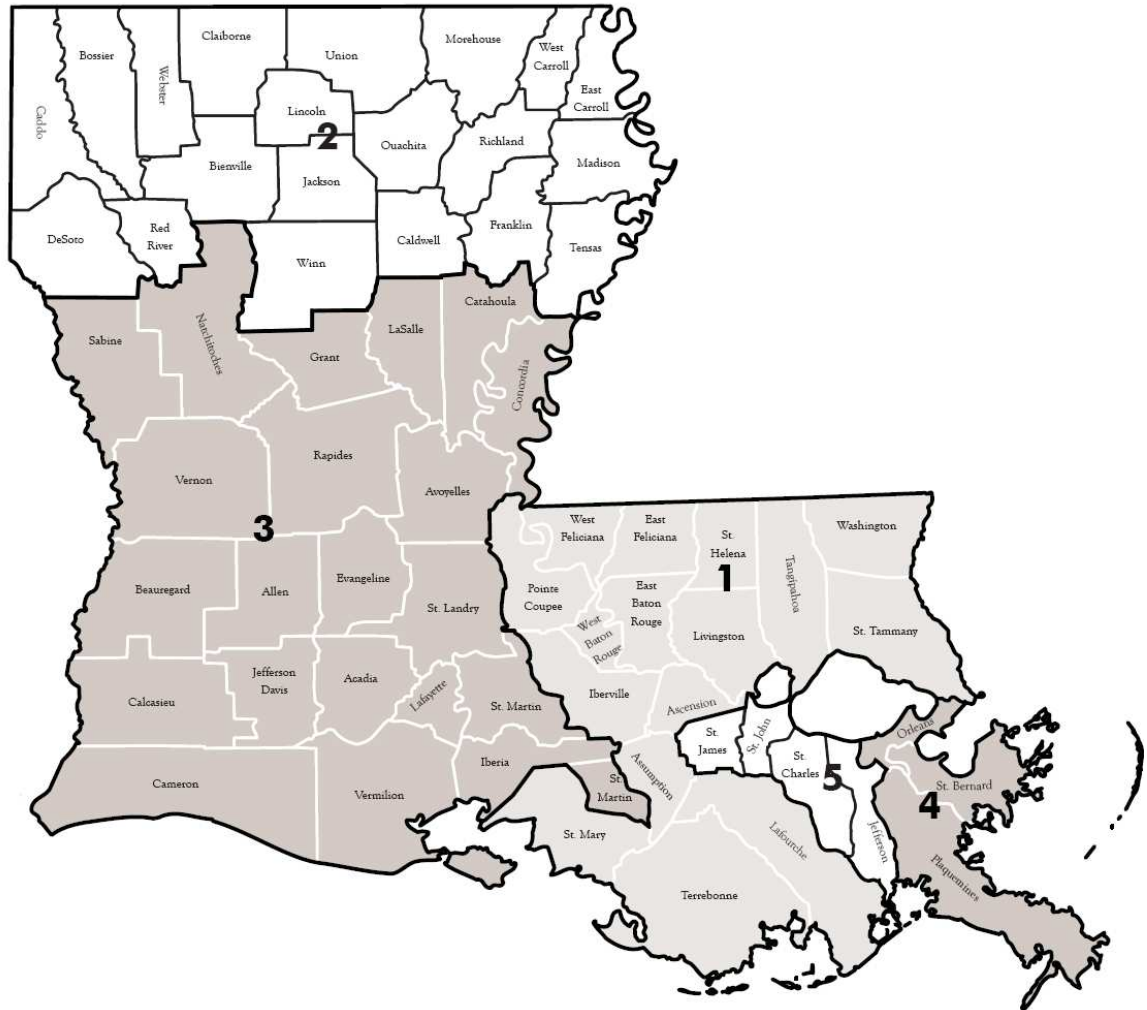


Figure 1. Map of Louisiana Courts of Appeal⁷⁶

There are forty-one district courts having general jurisdiction over civil matters.⁷⁷

The First through Fortieth Judicial District Courts sit throughout Louisiana. Some

⁷⁶ This map of the Louisiana Courts of Appeal is available from the Louisiana Supreme Court’s website. See, http://www.lasc.org/about_the_court/maps_of_jd.asp.

⁷⁷ Louisiana Constitution Article V, §14 provides that the “state shall be divided into judicial districts, each composed of at least one parish and served by at least one judge.” The specific district courts are provided for by statute. See, La. R. S. 13:471 *et seq.* Effective December 31, 2014, Orleans Parish will be designated as the Forty-First Judicial District Court and De Soto Parish will be designated as the Forty-Second Judicial District Court. See, Act 621 of 2006 Legislative Session and Act 873 of 2008 Legislative Session.

judicial districts are comprised of a single parish while others are comprised of multiple parishes. With the exception of Orleans Parish, the district courts handle both civil and criminal matters. In Orleans Parish, there are separate Criminal and Civil District Courts.⁷⁸ These two courts are located in separate facilities within the city of New Orleans. The Civil District Court is located in the Central Business District and the Orleans Criminal Court is located on Tulane Avenue near Broad Street.

Figure 2, below, shows the location of Louisiana’s district courts:

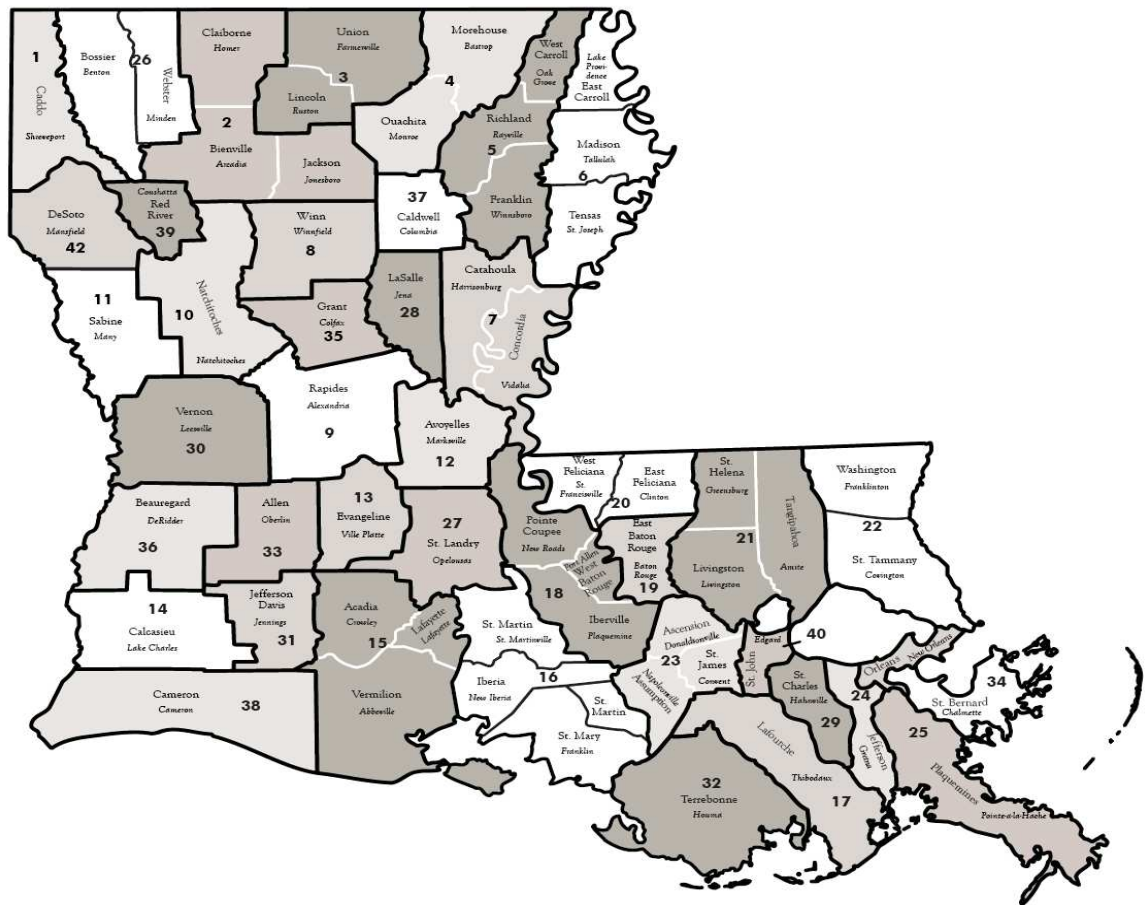


Figure 2. Map of Louisiana District Courts.⁷⁹

⁷⁸ Effective December 31, 2014, Orleans Parish will be designated as the Forty-First Judicial District Court.

⁷⁹ This map of the Louisiana district courts is available at the Louisiana Supreme Court’s web site. See, http://www.lasc.org/about_the_court/maps_of_jd.asp.

In addition to the district courts, there are several courts of “special jurisdiction” including Family and Juvenile Courts. There are also “limited jurisdiction” parish courts, city courts, traffic courts, mayors’ courts and justice of the peace courts throughout the state.⁸⁰

Unlike in the federal system, where the Clerk of Court is a component of the district courts themselves, in Louisiana the Clerk of Court’s Office is authorized by the Constitution as an entity separate and apart from the court. Although the Clerk of Court’s office is attached to the district courts, the Clerk is a constitutionally authorized position and the Clerk of Court for each parish independently elected.⁸¹ Also, unlike the federal system in which district court and appellate court judges are appointed by the President and confirmed by the Senate for life terms, all judges in the state system are elected.⁸²

There are approximately 274 active judges in the state courts of general jurisdiction (7 Supreme Court Justices, 54 Court of Appeal Judges, 213 district judges). This number does not include judges who sit on special and limited jurisdiction courts.

During Hurricanes Katrina and Rita over a million citizens of Louisiana evacuated their homes and businesses. As will be discussed below, this number included many of the 274 active state judges and federal district and appellate judges who sit in New Orleans metropolitan area including Orleans, Jefferson, St. Bernard and Plaquemines parishes.⁸³ Also included in the evacuation of the greater New Orleans area

⁸⁰ The various courts of limited jurisdiction are established by statute. See generally, La. R.S. 13:1401 *et seq.*

⁸¹ See, Louisiana Constitution, Article V, 28.

⁸² See, Louisiana Constitution, Article V, § 22 (A).

⁸³ According to articles written by judges and court personnel recounting their respective court’s Katrina and Rita experiences a significant portion of the judges and court staff were directly affected by the Hurricanes and many lost their own homes to wind and floodwaters. See, Edith Brown Clement, *Maintaining Continuity: The Fifth Circuit’s Rebound from Hurricane Katrina*, 38 Tex. Tech L. Rev. 531, 532 (2006)(pointing out that even a year after Hurricane Katrina some of the U.S. Fifth Circuit’s court

during Hurricane Katrina were approximately 7,000 attorneys or roughly one-third of the licensed attorneys in the State of Louisiana.⁸⁴ With this number of judges, court personnel and attorneys impacted by Hurricane Katrina, it should not be surprising that Louisiana's judicial system was severely adversely impacted by the storm.

In fact, if one is to compare the judicial appellate court map (Figure 1 above) and the district court map (Figure 2 above) with a map of Louisiana's coastal zone, it is readily apparent that the Louisiana Supreme Court, three of the five intermediate appellate courts (the Louisiana Third, Fourth and Fifth Circuit Courts of Appeal) and at least twelve district courts (the 14th, 15th, 16th, 17th, 18th, 23rd, 24th, 25th, 29th, 32nd, 34th and 40th judicial district courts) are situated in coastal parishes or near coastal parishes that are particularly vulnerable to the hazards associated with hurricanes. This proximity to potential danger from hurricanes during the five month long hurricane season each year is enough by itself to warrant a close look at the preparation taken by these courts and the federal courts that are in a similar situation to prepare for these hazards.

personnel continue to live in temporary housing in New Orleans); Loretta G. Whyte, *One Year Later: Hurricane Katrina and the Courts Restoring Operations*, 53 Sep Fed. Law. 38 (2006)(noting that “[a]lmost every member of the [United States District Court for the Eastern District of Louisiana] suffered partial or complete destruction of his or her home”); Charles Fulbruge, *One Year Later: Hurricane Katrina and the Courts: The Reaction of the Fifth Circuit Court of Appeals to Hurricane Katrina*, 53 SEP. Fed Law 35 (2006)(estimating that thirty percent of the U.S. Fifth Circuit's Clerk of Court and staff attorney's office “lost everything.”); Sarah S. Vance, *Justice After Disaster—What Hurricane Katrina Did to the Justice System in new Orleans*, 51 How. L. J. 621, 627 (2007)(noting that “Almost all of the judges and many members of the staffs of the civil trial courts in Orleans Parish lost their homes.”).

⁸⁴ See generally, Brenna G. Nava, *Hurricane Katrina: The Duties and Responsibilities of an Attorney in the Wake of A Natural Disaster*, 37 St. Mary's L. J. 1153 (2006)(noting the impact of Hurricane Katrina on attorneys in Louisiana); Michael H. Rubin and Beth E. Abramson, *Lessons Learned (The Hard Way) by Lawyers During Hurricanes Katrina and Rita*, 20 Oct Prob. & Prop. 25 (2006); Peter Applebome and Jonathan D. Glater, *Storm and Crisis: The Lawyers: Storm Leaves Legal System in Shambles*, New York Times A1 (September 9, 2005) available at 2005 WLNR 14201429 (noting that “more than a third of the state's lawyers have lost their offices some for good”).

II. LITERATURE REVIEW

The topic of disaster planning in the courts is not a new concept. Prior disasters, both natural and man-made, have impacted court operations throughout the United States. For example, the Grand Forks Red River Floods, the Loma Prieta Earthquake, the Oklahoma City bombing of the Murrah Building (which severely damaged the adjacent federal court) and the terrorist attacks on September 11, 2001 have caused past disruptions to courts.⁸⁵

In 1998, a series of articles was published in a special edition of *The Judge's Journal*. This series of articles focused on emergency preparations in the courts under a variety of circumstances. The articles included personal accounts of how various disasters had impacted courts throughout the country in the past ranging from courthouse fires to earthquakes.⁸⁶ The articles also suggested that the courts needed to make disaster planning a priority.⁸⁷

Despite the early attention, emergency planning in the courts did not seem to be a high priority agenda item. This changed on September 11, 2001, when terrorists struck the World Trade Center in New York and the Pentagon in Washington, D.C. The September 11 attack on New York is considered by many to be a “focusing event” with

⁸⁵ See e.g., Theodore B. Pedeliski, *A Case of Judicial Restoration: A Court System Responds to and Recovers from the Red River Flood of 1997*, 37 *The Judge's Journal* 17 (1998) (discussing the Red River Flood of 1997's impact on the courts of South Dakota); Rebecca Mae Salokar, *After the Winds: Hurricane Andrew's Impact on Judicial Institutions in South Florida*, 37 *The Judge's Journal* 26 (1998) (discussing the impact of Hurricane Andrew on the courts in Miami-Dade County, Florida); and Stephen L. Wasby, *Disruption, Dislocation, Discretion and the Loma Prieta Earthquake*, 37 *The Judge's Journal* 33 (1998); Emergency Preparedness in the Judiciary, *The Third Branch* August 20, 2002 available at <http://www.uscourts.gov/ttb/nov01ttb/emergency.html> (discussing the impact of the September 11th attacks on the New York judicial system).

⁸⁶ *Ibid.*

⁸⁷ Thomas Birkland, *Disaster and the Court's Agenda*, 37 *The Judge's Journal* 7 (1998) and Keith O. Boyum, *Understanding Disasters and Other Impacts on the Courts: Overview, Comparisons and Propositions*, 37 *The Judge's Journal* 12 (1998).

respect to the topic of emergency planning in the courts.⁸⁸ State and federal courts in Manhattan were in close proximity to the World Trade Center in downtown Manhattan. One court was located in the World Trade Center itself and other courts were in close proximity to the twin towers. After the attack occurred, the courts were evacuated and access and communications were disrupted for several weeks. Three state court security agents were killed when they went to the World Trade Center to assist with evacuations.⁸⁹

Following the September 11th attack, academics and members of the judiciary focused more of their attention on court security and preparation of the courts for disasters—both natural and man-made.

In September 2002, a year after the September 11th attacks, a meeting was convened in New York to discuss lessons learned from not only the September 11th attacks, but also from other disasters that have impacted court operations. During this three day conference, referred to as the “9-11 Summit,” judges and court administrators from courts that had previously been impacted by floods, tropical storms, the Oklahoma City bombing, the September 11 attacks and other disasters impacting courts throughout the country gathered to share their experiences and attempt to identify “best practices” to better prepare for similar events in the future.⁹⁰ Leading academic members in the field of disaster planning also participated in the “9-11 Summit” meetings to offer insight on what could be done to prepare the judicial branch for future man-made and natural

⁸⁸ A “focusing event” is a significant event that focuses the attention of policy makers to address existing policy. See generally, Thomas A. Birkland and Carrie A Schneider, *Emergency Management in the Courts: Trends After September 11 and Hurricane Katrina*, 28 Just. Sys. J. 20 (2007)(describing the September 11th attacks as a “major focusing event” that focused more attention on emergency management than any other event in the previous twenty-five years.”).

⁸⁹ Judith S. Kaye, *Coping with Disasters*, 3 J. Appl. Prac. And Process 453 (2001); Thomas A. Birkland, *Emergency Planning and the Judiciary Lessons from September 11*, Center for Court Innovation (2004).

⁹⁰ Transcripts of the proceedings at the 9-11 Summit are available at www.9-11Summit.org

disasters.⁹¹ The common themes that emerged from the presentations and workshops of the “9-11 Summit” were that there are several identifiable factors that lead to successful response of a court to disasters, both natural and man-made. The identified factors included the following: 1) strong court leadership during time of crisis and recovery, 2) careful planning and preparation for response and recovery, 3) clear lines of authority and designated responsibilities during times of crisis, 4) effective communications, both internal and external during and immediately after crisis, and 5) recognition that courts are comprised of people and that it is sometimes necessary to balance the needs of individual court personnel with the need to quickly resume operations.

In 2003, the National Center for State Courts Best Practices Institute published a report that set forth recommended best practices for state courts to prepare for emergencies.⁹² The National Center for State Court’s report identified seven best practices as “starting points” for courts to review and formulate their emergency plans. The identified seven “best practices” include: 1) “ensuring visible court leadership,” 2) “surveying and prioritizing emergency needs,” 3) “creating and practicing an emergency response plan,” 4) “‘getting a seat at the table’ in city, county or state emergency management meetings,” 5) “developing a plan to communicate internally,” 6) “developing a plan to communicate externally,” and 7) “not letting resources prevent planning.”⁹³ As will be discussed below, these practices represent good benchmarks against which to measure the Louisiana judiciary’s preparation for and response to Hurricanes Katrina and Rita.

⁹¹ Ibid.

⁹² See, National Center for State Courts, *Emergency Management for Courts*, (2003) available at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/facilities&CISOPTR=68> (last visited March 17, 2010).

⁹³ Ibid.

There is a limited amount of literature specifically addressing the preparation and response of the courts to Hurricanes Katrina and Rita. A few first hand accounts of the various courts' responses following the hurricanes may be found in reports issued by the Louisiana Supreme Court and its staff,⁹⁴ the Office of the U.S. Judicial Administrator,⁹⁵ and articles written by judges and staff of the U.S. Fifth Circuit Court of Appeal⁹⁶ and the United States District Court for the Eastern District of Louisiana.⁹⁷

In an article written in the Howard Law Journal, Judge Sarah Vance, one of the twelve active judges of the United States District Court for the Eastern District of Louisiana, provides one of the most comprehensive accounts of the state court and federal court response to Hurricane Katrina, “tracking developments in both the state and

⁹⁴ See, Annual Report 2005 of the Judicial Council of the Supreme Court, available at: http://www.lasc.org/press_room/annual_reports/reports/2005_ar.pdf (discussing the Louisiana Supreme Court's response to Hurricanes Katrina and Rita during 2005); Annual Report 2006 of the Judicial Council of the Supreme Court, available at: http://www.lasc.org/press_room/annual_reports/reports/2006_Annual_Report.pdf (discussing steps the court has taken in disaster planning since Hurricanes Katrina and Rita); Chief Justice Pascal Calogero, 2007 State of the Judiciary Address to the Joint Session of the House and Senate of the Louisiana Legislature available at www.lasc.org (discussing the Supreme Court's response to Hurricanes Katrina and Rita and preparation for future events).

⁹⁵ See, 2005 Annual Report of the Director of the Administrative Office of the United States Courts, available at <http://www.uscourts.gov/library/dir rpt05/2005Annualreportslim.pdf> (noting that Hurricanes Katrina and Rita had “an enormous effect on court operations in Florida, Louisiana, Mississippi, Texas and Alabama” and that the Administrative Office of the U.S. Courts assisted the courts in resuming operations by providing assistance in “relocating judges and court employees to safety, sharing expert guidance on temporary duty travel and related expense reimbursement, contacting banks to transmit paychecks promptly, making sure judiciary employees received their benefits, allocating supplemental funds to cover disaster expenses, delegating certain procurement authority for replacement furniture, supplies, and equipment and setting up alternative communications equipment to address service outages affecting court business.”) and 2006 Annual Report of the Director of the Administrative Office of the United States Courts available at http://www.uscourts.gov/library/annualreports/2006/2006_annualreport.pdf (noting continued efforts to assist courts in recovery from Hurricanes Katrina and Rita).

⁹⁶ See, Edith Brown Clement, *Maintaining Continuity: The Fifth Circuit's Rebound from Hurricane Katrina*, 38 Tex. Tech L. Rev. 531 (2005); Carolyn Dineen King, Circuit Judge, U.S. Court of Appeals for the Fifth Circuit, *Disaster Planning: Dealing with the Daze After Lessons Learned from Katrina*, Remarks at the Meeting of the Ninth Circuit Judicial Conference, at 1-2 (July 13, 2006)(unpublished); Charles Fulbruge, *One Year Later: Hurricane Katrina and the Courts: The Reaction of the Fifth Circuit Court of Appeals to Hurricane Katrina*, 53 SEP Fed. Law. 35 (2006).

⁹⁷ See, Sarah S. Vance, *Justice After Disaster—What Hurricane Katrina Did to the Justice System in New Orleans*, 51 How. L. J. 621 (2007-2008); Mary Ann Vial Lemmon, *The Flood and the Legal Deluge*, 45 Judges J. 8 (2006); Loretta G. Whyte, *One Year Later: Hurricane Katrina and the Courts: Restoring Operations*, 53 SEP Fed. Law. 38 (2006).

federal court systems from the immediate aftermath of the storm to shortly after its second anniversary.”⁹⁸ With respect to the state court system, however, Judge Vance’s comments focus primarily on problems associated with the criminal court system in Orleans Parish after Hurricane Katrina and efforts to reform this component of the state court system following Hurricane Katrina. With the exception of a limited citation to a telephone interview with Judge Madeleine Landrieu, very little is mentioned about the state of Louisiana’s civil court system.

Almost immediately following Hurricanes Katrina and Rita, R. Eric Petersen, prepared a Congressional Research Service Report for Congress entitled “Emergency Preparedness and Continuity of Operations (COOP) Planning in the Federal Judiciary” in which the importance of court planning for emergency conditions was expressed.⁹⁹ The CRS report noted the progress of courts’ planning for emergencies following the September 11th attacks. The author then set forth several policy considerations and raised questions concerning the current status of the judicial branches’ continuity of operations plans, urging that particularly in light of the recent disasters, courts and Congress should consider additional measures to plan for and insure continuity of court operations following disasters.¹⁰⁰ One of the suggested measures was adoption of provisions allowing courts to hold sessions outside of their normal places of business in the event that emergency conditions warranted a change of venue. Congress subsequently passed

⁹⁸ See, Sarah S. Vance, *Justice After Disaster--- What Hurricane Katrina Did to the Justice System in New Orleans*. 51 How. L. J. 621, No. 3 (2007-2008).

⁹⁹ According to Erich Petersen, a continuity of operations plan or “COOP” “refers to the internal effort of an organization, such as a branch of government, court or office, to assure that the capability exists to continue essential operations in response to a comprehensive array of potential operational interruptions.” See, R. Erich Petersen, *Emergency Preparedness and Continuity of Operations (COOP) Planning in the Federal Judiciary*, CRS Report RL 31978, p. CRS-5 (September 8, 2005).

¹⁰⁰ See, R. Erich Petersen, *Emergency Preparedness and Continuity of Operations (COOP) Planning in the Federal Judiciary*, CRS Report RL 31978 (September 8, 2005).

emergency legislation authorizing extraterritorial operations of courts in times of emergencies.¹⁰¹ Louisiana has not passed a similar comprehensive procedure; however, the Louisiana Legislature did authorize courts to conduct criminal proceedings outside of their normal territorial jurisdiction in times of emergency pursuant to orders of the Louisiana Supreme Court and Clerks of Court to establish ancillary offices outside their home parishes in times of emergency.¹⁰²

Two scholars, Thomas A. Birkland and Carrie A. Schneider, have written an article titled “Emergency Management in the Courts: Trends After September 11 and Hurricane Katrina,” that examines current trends of the courts to prepare for large scale disasters in the wake of the September 11 attack and Hurricane Katrina.¹⁰³ This article builds on prior work of Professor Birkland that previously examined lessons learned by the judiciary with respect to disaster planning after the September 11th attacks.¹⁰⁴ In the 2007 article, Birkland and Schneider argue that although Hurricane Katrina was different than other disasters due to its widespread geographic impact, disasters have common elements, including disruption of the normal functioning of government, economic and social disruption, as well as bringing a degree of uncertainty to citizens with respect to their future. Likewise, the authors note that there are common elements to preparing for disasters.

In reviewing many of the guidance documents available to courts, Birkland and Schneider note that common themes emerge: 1) court leadership is important in preparing

¹⁰¹ See, Federal Judiciary Emergency Special Sessions Act of 2005.

¹⁰² See, Act 52 of 2005 First Extraordinary Session and Act 14 of 2005 First Extraordinary Session.

¹⁰³ See, Thomas A. Birkland and Carrie A. Schneider, *Emergency Management in the Courts: Trends After September 11 and Hurricane Katrina*, 28 Just. Sys. J. 20 (2007).

¹⁰⁴ See, Thomas A. Birkland, *Emergency Planning and the Judiciary: Lessons from September 11*. New York: Center for Court Innovation. Copy available at <http://www.courtinnovation.org/uploads/documents/emergencyplanning.pdf>

for and responding to disasters, 2) courts must set priorities in responding to disasters, 3) preparation plans are important but the process of planning is more important to successful management and response to disasters and 4) communications are a key element of a court's response.¹⁰⁵

With respect to communications, the Birkland and Schneider state that there are four key elements: 1) technology for communicating with key personnel during and immediately after the crisis, 2) having a process for communicating with court personnel, 3) having a process and plan for handling data communications and record access, and 4) having an external communication plan for communicating with external stakeholders.¹⁰⁶ These common elements are, for the most part, the same elements identified by court officials during working sessions of the "9-11 Summit" in September, 2006. Despite having identified common factors of court planning for disasters and emergencies, the authors argue that there is still a need for further systematic research with respect to court planning for emergencies. In particular, the authors identify five additional research questions: 1) "What are the most common threats to court security?" 2) "What are the most consequential threats to court security?" 3) "How do these threats vary by jurisdiction?" 4) "Is planning uniform within or between jurisdictions? What explains the variation in planning? Leadership differences? The nature of the courts' organization in a state?" 5) "Are "lessons" really "learned" from past events? Or are lessons or aphorisms merely observed, without any action being taken?"

¹⁰⁵ Birkland and Schneider, *Emergency Management in the Courts: Trends After September 11 and Hurricane Katrina*.

¹⁰⁶ Ibid.

III. RESEARCH METHODOLOGY

Following the foregoing literature review, research methodology was adopted in order to more fully evaluate the impact of Hurricanes Katrina and Rita on the Louisiana Judicial System. In performing typical legal research one starts with a legal question and then reviews existing statutes and case law to derive an answer. This traditional methodology was not sufficient for determining how Hurricanes Katrina and Rita impacted the judicial system.

In order to research the impact Hurricanes Katrina and Rita had on the court system in Louisiana, existing literature that discusses how other courts have responded to disasters of varying scales including earthquakes, floods and terrorist attacks was examined. Published and unpublished accounts of what the state and federal courts did in the aftermath of Hurricanes Katrina and Rita to respond to the disasters and how the courts altered their contingency plans to prepare for future disasters were also reviewed.

Interviews with several individuals who participated in court response to the Hurricanes were also conducted. The individuals interviewed included the Honorable Madeleine Landrieu, Judge of the Civil District Court of Orleans Parish, who was appointed Chairperson of the Louisiana District Judges Association's Committee on Disaster Recovery Planning following Hurricanes Katrina and Rita, the Honorable John T. Olivier, Clerk of the Louisiana Supreme Court during the time period before, during and after Hurricanes Katrina and Rita, and General Hunt Downer, assistant adjutant general of the Louisiana National Guard (also a Louisiana practicing attorney). Personal statements of several judges, which were provided to the Louisiana District Judges Association's Disaster Recovery Planning committee and whose courts were directly

impacted by Hurricanes Katrina and Rita, were also examined to determine how those judges and the courts over which they presided responded to the hurricanes.

Additional data including court case load statistics, where available, was reviewed to gain a general understanding of the impact of the hurricanes on the courts' dockets. Additionally, electronic legal research was conducted through commercial services and court's electronic records systems to gain a general understanding of the types of disputes that were being considered by the courts in Louisiana following Hurricane's Katrina and Rita and how the courts were managing their dockets following the storms.

Finally, with respect to the impact of Hurricane's Katrina and Rita on lawyers and law firms within Louisiana, published accounts as well as personal experience and interviews with several affected attorneys were considered to determine the types of impacts that the hurricanes had on practicing attorneys and their law firms.

IV. DISCUSSION

A. Legal Infrastructure

Unlike prior hurricanes which affected only limited areas and closed public buildings, including courts, for relatively short periods of time, Hurricanes Katrina and Rita forced closure of some courthouses across the State of Louisiana for prolonged periods. Although initial reports in the news media claimed that the court system had been devastated, these reports were, for the most part, premature and exaggerated focusing primarily on the Orleans Parish Criminal court system.¹⁰⁷

Although a number of courthouses, particularly those in St. Bernard, Plaquemines, Orleans, Jefferson, Vermilion, Cameron and Calcasieu Parishes were physically inaccessible for periods of time following Hurricanes Katrina and Rita, the primary problem was not with the courthouses themselves.

Despite initial reports of flooding, the Fifth Circuit Court of Appeals John Minor Wisdom Courthouse in New Orleans suffered only a few broken windows.¹⁰⁸ The United States District Court for the Eastern District's New Orleans courthouse likewise suffered very little physical damage.

Chief Justice Calogaro of the Louisiana Supreme Court, reported that twenty state courthouses suffered some degree of damage from the storms. The Supreme Court's Royal Street headquarters in New Orleans suffered minor flooding when the lack of electricity caused the basement's sump system to cease functioning.¹⁰⁹ The Civil District

¹⁰⁷ See e.g. Peter Applebome and Jonathan D. Glater, *Storm and Crisis: The Lawyers: Storm Leaves Legal System in Shambles*, New York Times, September 9, 2005 at A1 available at 2005 WLNR 14201429; Patti Bond, *Katrina: the Aftermath: Legal Affairs Put in Limbo: Officials Fear Some Records Didn't Survive*, Atlanta J. Const. September 11, 2005 at G1 available at 2005 WLNR 14293728.

¹⁰⁸ Edith Brown Clement, *Maintaining Continuity: The Fifth Circuit's Rebound From Hurricane Katrina*, 38 Tex. Tech L. Rev. 531, 533 (2005).

¹⁰⁹ Annual Report 2005 of the Judicial Council of the Supreme Court, available at: http://www.lasc.org/press_room/annual_reports/reports/2005_ar.pdf

Court in New Orleans also suffered minor damage when water and sewerage backed up into its basement.

By far the most significant damage to courthouse infrastructure from Hurricanes Katrina and Rita was caused to courthouses that were located in vulnerable areas to begin with. The courts in St. Bernard Parish and the Criminal District Court in Orleans Parish were located in low lying areas that suffered severe flooding after Hurricane Katrina. The courthouse in Cameron Parish is located within a mile from the shores of the Gulf and was inundated by storm surge from Hurricane Rita. Those courts that sat on higher ground suffered minimal physical damage from the storms.

An examination of flood maps prepared by NOAA with court locations shows the relative vulnerability of courts in the New Orleans area to flooding. Figure 3 shows the depth of flood waters in St. Bernard, Orleans, Jefferson and Plaquemines Parishes on August 31, 2005 following Hurricane Katrina. The location of key courthouses has been plotted on this map. A similar map showing the flooding on September 15, 2005 is seen in Figure 4. The Orleans Parish Criminal Court was located in an area that was inundated with 5-7 feet of floodwater. The Orleans Parish Civil District Court was in an area inundated with 1-3 feet of floodwater. The courts in St. Bernard Parish were likewise vulnerable to flooding. However, the federal court complex (the U.S. Fifth Circuit Court of Appeals and U.S. District Court for the Eastern District of Louisiana), the Louisiana Supreme Court and the Louisiana Fourth Circuit Court of Appeals (located in the same building on Royal Street), the Louisiana Fifth Circuit Court of Appeals and 24th Judicial District Court (located in the same building in Jefferson Parish) and the 25th Judicial District Court (Plaquemines Parish) were on higher ground and therefore more insulated from the adverse effects of the flooding following Hurricane Katrina.

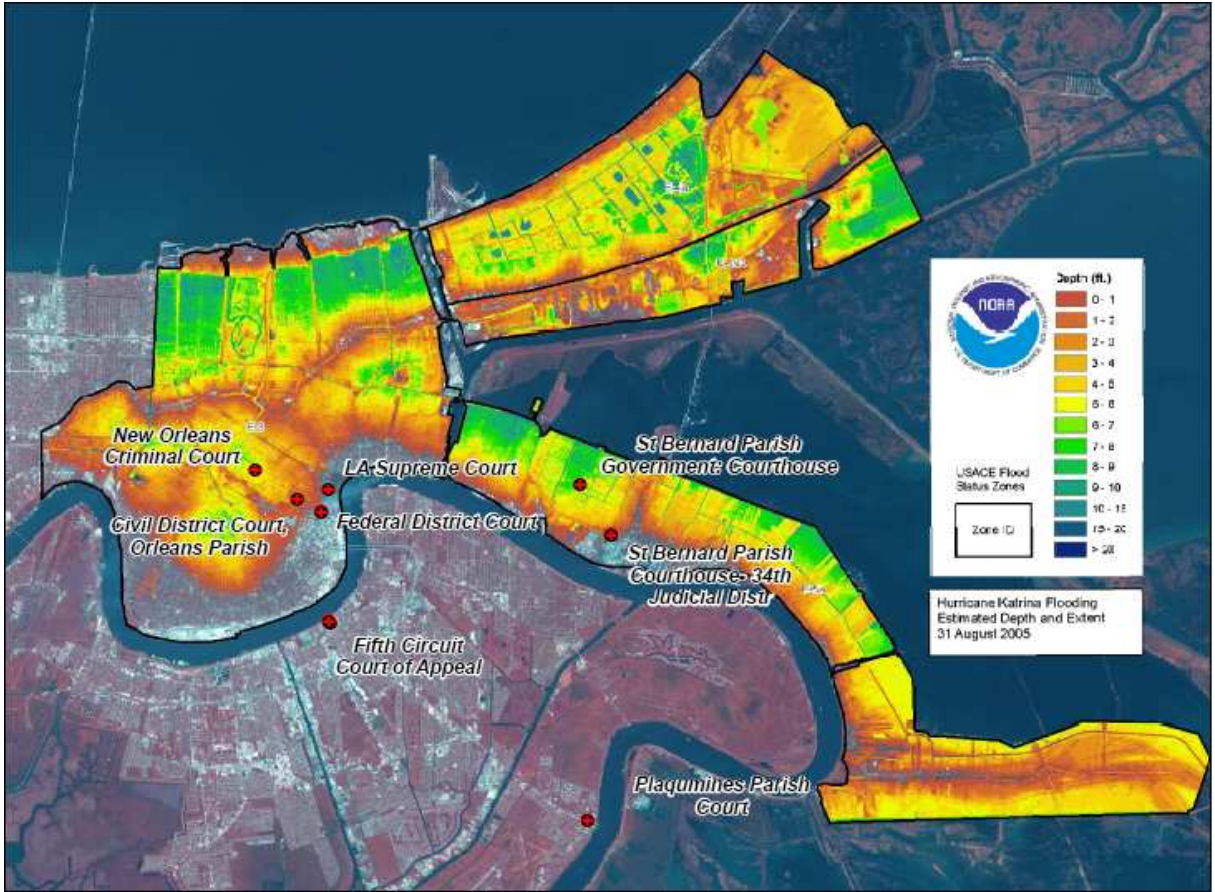


Figure 3. Courthouse Locations Plotted Against NOAA Flood Depths August 31, 2005



Figure 4. Courthouse Locations Plotted Against NOAA Flood Depths September 15, 2005

The biggest impact on the courts was not the flooding but the fact that judges, courtroom deputies, clerk of court personnel, security personnel, court reporters, and other staff were, like their fellow citizens, displaced by the storms. The lack of access to the courthouses due to lack of electricity and other public utilities as well as severe damage to surrounding infrastructure and the mandatory evacuations of the Orleans and Jefferson Parishes following Hurricanes Katrina, were major impediments to accelerated re-opening of the courts. Similar problems with access existed in Cameron Parish following Hurricane Rita.

Limited access following a widespread disaster is not surprising and should have been planned for by the courts prior to the storms. Limited access to courthouse facilities

following disasters was certainly discussed by many judges and court administrators at the “9-11 Summit” in September, 2001 and was experienced by courts in previous disasters including the Grand Forks Red River Flooding in 1997, Tropical Storm Allison in Houston, Texas, the September 11th attacks on New York and the destruction of the Ninth Circuit Court of Appeals following the Loma Prieta earthquake in San Francisco. The courts that had continuity of operations plans did take lack of access into account; however, it was not anticipated that the destruction associated with Hurricanes Katrina and Rita would be so widespread and that the courts would be prevented from effectively using their home courthouses for such a prolonged period of time.¹¹⁰

The following sections discuss the storms’ impacts on specific Louisiana federal and state courts and how these courts prepared for the coming storms, reacted during the immediate aftermath and further developed or refined plans for dealing with future disasters.

B. The Federal Courts

According to Judge Sarah Vance, “[t]he recovery of the federal justice system after Katrina was faster and smoother in no small part because the federal judiciary had better access to resources and technology, and, as a result of the events of September 11, 2001, it had a plan in place for continuity of operations.”¹¹¹ Judge Vance attributes the slower recovery of the state judiciary to the fact that the state judiciary “had fewer resources and was less technologically sophisticated to begin with, had no plan for

¹¹⁰ See generally, Edith Brown Clement, *Maintaining Continuity: The Fifth Circuit’s Rebound from Hurricane Katrina*, 38 Tex. Tech L. Rev. 531 (2006); Loretta Whyte, *One Year Later: Hurricane Katrina and the Courts Restoring Operations*, 53 SEP Fed. Law 38 (2006)(noting that “we had not anticipated the extent or the duration of the devastation that Katrina was to cause.”).

¹¹¹ Sarah S. Vance, *Justice After Disaster—What Hurricane Katrina Did to the Justice System in New Orleans*, 51 How. L. J. 621, 638-639 (2007-2008).

continuity of operations in the event of emergency, and it suffered far greater damage to its physical plant and communication system than the federal system did.”¹¹²

Judge Vance was certainly correct in many respects. As a direct result of the September 11th attacks, the federal judiciary was strongly encouraged to prepare continuity of operations plans.¹¹³ As a result of this planning, the United States Fifth Circuit Court of Appeals in New Orleans and the United States District Court for the Eastern District of Louisiana in New Orleans had continuity of operations plans in place prior to Hurricane Katrina. According to Judge Edith Clement, circuit judge of the U.S. Fifth Circuit Court of Appeals, the U.S. Fifth Circuit Court of Appeals was the first circuit court in the United States to hire an emergency preparedness coordinator.¹¹⁴ The Fifth Circuit’s emergency preparedness coordinator assisted the court in developing its continuity of operations plan (“COOP”). According to Judge Clement, “[t]hrough the court deviated from the COOP due to the unprecedented circumstances created by Katrina, the key issues posed by the emergency already had been identified. For example, the court had determined the minimum square footage required for a temporary headquarters, how to handle automation issues, and how to assist staff relocation. The COOP proved invaluable in quickly reestablishing operations.”¹¹⁵ The federal courts also had vast resources, including those from the General Services Administration, the U.S.

¹¹² Sarah S. Vance, *Justice After Disaster—What Hurricane Katrina Did to the Justice System in New Orleans*, 51 *How. L. J.* 621, 622 (2007-2008).

¹¹³ October 17, 2001 Memorandum to All Chief Judges, United States Courts from Leonides Mecham, Director, Administrative Office of the United States Courts (recommending that the courts designate a senior executive to be responsible for developing appropriate emergency procedures) (copy in author’s files).

¹¹⁴ Edith Brown Clement, *Maintaining Continuity: The Fifth Circuit’s Rebound from Hurricane Katrina*, 38 *Tex. Tech. L. Rev.* 531, 532 (2005).

¹¹⁵ *Ibid.*

Marshall Service and the Administrative Office of U.S. Courts available to them to assist with relocation and re-establishment of operations.

Although the federal courts' physical facilities were relatively unharmed, the federal courts nevertheless faced the challenge of access to their respective headquarters and the impact that the Hurricanes had on their personnel. According to Judge Vance “[a]bout 75% of the federal district court judges and court staff in New Orleans either lost their homes or suffered serious damage.”¹¹⁶

Fortunately, the Fifth Circuits' computer records and files were unharmed during the storm and subsequent flooding.¹¹⁷ In the days following Hurricane Katrina, a contingent of Fifth Circuit court personnel, accompanied by deputies of U.S. Marshall Service was dispatched to New Orleans to retrieve court servers and records so that operations could resume in the Fifth Circuit's temporary quarters in Houston.¹¹⁸

Communications were an issue following Hurricane Katrina for the U.S. Fifth Circuit Court of Appeals. Although the courts had planned for communications with employees by directing them to contact the court's emergency numbers for information, phone systems and communications were down in the days following the storm thereby hindering the ability of court personnel to obtain information through the court's

¹¹⁶ Sarah S. Vance, Justice After Disaster—What Hurricane Katrina Did to the Justice System in New Orleans, 51 How. L. J. 621, 639 (2007-2008)(citing Carolyn Dineen King, *Disaster Planning: Dealing with the Daze After Lessons Learned from Katrina*, remarks at the Meeting of the Ninth Circuit Judicial Conference (July 13, 2006).

¹¹⁷ See, Press Release, United States Fifth Circuit Court of Appeals www.ca5.uscourts.gov/DisplayNews.aspx?NewsItem=105

¹¹⁸ Edith Brown Clement, *Maintaining Continuity: The Fifth Circuit's Rebound from Hurricane Katrina*, 38 Tex. Tech. L. Rev. 531, 532 (2005); Charles Fulbruge, *One Year Later: Hurricane Katrina and the Courts: The Reaction of the Fifth Circuit Court of Appeals to Hurricane Katrina*, 53 SEP Fed. Law. 35 (2006).

emergency phone system.¹¹⁹ Since the Fifth Circuit’s computer systems were backed up offsite, communications via email were soon re-established.¹²⁰

By order of Chief Judge Carolyn King, the United States Fifth Circuit Court of Appeals Clerk of Court’s New Orleans office was declared closed as of the close of business on August 26, 2005 (Friday) until further order of the court.¹²¹ Attorneys were directed to file emergency pleadings addressing emergency matters such as death penalty appeals with execution dates, deportation proceedings with confirmed deportation dates in Houston from August 27 through September 20, 2005. The period from August 26 through October 11, 2005 was deemed a “legal holiday” for regular business such as civil and criminal appeals. Following October 11, 2005, regular filings were ordered to resume in the Clerk of Court’s temporary office in Houston. Oral arguments were subsequently held in Houston and Austin, Texas.¹²² The Fifth Circuit returned to New Orleans and resumed full operations in the John Minor Wisdom Court Building on January 18, 2006.

Although the Fifth Circuit was able to operate from temporary offices in Houston, Texas almost immediately following Hurricane Katrina, the District Court was not authorized by law to hold session outside of the geographic confines of the Eastern District of Louisiana.¹²³ This presented an additional impediment to resumption of

¹¹⁹ The breakdown of communications systems across the Gulf South was cited as a major factor inhibiting response and recovery operations following Hurricane Katrina. According to The White House’s Report, *The Federal Response to Hurricane Katrina: Lessons Learned*, over three million customer phone lines in Alabama, Mississippi and Louisiana were knocked out after Hurricane Katrina. The storm also crippled thirty-eight 911 emergency call centers and a significant number of switching stations. Fifty percent of area radio stations and forty-four percent of area television stations were temporarily knocked off the air by Hurricane Katrina. See, The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, p. 2.

¹²⁰ Sarah S. Vance, Justice After Disaster—What Hurricane Katrina Did to the Justice System in New Orleans, 51 *How. L. J.* 621, 640 (2007-2008).

¹²¹ August 26, 2005 Order of Chief Judge Carolyn D. King.

¹²² September 12, 2005 Order of Chief Judge Carolyn D. King.

¹²³ The United States Fifth Circuit is comprised of the geographic area within the States of Texas, Louisiana and Mississippi. See, 28 U.S.C § 41. The Circuit Judges maintain individual offices in various locations

normal operations by the district courts. Although authorization for district courts to hold sessions outside their normal geographic jurisdictions had been discussed prior to Hurricane Katrina, the Congress had not yet enacted legislation authorizing such action.¹²⁴

The geographic jurisdiction of the United States District Courts is generally a large area. In some states, such as Louisiana, there are multiple United States District Courts that have several parishes or counties within their geographic jurisdiction.¹²⁵ In other states the geographic jurisdictional area of the federal district court encompasses the entire state.¹²⁶ Absent authority to operate outside of its normal geographic jurisdiction, the United States District Court could not immediately relocate and resume operations following Hurricane Katrina. Although there was a small satellite courthouse in Houma, Louisiana that services the United States District Court for the Eastern District of Louisiana, this courthouse was insufficient to handle the needs of the entire Eastern District Court.¹²⁷

Within days of Hurricane Katrina, the Congress passed emergency legislation, known as the Federal Judiciary Emergency Special Sessions Act of 2005, to address the issue of federal district court authority to hold emergency sessions outside of the court's

throughout the Fifth Circuit. The Eastern District of Louisiana includes the Parishes of Assumption, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Tammany, Tangipahoa, Terrebonne and Washington. 28 U.S.C. § 98.

¹²⁴ See, R. Eric Petersen, *Legislative Initiatives to Temporarily Relocate Federal Courts Interrupted by Natural and Man-made Disasters, 109th Congress*, CRS Report for Congress, Report RS22244 (September 8, 2005)(noting that since 2005 the Judicial Conference of the United States, had asked Congress to pass emergency legislation to allow courts to shift court proceedings temporarily into adjacent judicial districts when emergency circumstances require such action).

¹²⁵ Examples include Louisiana, Texas and Mississippi.

¹²⁶ See e.g., Arizona, Connecticut, Delaware, Hawaii, Idaho, Kansas, Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont and Wyoming.

¹²⁷ The Middle District of Louisiana has no satellite offices. The Western District of Louisiana has its headquarters in Shreveport, Louisiana but also has courthouses in Lake Charles, Lafayette, Opelousas, Alexandria and Monroe.

district during times of emergency.¹²⁸ The Federal Judiciary Emergency Special Sessions Act of 2005 specifically granted authority to the district courts to hold, “[s]pecial sessions of the district court...at such places within the United States outside the district as the nature of the business may require and upon such notice as the court orders, upon a finding...that, because of emergency conditions, no location within the district is reasonably available where such special sessions could be held.”¹²⁹ The only exception to conducting business outside of the geographic confines of the district was that, “a criminal trial may not be conducted at a special session outside the State in which the crime has been committed unless the defendant consents to such a criminal trial.”¹³⁰ Therefore, with the passage of the Federal Judiciary Emergency Special Sessions Act, in times of emergency, the vast majority of the business of the federal district courts, including trials in civil proceedings as well as pre-trial proceedings in criminal cases, can now be conducted anywhere in the United States. This legislation should prove invaluable during future large scale disasters.¹³¹

Following passage of the Federal Judiciary Emergency Special Sessions Act, in addition to the court’s satellite office in Houma, Louisiana, the United States District Court for the Eastern District of Louisiana was immediately authorized to hold sessions

¹²⁸ Federal Judiciary Emergency Special Sessions Act of 2005, Pub. L. No. 109-63, 119 Stat. 3136 (2005)(codified as amended in multiple sections of Title 28 of the United States Code).

¹²⁹ See, Federal Judiciary Emergency Special Sessions Act, 28 U.S.C. §141(b)(1).

¹³⁰ See. Federal Judiciary Emergency Special Sessions Act, 28 U.S.C. §141 (b)(2).

¹³¹ It should be noted however that there are critics of the Act’s criminal provisions. These critics argue that the requirement of consent by the defendant to proceed with a criminal trial outside the court’s normal jurisdiction renders the act ineffective in the criminal context. See, Karen L. Helgeson, *The Federal Judiciary Emergency Special Sessions Act of 2005: Allowing Ongoing Criminal Prosecutions During Crisis or Hindering Compliance with the Speedy Trial Act?*, 92 Iowa L. Rev. 245 (2006).

in Baton Rouge (Middle District of Louisiana), Lafayette (Western District of Louisiana) and Houston (Southern District of Texas).¹³²

Although the federal district court in New Orleans quickly acquired physical facilities from which it could operate, it immediately became evident that displacement of stakeholders would make it difficult to quickly resume normal operations. Therefore, on August 31, 2005, Chief Judge Ginger Berrigan issued a global order continuing all criminal matters for three months.¹³³ A separate order was issued by Chief Judge Berrigan on September 2, 2005, suspending all deadlines and delays in civil matters until further order of the court.¹³⁴ Another order was issued on November 3, 2005, lifting the suspension of civil deadlines and delays in civil cases effective November 25, 2005, a date which corresponded with analogous executive orders issued by Governor Blanco and by the Louisiana Supreme Court applicable to proceedings in State courts.¹³⁵

The Clerk of Court for the Eastern District of Louisiana set up a temporary office in Lafayette, Louisiana to receive pleadings and court notices.¹³⁶ The filings received by the Clerk of Court in Lafayette were distributed to the court's satellite offices. According to Judge Vance, "[b]y October 3, 2005, the Eastern District of Louisiana was fully operational at all temporary locations."¹³⁷

¹³² Notice and Order of Helen Berrigan, Chief Judge, United States District Court for the Eastern District of Louisiana (September 2, 2005).

¹³³ Sarah S. Vance, *Justice After Disaster—What Hurricane Katrina Did to the Justice System in New Orleans*, 51 How. L. J. 621, 641 n. 179 *citing*, Global Order from Helen Berrigan, Chief Judge, United States District Court for the Eastern District of Louisiana (August 31, 2005).

¹³⁴ *Ibid*, *citing*, Order from Helen Berrigan, Chief Judge, United States District Court for the Eastern District of Louisiana (September 2, 2005).

¹³⁵ *Ibid*, *citing*, Order from Helen Berrigan, Chief Judge, United States District Court for the Eastern District of Louisiana (November 3, 2005).

¹³⁶ Loretta Whyte, *One Year Later: Hurricane Katrina and the Courts Restoring Operations*, 53 SEP Fed. Law 38.

¹³⁷ Sarah S. Vance, *Justice After Disaster--- What Hurricane Katrina Did to the Justice System in New Orleans*, 51 How. L. J. 621, 642 (2007-2008).

Among the displaced individuals following Hurricanes Katrina and Rita were roughly one-third of the licensed attorneys in Louisiana.¹³⁸ Many of the displaced lawyers, especially those with offices in the metropolitan New Orleans area had no access to their offices, files or computer systems. The federal courts and several state and local bar associations assisted attorneys by establishing communication centers to set up temporary email accounts. Access fees to the federal district court's Public Access to Courts Electronic Records (PACER) system were waived so that attorneys could reconstruct pleadings files from remote locations.¹³⁹ At the time, the United States District courts had already implemented an electronic filing system for all pleadings. This system proved invaluable because, with a computer, internet line and password, displaced attorneys could continue to file necessary pleadings with the court from any location. Other courts, including the U.S. Fifth Circuit and state courts had not yet implemented electronic filing and records systems.

The Eastern District of Louisiana returned to its home office in New Orleans on November 1, 2005 and resumed the majority of its operations; however, criminal and civil trials did not resume until January 2006.¹⁴⁰ An early resumption of operations allowed the federal district court in New Orleans to assist the state criminal court in Orleans Parish by allocating two courtrooms to house state court judges to conduct

¹³⁸ According to Judge Sarah S. Vance, over 8,000 lawyers were displaced by the storm. See, Sarah S. Vance, *Justice After Disaster--- What Hurricane Katrina Did to the Justice System in New Orleans*, 51 How. L. J. 621, 643 (2007-2008)

¹³⁹ The federal district courts had implemented an electronic filing system prior to Hurricane Katrina. The United States Fifth Circuit Court of Appeal did not have a similar filing system at the time; however, this court has mandated electronic filing as of March, 2010.

¹⁴⁰ Sarah S. Vance, *Justice After Disaster--- What Hurricane Katrina Did to the Justice System in New Orleans*, 51 How. L. J. 621, 643 (2007-2008) citing, Helen Berrigan & Pamela Metzger, *The Criminal Justice and Indigent Defense Systems Post-Katrina*, Remarks at the Federal Judicial Center and Tulane University Symposium on Disaster Recovery: Issues in Law and Society (May 23, 2007).

limited proceedings, exclusive of trials (the Orleans Parish Criminal Court building which was located on Tulane Avenue near Broad Street was heavily damaged by flooding).¹⁴¹

Overall, the federal court planning for and response to Hurricanes Katrina and Rita was quite good. Although the court's existing continuity of operations plans had to be altered due to existing conditions, those alterations were made with relative ease. The federal courts had clearly gone through the process of planning prior to Hurricanes Katrina and Rita. This planning process paid dividends when the Hurricanes struck. Likewise, the federal courts had strong leadership. Chief Judge King of the Fifth Circuit and Chief Judge Berrigan of the federal district court worked with their respective colleagues on the bench and court staffs to lead the courts through the crisis that was presented following the Hurricanes. The prior planning coupled with good leadership and technology allowed the federal courts to resume operations in an expedited fashion.

C. The State Courts

Although less formally prepared, the state courts in Louisiana appear to have attempted to effectively respond to Hurricanes Katrina and Rita following the storms. According to Louisiana Supreme Court Clerk of Court John Olivier, the Supreme Court had begun working on a continuity of operations plan before Hurricane Katrina. However, this plan had not been completed at the time that the storm struck.¹⁴² The Louisiana Supreme Court's continuity of operations plan had been discussed in an administrative conference in June 2005, but was not scheduled to be discussed again until

¹⁴¹ Sarah S. Vance, *Justice After Disaster--- What Hurricane Katrina Did to the Justice System in New Orleans*, 51 *How. L. J.* 621, 643 (2007-2008).

¹⁴² Author's Interview with Hon. John T. Olivier.

September.¹⁴³ Few if any of the lower courts in the state system had continuity of operations plans in place.

The State Court system in the affected parishes also presented a different scenario from both a legal and practical standpoint from its sister federal courts. Since the Louisiana Constitution of 1864, there has been a constitutional mandate that the Louisiana Court system must operate. Article I, Section 22 of the Louisiana Constitution of 1974 provides: “All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial partiality, or unreasonable delay, for injury to him in his person, reputation or other rights.”¹⁴⁴ This clear provision seemingly presents a legal problem when circumstances dictate that the courts are physically inaccessible and functionally unable to operate.

The Louisiana Supreme Court and the Louisiana Fourth Circuit Court of Appeal are located in the French Quarter. While the building in which these courts are located did not receive significant floodwaters, it was for all practical purposes inaccessible in the weeks following Hurricane Katrina. There was no electricity, sewerage or water. Moreover, security concerns existed for court personnel as well as those with business before the court due to civil unrest in New Orleans.

When Hurricane Katrina struck, the Justices of the Supreme Court and court personnel had evacuated to various locations. Since Baton Rouge escaped significant impact from Hurricane Katrina and was accessible, the Supreme Court relied upon Justice Catherine Kimball, who is from the Baton Rouge area, as its primary point of contact.

¹⁴³ Author’s Interview with Hon. John T. Olivier and Annual Report 2005 of the Judicial Council of the Supreme Court, available at http://www.lasc.org/press_room/annual_reports/reports/2005_ar.pdf

¹⁴⁴ Article I, Section 22 of Louisiana Constitution of 1974.

The Louisiana Supreme Court quickly set up temporary headquarters in the state office building in Baton Rouge that houses the Louisiana First Circuit Court of Appeals. The court first contacted the Justices and key court employees. By the end of the first week following Hurricane Katrina's landfall, key personnel had relocated to Baton Rouge and were working from the First Circuit's offices. Although the court issued a closure order following Hurricane Katrina, the court continued to accept emergency filings.

During the weeks following Hurricane Katrina, members of the Supreme Court's staff, accompanied by State Police and court security officers, returned to New Orleans to retrieve servers and key material for re-establishing the court's computer infrastructure. Once retrieved, server space was acquired in the Baton Rouge area. Resumption of computer operations allowed the court to utilize its web page as a means of communicating with the public and attorneys with business before the court. The Court also worked with officers of the Louisiana Bar Association to disseminate communications to the public and members of the bar following the storms.

The Supreme Court ultimately returned to New Orleans in late November 2005 and resumed normal operations at its headquarters on December 1, 2005.

Following Hurricane Katrina, 24th Judicial Court (Jefferson Parish) Judge Robert Pitre, Jr. provided a written account of his court's experience during Hurricane Katrina to the Disaster Planning and Recovery Committee of the Louisiana District Judges Association.¹⁴⁵ According to Judge Pitre, the 24th Judicial District Court's five story building in Gretna, received only minor damage. However the Liberto Building, an ancillary building, suffered major damage and had to be torn down. Unfortunately the

¹⁴⁵ Written statement of Judge Robert A. Pitre, Jr. provided to Louisiana District Judges Association (copy in author's file).

court's computer servers were located in the Liberto building and suffered some damages; however the servers were retrieved, restored and moved to a useable building following the storm. However, due to a lack of electricity, communications and infrastructure damage, the court's computer and email servers were not operational immediately following the storm. Following Hurricanes Katrina and Rita, the court began working with a computer back up service in Baton Rouge to provide it with the ability to communicate in the event of future loss of power, computer and telephone lines.

By October 10, 2005, all of the judges of the 24th Judicial District Court were back in the New Orleans area and were ready to resume operations. According to Judge Pitre, the criminal docket of the 24th Judicial District Court was slightly reduced immediately following the storms. Although jury trials resumed in early 2006, in the 24th Judicial District Court, according to Judge Pitre, the Clerk of Court had to issue over 1,000 notices to secure a jury pool of about 100 jurors.¹⁴⁶ Although the reason for the 10:1 ratio of notices to jury pool members is unclear, it may be indicative of the fact that citizens in Jefferson Parish were either unable (either because they were not able to be served with the jury notices at former addresses) or unwilling to resume jury service in the months following the storm.

Like the 24th Judicial District Court in Jefferson Parish, the 25th Judicial District Court for Plaquemines Parish was also temporarily inaccessible following Hurricane Katrina. Judge William Roe of the 25th Judicial District Court also provided a written statement to the Louisiana District Judges Association's Committee on Disaster

¹⁴⁶ Written statement of Judge Robert A. Pitre, Jr. to Louisiana District Judges Association (copy in author's file).

Planning.¹⁴⁷ According to Judge Roe, the members of his court, like those of other courts in the area, believed that they would only be away for a few days following Hurricane Katrina. Following the storm, effective communications were non-existent. According to Judge Roe, he and the other judge of the 25th Judicial District Court could not communicate with one another or with law enforcement officials in Plaquemines Parish. Re-establishing communications with Judge Roe's staff took weeks following Hurricane Katrina. Judge Roe was away from his home for three weeks following Hurricane Katrina and in his statement to the District Judges Association, Judge Roe identified the lack of housing for court personnel as a significant challenge for the court. According to Judge Roe, it was not until December 2005 that all of the court's employees secured FEMA housing. Also, in Plaquemines Parish, the Parish Prison and Juvenile Detention Facility were totally destroyed thereby challenging the resumption of normal criminal operations. Judge Roe also identified juror availability as a significant post-Katrina impediment to resumption of court operations.

Interestingly, at the time of Hurricane Katrina, the 25th Judicial District Court was housed in a temporary facility in Belle Chase, Louisiana. The parish seat of Plaquemines Parish is actually in East Pointe-a-la Hache. The courthouse in East Point-a-la-Hache was destroyed in a fire several years before Hurricane Katrina struck and the court relocated to Belle Chase. If the court had been located in Point-a-la-Hache the physical damage to the courthouse surely would have been far more severe, as the area is situated near the mouth of the Mississippi River. It has limited hurricane levee protection and was on the eastern side of Hurricane Katrina at landfall. Point-a-la Hache suffered significant damage due to Hurricane Katrina's twenty to thirty foot storm surge.

¹⁴⁷ A copy of Judge Roe's written statement is also in the author's files.

Other district courts in the New Orleans area were damaged to some extent and also were inaccessible in the days following Hurricane Katrina. In particular, the 34th Judicial District Courthouse in St. Bernard Parish, located in Chalmette, Louisiana was one of the courts hit hardest by Hurricane Katrina. Located in the midst of the massive flooding in St. Bernard Parish, this courthouse received significant floodwaters and was physically inaccessible for an extended period of time.

The Orleans Parish Civil Court is located near the Louisiana Superdome on Loyola Avenue in New Orleans. Although the courthouse was on the fringe of severe flooding, the courthouse itself received only minor damage from flooding in the basement. However, like the other courts in the New Orleans area, access following the storm was the primary limiting factor to resumption of operations. Following Hurricane Katrina, the court conducted temporary operations in Baton Rouge and later moved to other temporary offices in Gonzales, Louisiana.¹⁴⁸ The Civil District Court did not return to its building until late 2005 and did not resume jury trials until mid 2006.¹⁴⁹

Similar situations arose when Hurricane Rita struck the southwest portion of the state. Courts in Vermilion, Cameron and Calcasieu parishes were inaccessible for a period of time. Other courts in southwest Louisiana, such as those in Allan, Lafayette and Acadia parishes, were also declared closed for a limited period of time. Unlike in New Orleans after Hurricane Katrina, there was no prolonged period of flooding or evacuation in southwest Louisiana following Hurricane Rita.

¹⁴⁸ Author's interview with Hon. Madeleine Landrieu, Judge Orleans Parish Civil District Court, February 2009.

¹⁴⁹ Ibid.

The most significant impact following Hurricane Rita occurred to the 38th Judicial District Court in Cameron, Parish. The courthouse for the 38th Judicial District Court is located in Cameron, Louisiana, ground zero for Hurricane Rita's landfall.

Judge Ward Fontenot provided an interesting overview of the impact of Hurricane Rita on his court in a written statement to the Louisiana District Judges Association. The 38th Judicial District Court is located in Cameron, Louisiana and is situated less than a mile from the coast. It is probably the most vulnerable court location in Louisiana with respect to hazards presented by hurricanes.

According to Judge Fontenot, when it became evident that Hurricane Rita would approach Cameron Parish, there was no question that a total evacuation of the low-lying Cameron Parish would be necessary. Cameron Parish had learned a deadly lesson in 1957 when Hurricane Audrey killed 600 citizens. According to Judge Fontenot, Cameron Parish's evacuation had 100% compliance and not a single resident perished during Hurricane Rita.¹⁵⁰

Like its sister courts in southeast Louisiana, the assumption was that Hurricane Rita would strike over a weekend and that the district court in Cameron would resume normal operations the following Monday, September 26, 2005.

The courthouse in Cameron is a depression era concrete and steel structure that was built in 1938. The Clerk of Court's office is on the first and second floors and the judges offices and courtrooms are on the third floor. According to Judge Fontenot, on Wednesday, September 21, the clerk's office started moving files, computer equipment and other resources to the third floor putting the materials in the Judge's office and

¹⁵⁰ Written statement of Judge Ward Fontenot to Louisiana District Judges Association (copy in author's file).

courtroom. Unlike some of the other courts, the 38th Judicial Court Clerk instituted an “electronic” records retention system in 1957 by microfilming all court filings and storing back ups of the records in Alexandria, Louisiana. According to Judge Fontenot, in approximately 1996, the Clerk started scanning all filings on a hard drive which was backed up daily offsite.¹⁵¹

Judge Fontenot classified the damage following Hurricane Rita’s landfall as “more than had been anticipated or imagined.”¹⁵² Like in the New Orleans area, lack of communications was a significant problem in Cameron Parish. There was no electricity, land phone lines or cell phone service. Judge Fontenot indicated that there was no way for him to contact law enforcement or parish officials immediately following Hurricane Rita. Judge Fontenot also was not able to contact his own secretary until October 4, 2005, almost two weeks after Hurricane Rita’s landfall.

According to Judge Fontenot, despite suffering a “tsunami-type” storm surge of ten to twelve feet, the courthouse in Cameron was still in tact. The judges’ office on the third floor and the Clerk of Court’s office on the second floor were above the water line and escaped significant damage. However the first floor of the courthouse was inundated with water and mud.¹⁵³ Despite this damage, the courthouse in Cameron was the only useable building left in lower Cameron Parish following Hurricane Rita.¹⁵⁴

This presented a new impediment to use of the courthouse for normal court operations--- use of the courthouse for recovery operations. According to Judge Fontenot, the upper floors of the courthouse were “commandeered” for emergency services

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

following the storm. The courtroom became an office for the Army and Judge Fontenot's chambers became the officers' "bunkhouse." Once FEMA moved into the parish that agency also utilized existing space on the upper floors of the courthouse.

By the week of October 14, 2005, Judge Fontenot began coordinating his court's recovery with the Supreme Court and Judge Mike Canaday, Chief Judge of the 14th Judicial District Court in neighboring Calcasieu Parish. Temporary offices were provided to the 38th Judicial District Court at the 14th Judicial District Court's office in Lake Charles. The Clerk of Court for the 38th Judicial District Court set up temporary offices in Jennings, Louisiana in Jefferson Davis Parish. A satellite Clerk of Court's office was later set up in Grand Lake, Louisiana in northern Cameron Parish.¹⁵⁵

The 38th Judicial District Court did not return to its home courthouse in Cameron, Louisiana until April, 2006. Even by April, widespread devastation still existed in Cameron. There were no restaurants, grocery stores or service stations. When the court did resume operations, the Clerk would send out notices to the prospective jurors telling them that they had to bring their own food and a full tank of gas. They were also told that the only medical care in the vicinity of the court would be an ambulance team and a medical evacuation helicopter. Despite these severe conditions, Judge Fontenot reported that the court had a surprisingly good response to summons, subpoenas and other court communications.¹⁵⁶

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

In order to facilitate lawyers, the 38th Judicial District Court arranged for a large trailer to be located in the courthouse parking lot outfitted with office furniture, telephones and faxes.¹⁵⁷

Although some of the district courts and clerks of court established satellite offices and operations in neighboring parishes, their legal authority at the time to do so is questionable. Unlike the federal legislation following Hurricane Katrina which expressly authorized the federal district courts to operate outside their respective jurisdictions during times of emergency, no such express authorization existed at the time for the state courts or clerks of court. Subsequently, however, the Louisiana Legislature did authorize district courts to conduct criminal proceedings in locations other than their home parishes during times of emergency.¹⁵⁸ The clerks of court were also authorized to establish satellite offices in any parish during times of emergency.¹⁵⁹

D. Legal Concerns Arising from Court Closures

The closure of the courts necessitated that steps be taken to ensure that no legal rights were lost during closure and that essential legal rights were enforced during that same period of time.

There were several concerns in this regard in both the civil and criminal context. The first concern was that many substantive rights might be extinguished by law if actions to enforce those rights were not taken in a timely fashion.

In the civil context laws governing liberative prescription, prescription of non-use and preemption specify the time periods within which rights must be exercised or lost. In the criminal context, criminals may only be held for limited periods of time without being

¹⁵⁷ Ibid..

¹⁵⁸ See, Act 52 of the First Extraordinary Session of the 2005 Legislature.

¹⁵⁹ See, Act 14 of the First Extraordinary Session of the 2005 Legislature.

charged and these criminals are guaranteed a right to a speedy trial. If these individuals are not charged and tried in a timely fashion they must be set free.

A second concern was that rights in pending cases might be forfeited in a number of ways if deadlines imposed by statutes or rules were not met. For example, if an appellate brief is not filed in a timely fashion the opposition is waived.

A third concern existed because of procedural requirements related to the specific courts, or venues, in which matters must be brought and the authority of the specific court within a given geographic area (jurisdiction) to act outside of that area, by holding hearings or empanelling juries. Although some district courts and clerks of court established ancillary offices in other parishes, their authority to do so was questionable.

Following Hurricane Katrina initial steps were taken by Governor Blanco pursuant to the authority granted by the Louisiana Homeland Security and Emergency Assistance and Disaster Recovery Act of 1993 to protect legal rights. Under the authority of La. R.S. 29:724(A) significant emergency power is vested in the Governor of Louisiana including the power to suspend provisions of statutes.

Utilizing this authority, Governor Blanco issued three successive executive orders on the topic of “Emergency Suspension of Prescription, Peremption and Other Legal Deadlines.” The first was KBB 2005-32, issued on September 6, 2005. Although this order was issued on September 6, 2005 it was specifically declared to be retroactive “from Monday, August 29, 2005 through Sunday, September 25, 2005.”¹⁶⁰ The order noted that a gubernatorial proclamation of a state of emergency under the Louisiana Homeland Security Act had been declared. It specifically recited that clients and lawyers could not contact each other; that the state constitution required that courts be “open” and

¹⁶⁰ Executive Order KBB 2005-32.

they could not be open; that a “profound impact on the basic rights to [sic] an untold number of persons” might occur unless action were taken to suspend the effects of the tolling of legal delays; and that various attorney organizations had requested the Governor to, “suspend all deadlines applicable to legal proceedings, including prescription and preemption, in all Louisiana state courts, administrative agencies and boards.” Based on these circumstances the order announced that “All deadlines in legal proceedings, including liberative and preemptive periods in all courts, administrative agencies, and boards are hereby suspended until at least September 25, 2005, including, but not limited to, any such deadlines set for [sic] in the following:...” The order went on to list the Louisiana Civil Code, the Code of Civil Procedure, the Civil Code Ancillaries, Title 13 as to courts and judicial procedure, Title 23 as to workers’ compensation and Title 40 as to medical malpractice as specific sources of deadlines that were being suspended. Notably, the order made no reference to the authority of the Supreme Court or the legislature to alter the suspension.

On September 23, 2005, as Hurricane Rita was approaching the shores of Louisiana, the Governor issued Executive Order KBB 2005-48. The primary objective of this executive order was to extend Executive Order KBB 2005-32 from September 25, 2005 through October 25, 2005. A thirty day extension of executive orders issued under the authority of the Louisiana Homeland Security Act is authorized by La. R. S. 29:724(B)(1). There were minor differences in the two orders. Unlike the first executive order, the second makes specific reference to “non-constitutionally mandated deadlines in criminal proceedings.” Another paragraph was added which provided that the “suspension of laws as provided in Subsection 1(A) of this Executive Order, shall apply

statewide and to all matters, except to the extent that the suspension of deadlines in legal proceeding may hereafter be shortened or lifted, in whole or in part, by an order issued by the Louisiana Supreme Court acting in accordance with the power vested pursuant to Article V of the Constitution.”¹⁶¹

On September 27, 2005, the Supreme Court issued an order stating that it was closed through October 25, 2005.¹⁶² On October 3, 2005, the Louisiana Supreme Court, now temporarily functioning at the Louisiana First Circuit Court of Appeals building in Baton Rouge, issued a resolution of its own. The Supreme Court’s resolution recited and acknowledged the various proclamations and orders issued by Governor Blanco, and then announced a “temporary procedure...to facilitate the shortening or lifting of the suspension of legal deadlines in appropriate cases.” A trial or appellate court was authorized to “lift or shorten the suspension periods” if a joint motion was filed in the proceedings certifying that “no attorney or party to the proceeding was adversely impacted by Hurricanes Rita or Katrina.” Even if there was an impacted attorney or party, the courts could lift deadlines in the event that the parties wished to proceed and filed an affidavit to that effect. If unanimous consent to proceed could not be obtained, but one party desired to proceed with proceedings, the Supreme Court procedure set forth a mechanism for issuing rule to show cause orders and setting hearings to determine whether the court should proceed. The resolution did contain an additional provision which stated that, “No Order lifting or shortening the suspension of legal deadlines shall serve to lift the suspension of liberative prescriptive periods or preemptive periods.” Thus, the presumption is that the deadlines that could be shortened were intended to be

¹⁶¹ Executive Order KBB 2005-48.

¹⁶² September 27, 2005 Order of Louisiana Supreme Court available at <http://www.lasc.org>

administrative deadlines not substantive deadlines for asserting claims. The Supreme Court's resolution also specified that its provision were to be effective until October 25, 2005, but that if the Governor extended her own executive orders the Supreme Court's resolution would likewise be extended.¹⁶³ Such an extension occurred on October 19, 2005, when the Governor issued Executive Order KBB 2005-67, which extended the prior two orders until November 25, 2005. Consequently, by order dated October 25, 2005, the Louisiana Supreme Court extended its own closure by declaring that it "shall be closed through November 25, 2005."¹⁶⁴

By mid-September the courts, which were well into the process of finding temporary accommodations from which to carry on limited functions, issued their own orders declaring "legal holidays" of varying lengths. The effect of a legal holiday is effectively to extend filing deadlines. Although the Louisiana Supreme Court declared that it was closed from August 29, 2005 through November 25, 2005 for regular filing purposes, the court did continue to operate out of the First Circuit Building in Baton Rouge, accepting emergency filings, handling administrative matters, and assisting lower courts in resuming their operations. Oral arguments resumed before the Court in a limited number of cases during the week of November 28-30, 2005 in Baton Rouge. The Louisiana Supreme Court Clerk of Court's office in New Orleans re-opened the following Monday, December 1, 2005.¹⁶⁵

The state courts of appeal issued similar closure orders following Hurricane's Katrina and Rita. The Fourth Circuit issued an order on October 27, 2005, declaring August 25 through November 25 to be a legal holiday; but, noted that the Clerk of Court

¹⁶³ October 3, 2005 Resolution of the Louisiana Supreme Court available at <http://www.lasc.org>

¹⁶⁴ October 25, 2005 Order of Louisiana Supreme Court available at <http://www.lasc.org> .

¹⁶⁵ Louisiana Supreme Court News, November 23, 2005 copy available at <http://www.lasc.org>

would accept filings on October 26, 2005 at its temporary location in Hammond, Louisiana at Southeastern Louisiana University or at an additional temporary location—the Toulouse Room on the Second Floor of the Omni Royal Orleans Hotel in New Orleans.

The Fifth Circuit issued a similar order declaring a legal holiday. Following Hurricane Rita, The Third Circuit, which had been posting announcements from the Supreme Court, the Fourth and Fifth Circuits on its website, issued its own order closing from September 23, 2005 through October 14, 2005 and declaring that period a legal holiday.

The various district courts affected by the storms issued similar orders: 24th JDC- Jefferson Parish closed through October 11, 2005 but receiving filings on emergency basis in the interim¹⁶⁶; 33rd JDC- Allen Parish closed September 25, 2005 through October 2, 2005¹⁶⁷; 34th Judicial District Court- St. Bernard Parish- closure August 29th through October 1, 2005; 15th Judicial District Court- Vermilion Parish and Acadia- closure September 26-28, 2005¹⁶⁸; 14th Judicial District Court- Calcasieu Parish- closed September 23-October 10, 2005¹⁶⁹.

The Civil District Court for Orleans Parish initially relocated to Baton Rouge and accepted filings there until it secured additional office space in Gonzales. Once in Gonzales, the Orleans Civil District Court cancelled all jury trials due to an inability to empanel a jury from Orleans Parish and suspended most operations until October 25th.¹⁷⁰

¹⁶⁶ 24th Judicial District Court Order of Judge Fredricka Wicker dated September 15, 2005.

¹⁶⁷ 33rd Judicial District Court Order of Judge Joel Davis dated September 28, 2005.

¹⁶⁸ 15th Judicial District Court Order of Judge Maryln Castle dated September 28, 2005.

¹⁶⁹ 14th Judicial District Court Order of Judge Michael Canady dated October 24, 2005.

¹⁷⁰ Copies of the District Court closure orders are available on the Louisiana Supreme Court's website at <http://www.lasc.org>

The effect of these orders and resolutions was an attempt by two of the three branches of government to protect the legal rights of those who could not access the courts due to either court closure or their own circumstances of hardship.

One may argue that all of this was not necessary under existing precedent which recognizes that filing deadlines may be suspended when the courts are not accessible.¹⁷¹ In this regard, the courts have long adopted a legal principle known by the Latin phrase *contra non valentem agree non currit prescriptio* (roughly translated, prescription does not run against a person unable to act) to protect the rights of individuals when access to the courts is not possible. Indeed one of the first known cases in Louisiana applying this doctrine was the matter of *Quierry's Executor v. Faussier's Executors*, 4 Mart. (O.S.) 609 (La. 1817). In that case, the plaintiff missed a filing date because the courts in New Orleans were inaccessible due to “the invasion” i.e. the attempted British invasion of New Orleans and the Battle of New Orleans at the conclusion of the War of 1812. The Supreme Court concluded that the “occlusion” of the judicial system deprived the plaintiff of access to the courts and that the plaintiff should therefore have been granted additional time to file his claim. However even in this situation, the Legislature had met on December 16, 1814 and “passed a law for suspension of all civil suits, and prohibiting the commencement of any, of one hundred and twenty days...”¹⁷² When the period of suspension expired, another two months passed before the suit was filed. However, the plaintiff argued that in effect he only had nine months to file suit when he should have had twelve. The Supreme Court allowed the filing and pursuit of the claim.

¹⁷¹ See generally, Benjamin West Janke, *Revisiting Contra Non Valentem in Light of Hurricanes Katrina and Rita*, 68 La. L. Rev. 497 (2007-2008) (arguing that the judicial doctrine of *contra non valentem* was sufficient to protect legal rights during the aftermath of Hurricanes Katrina and Rita).

¹⁷² *Quierry's Executor v. Faussier's Executors*, 4 Mart. (O.S.) 609 (La. 1817).

Irrespective of the executive orders and the orders issued by the various courts, a constitutional impediment concerned many practitioners and judges following Hurricanes Katrina and Rita. Article 3, Section 20 of the Louisiana Constitution of 1974 provides that “only the legislature may suspend a law, and then only by the same vote and, except for gubernatorial veto and time limitations for introduction, according to the same procedures and formalities required for enactment of that law.”¹⁷³ This wording in the 1974 Constitution is different from the wording of prior constitutional provisions on the same subject. From the Constitution of 1812 through the Constitution of 1921 the phrase “or by its authority” was also included in the referenced provision. Arguably, this simple clause, included in the state Constitutions before 1974, would allow the Legislature to delegate the authority to suspend laws to the other branches of government including the governor. The Homeland Security Act and the powers vested in the governor by La. R.S. 29:724(A) could arguably be considered such a delegation. The 1974 Constitution, however, omitted this important clause and one might argue that under the present Constitution the Legislature and only the Legislature may suspend laws- including laws relating to the running of prescription. Article 2 Section 2 of the 1974 Constitution lends further concern. After describing the three branches of government, the provision states that “except as otherwise provided by this constitution, no one of these branches...shall exercise power belonging to either of the others.” Hence, if the authority to suspend laws, including laws providing for such things as prescription, are vested in the Legislature and only in the Legislature arguably neither the Executive nor Judicial Branch may intervene.

¹⁷³ Louisiana Constitution Article 3, § 20.

In mid-October 2005, Governor Blanco called for a special session of the Louisiana Legislature to meet on November 6-22, 2005. Although the primary purpose of this legislative special session was to address the growing financial crisis that the state was facing as a result of Hurricanes Katrina and Rita, other issues including bills aimed at protecting the rights of individuals during the time of emergency were introduced. Act 6 of the Special Session specifically addressed issues associated with protecting the legal rights of individuals during the emergency that followed the two hurricanes.¹⁷⁴ In this Act, the Legislature ratified and confirmed the actions of Governor Blanco in issuing the three executive orders discussed above and then provided for an additional “limited suspension” of prescription through January 3, 2006. With respect to liberative prescription and prescription of non-use the Legislature clarified that if a prescriptive or preemptive period ended during the period of August 26, 2005 through January 3, 2006, the rights would be preserved. Prescription of non-use with respect to minerals was expressly excluded from the suspension provision. With respect to deadlines in legal proceedings that were suspended by the executive orders, a limited suspension was also provided through January 3, 2006, if the deadline would have otherwise lapsed during the time of November 25th through January 3, 2006. If a deadline was not suspended by the executive orders and if that deadline would have lapsed during the period of October 25, 2005 through November 25, 2005, a party could obtain relief if a party or his attorney could show that they were affected by the Hurricanes and that the filings could not have taken place earlier. The Legislature further recognized that the courts in Cameron, Orleans, Plaquemines, St. Bernard, Jefferson and Vermilion parishes as well as the legal communities and citizens of these parishes were so severely devastated that although the

¹⁷⁴ Act 6 of the First Extraordinary Session of 2005.

courts may be open on a limited basis, the destruction in the area continued to endanger and infringe upon normal functioning of the judicial system. With respect to parties in litigation or contemplating litigation in these areas, the Legislature provided that parties and counsel could apply for an additional extension of prescription, preemption and legal deadlines through May 31, 2006 upon showing that but for the events of the hurricanes the legal filing sought to be filed would have been filed.

Act 6 further provided that the suspensions provided would not apply to landlord-tenant disputes, eviction proceedings, and lease disputes regarding immovable property, provided the proceedings were carried out in accordance with the provisions of Executive Order KBB 2005-67.

Seemingly, the Legislature put to rest any concerns with respect to the accrual of prescription during the time of emergency following the storms. However, there were still instances in which the legal effect of the Governors' executive orders was challenged. Courts that have considered the applicability of the Governor's post-Katrina and post-Rita executive orders and the legislature's ratification of those orders have upheld their applicability under appropriate circumstances.¹⁷⁵

¹⁷⁵ See e.g., *Kimbrough v. Cooper*, No. 2005-K-2335 (La. 11/22/05), 915 So. 2d 344 (finding that Governor's Executive Orders suspended period for formally filing certain criminal charges); *McCrory v. Can Do Inc.*, No. 2006-982 (La. App. 3d Cir. 9/6/06), 938 So. 2d 802 (denying motion to dismiss untimely appeal and remanding to trial court to determine whether conditions set forth in legislation ratifying Governor's executive orders had been satisfied); *Huth v. Pickering*, No 07-181 (La. App 5th Cir. 8/28/07), 966 So 2d 652 (finding time for plaintiff to file suit fell within interruption period provided for in legislative act ratifying Governor's Executive Orders); *Brown vs. City of New Orleans*, 2007 W. L. 2480984 (E.D. La. 2007)(finding that the Governor's Executive Orders and subsequent legislative ratification extended the period of time for a former prisoner's damage claim); *Mitchell vs. Kaiser Aluminum and Chemical Corporation*, No. 06-CA-226 (La. App. 5th Cir. 9/26/09), 942 So. 2d 1093 (finding that the Governor's Executive Orders and subsequent legislative ratification suspended the deadline for payment of certain workers' compensation benefits).

E. Hurricane Katrina and Rita's Impact on Attorneys

In addition to finding homes for the courts and the challenge of preserving legal rights, unique challenges also faced attorneys and their law firms in the days immediately following Hurricanes Katrina and Rita. Thousands of attorneys in the New Orleans area were part of the massive evacuation of New Orleans. Their offices were suddenly inaccessible. Clients could not contact attorneys and attorneys could not contact clients. Even if contact was made, important files and client papers were in New Orleans offices and inaccessible.

In a memorandum, which was obviously typed before new "official" stationary could be printed, the Supreme Court directed all Louisiana judges to be patient with attorneys and lend assistance if necessary. The memo stated: "Many lawyers and court staff have lost their clothes, files, contact with clients and witnesses, and vehicles. Even when they have transportation, congestion in newly overcrowded cities leads to long delays. The Court asks that you temporarily waive the dress code normally required in your court and exercise patience with those who appear excusably late for court. In addition, please give compassionate consideration to requests for continuances in those cases where lawyers have lost contact with clients, witnesses, or staff or have files that have been destroyed or are unavailable."¹⁷⁶

Many of the larger law firms, with offices in multiple locations, retreated to their satellite offices. Others quickly secured additional office space in Baton Rouge and Lafayette causing virtual real estate boom overnight. The internet and email played perhaps the most vital role in attorneys locating one another and in clients locating

¹⁷⁶ This memorandum had no signature but was been posted on the official Louisiana Supreme Court website under the topic of Hurricane Katrina orders. A copy was obtained by the author from the Supreme Court's website at www.lasc.org in September 2005.

attorneys. The Louisiana Bar Association, as well as the courts, established attorney relocation registers on their respective websites. Word of various attorney locations was also spread among their colleagues via email. Eventually formal correspondence was sent out identifying attorney locations. Copies of files were frequently obtained from the courts' electronic imaging facilities, from the courts themselves and from co-counsel who for the most part showed remarkable professionalism and cooperation during the times of crisis. Many displaced attorneys subsequently returned to their offices in the New Orleans area; however many law firms that had thriving practices on the afternoon of August 26, 2005 no longer exist. Like other commercial businesses, they became collateral damage to Katrina's fury.

F. Post Katrina and Rita Litigation

Irrespective of the inability of many state courts to conduct jury trials immediately following Hurricanes Katrina and Rita, the post-Katrina legal environment can only be classified as tepid. Perhaps the only thing growing as fast as mold in soaked carpeting in New Orleans was the docket of post-Katrina lawsuits in many courts.

According to Judge Vance, Loretta Whyte, Clerk of Court for the United States District Court for the Eastern District of Louisiana estimated that 4,753 suits related to Hurricane Katrina were filed in the United States District Court for the Eastern District of Louisiana in 2006.¹⁷⁷ The total civil number of civil cases filed in the Eastern District of Louisiana further increased from 4774 suits in 2005 to 9805 in 2006.¹⁷⁸ The number of

¹⁷⁷ See, Sarah S. Vance, *Justice After Disaster—What Hurricane Katrina Did to the Justice System in New Orleans*, 51 *How. L. J.* 621, 644 n. 208 (2007-2008), *citing*, October 10, 2007 email from Loretta Whyte, Clerk of Court, United States District Court, Eastern District of Louisiana to Sarah Vance, Judge, United States District Court, Eastern District of Louisiana and U. S. Courts, 2006 Judicial Facts and Figures, "Table 4.2, U.S. District Courts, Civil Cases filed by District," available at <http://www.uscourts.gov/judicialfactsfigures/2006/Table402.pdf>

¹⁷⁸ *Ibid.*

civil cases in the United States District Court for the Eastern District of Louisiana further climbed steadily in 2007 to 10,484 before beginning to decline to 8,325 filings in 2008.¹⁷⁹ Although it is unclear exactly how many of the 2007 and 2008 filings are directly related to Hurricane Katrina and Rita, one explanation for the increased number of filings may be the expiration of limitations periods during 2006 and early 2007 as well as denial of certification or “opt outs” in a number of Hurricane Katrina related class action proceedings.

Unfortunately, additional cases by case analysis would have to be performed to determine whether there is a similar pattern of Katrina and Rita specific filings in the state district courts. However limited data is available from the Louisiana Supreme Court’s annual reports in 2004-2008 regarding the courts’ general case loads. That data reveals that in 2005 there was a 19.6% decrease in the number of filings in the Louisiana Supreme Court and a 13.7% decrease in the number of filings in the Courts of Appeal. Total filings in the trial courts, however, were about the same as they were in 2004. The Supreme Court’s 2005 annual report attributes the 2005 decrease in total filings in the Louisiana Supreme Court and the states intermediate appellate courts as being related to the hurricanes; however, this conclusion really cannot be drawn from the raw numbers.¹⁸⁰

Comparison of other figures from 2004-2008 shows some inconsistencies. There is an inconsistent pattern of increases and decreases in total filings at the Louisiana Supreme Court during this period of time. Filings from 2004 to 2005 decreased 19.6% and then from 2005-2006 increased 14.7%. In 2007 there were 2,497 total filings in the

¹⁷⁹ U.S. Courts, 2008 Judicial Facts and Figures, “Table 4.2, U.S. District Courts, Civil Cases filed by District” available at <http://www.uscourts.gov/judicialfactsfigures/2008/Table402.pdf>

¹⁸⁰ Annual Report 2005 of the Judicial Council of the Supreme Court, available at http://www.lasc.org/press_room/annual_reports/reports/2005_ar.pdf

Louisiana Supreme Court which was, according to court officials, the lowest number of total filings in the previous twenty years.¹⁸¹ In 2008, the total filings in the Louisiana Supreme court increased to 3,014. This number however is still below the 3,228 total filings in 2004.¹⁸²

At the appellate level there was a decrease in total filings in 2005 and 2006 and slightly increased filings in 2007 and 2008. The total number of appellate opinions from the intermediate appellate courts decreased 11.2% from 2004 to 2005, increased 5.8% in 2006, decreased 5.7% in 2007 and decreased 3.9% in 2008.

Total filings in the district courts suffered only a negligible .03% decrease from 2004 to 2005 and then increased in every year thereafter from 2006 to 2008.

When one examines filings in trial courts that experienced significant adverse effects from Hurricane Katrina and Rita such as Orleans Civil District Court, the 34th Judicial District Court in St. Bernard Parish and the 38th Judicial District Court in Cameron, there is a sharp decrease in the number of civil filings in 2005; however, there is a subsequent increase in 2006 and 2007.

One statistic, which may be attributable to the aftermath of Hurricanes Katrina and Rita is the number of jury trials that were held in 2005-2008. In 2004 there were seventy-one jury trials in Orleans Parish Civil District Court in 2004. In 2005 and 2006 there were forty-one jury trials held each year. Only thirty-eight jury trials were held in 2007 and only thirty-two were held in 2008. In St. Bernard Parish, there were ten jury trials held in 2004 and only four in 2005. In 2006 there were none. Three jury trials were held in St. Bernard in 2007 and four in 2008. Cameron Parish's jury trial statistics

¹⁸¹ Annual Report 2007 of the Judicial Council of the Supreme Court, available at <http://www.lasc.org>

¹⁸² Annual Report 2009 of the Judicial Council of the Supreme Court, available at <http://www.lasc.org>

do not present a significant basis for comparison as Cameron Parish is one of the least populated parishes in the state and there were only two jury trials in 2004 before Hurricane Katrina.

The filing data, which was acquired from the Louisiana Supreme Court's Annual Reports for 2004-2008 may be summarized in the following tables:

Table 1. Filings and Opinions in Louisiana State District and Appellate Courts by Year

	2004	2005	2006	2007	2008
Total Louisiana Supreme Court Filings	3,228	2,595	3,042	2,497	3,014
Total Court of Appeals Filings	9,498	8,199	7,981	8,039	8,193
Total Civil Opinions by Courts of Appeal	1,931	1,685	1,822	1,674	1,546
Total District Court Filings	741,180	740,873	733,271	740,790	772,632

Table 2. Civil Filings and Jury Trials in Orleans, St. Bernard and Cameron Parishes by Year

	2004	2005	2006	2007	2008
Orleans CDC					
Civil Filings	18,763	13,821	14,174	16,106	12,977
Jury Trials	71	41	41	38	32
St. Bernard					
Civil Filings	2,708	2,218	2,511	2,768	1,901
Jury Trials	10	4	0	3	4
Cameron					
Civil Filings	400	383	611	261	242
Jury Trials	2	2	2	1	4

The data in the foregoing tables is raw data, as it would require a case by case examination to determine what percentage of total filings and total civil filings in the Louisiana state courts related directly to Hurricanes Katrina and Rita. Also, based on the

raw data, there does not appear to be a significant increase in the number of filings in district courts statewide in the years immediately after Hurricanes Katrina and Rita. In fact the number of district court filings was lower than the number of pre-storm filings, only reaching increased numbers in 2008, three years after the storms. There may be a number of factors that explain decreases in state court filings during the period from 2005-2007 and the subsequent increase in 2008. A number of individuals may have been participants in class actions that were pending in federal courts and therefore did not file individual claims in state courts. The decreases in 2005-2007 may also be attributable to inaccessibility of the courts or a refocusing on other priorities. The increase in 2008 may be due to increased filings due to de-certification of federal class actions or expiration of limitations periods. The raw data is not clear with respect to the reasons for the increases and decreases. Additional investigation into the exact nature of the suits would be required to draw better conclusions that the filings and number of opinions released by the courts was related to the hurricanes.

Because of requirements at the time of filing, it can, however be determined that a number of suits that were filed in the United States District Court for the Eastern District of Louisiana clearly focused on various issues related to Hurricane Katrina. These issues included the breaches of the levees in New Orleans,¹⁸³ spills and leaks of various

¹⁸³ See e.g., *Laura Greer, et. al. vs. United States of America*, C.A. No. 05-5709, United States District Court for the Eastern District of Louisiana; *Frederick Bradley vs. Modjeski & Master Inc., et. al.*, C.A. No. 05-6359 United States District Court for the Eastern District of Louisiana; *Kirsch v. Boh Brothers, et. al.*, C.A. No. 05-6073 United States District Court for the Eastern District of Louisiana; *Lynn Griffia vs. United States of America*, C.A. No. 05-6083 United States District Court for the Eastern District of Louisiana; *Lima vs. United States of America*, C.A. No. 05-6084 United States District Court for the Eastern District of Louisiana; *Henry Lawrence vs. Virginia Wrecking Company, et. al.*, C.A. No. 05-6422, United States District Court for the Eastern District of Louisiana. All cases involving canal breaches were subsequently consolidated under *Katrina Canal Breaches Consolidated Litigation, Coleen Berthelot et al vs. Boh Brothers Construction L.L.C.* (lead case) No. 05-4182 (E.D. La.)(see court website information at <http://www.laed.uscourts.gov/CanalCases/CanalCases.htm>)

substances from industrial facilities on both the east and west banks of the Mississippi River,¹⁸⁴ insurance coverage issues,¹⁸⁵ voting rights issues,¹⁸⁶ claims associated with damage to Louisiana's wetlands,¹⁸⁷ wrongful death claims,¹⁸⁸ claims against FEMA,¹⁸⁹ claims against FEMA trailer manufacturers claiming exposure to toxic formaldehyde fumes,¹⁹⁰ civil rights and constitutional rights claims¹⁹¹ and claims that local public

¹⁸⁴ See e.g., *George Baraisich, et. al. vs. Shell Pipeline Company, L.P., et. al.*, C.A. No. 05-4180, United States District Court for the Eastern District of Louisiana; *Timothy Danos et. al. vs. Bass Enterprises Production Company, et. al.*, C.A. No. 05-4212, United States District Court for the Eastern District of Louisiana; *August and Dorothy Tinson v. Bass Enterprises*, C.A. 05-4512, United States District Court for the Eastern District of Louisiana; *Anna Lincoln et. al. vs. Shell Pipeline Company, L.P.*, C.A. 05-4197, United States District Court for the Eastern District of Louisiana; *Frank Frelich et. al. vs. Shell Pipeline Company, L.L.C.*, C.A. No. 05-4199, United States District Court for the Eastern District of Louisiana; *Ronald Allange v. Murphy Oil Company*, C.A. No. 05-6322 United States District Court for the Eastern District of Louisiana; *Harold Gallo v. Murphy Oil Company*, 05-6325 United States District Court for the Eastern District of Louisiana.

¹⁸⁵ Among the earliest filed insurance related cases were *Kelly Creely vs. Fidelity National Property and Casualty Insurance Company*, No. 05-6075 United States District Court for the Eastern District of Louisiana; *Lee Sucherman v. Metropolitan Property and Casualty Insurance Company*, C.A. 05-6456 United States District Court for the Eastern District of Louisiana; and *Gerald Cooper vs. United States Automobile Association*, C. A. No. 05-6456 United States District Court for the Eastern District of Louisiana. According to Judge Sarah S. Vance, as of January 1, 2008, 2766 Katrina cases had been filed against State Farm and 2012 cases against Allstate. As of the same date, insurance defendants were included in 8,333 of the 10,753 identified Katrina related cases. See, Sarah S. Vance, *Justice After Disaster--- What Hurricane Katrina Did to the Justice System in New Orleans*, 51 *How. L. J.* 621, 645 n. 219 and n. 224.

¹⁸⁶ *Calvin Smith vs. Federal Emergency Management Agency and the Department of Homeland Security and Michael Chertoff*, C. A. 05-6435 United States District Court for the Eastern District of Louisiana. See also, *Wallace v. Dep't of Homeland Security*, No. 05-5519 (E.D.La., closed 6/13/06).

¹⁸⁷ *George Baraisich, et. al. vs. Columbia Gulf Transmission, et. al.*, C.A. No. 05-4161, United States District Court for Eastern District of Louisiana; *Charles Villa, Jr. et. al. vs. Columbia Gulf Transmission Company, et. al.*, C.A. No. 05-4569, United States District Court for Eastern District of Louisiana.

¹⁸⁸ *Ronald Mineo vs. Chateau Living Center, et. al.*, No. 626291 24th Judicial District Court, Jefferson Parish Louisiana.

¹⁸⁹ See e.g., *Ridgley vs. Federal Emergency Management Agency*, No. 07-2146, 2007 W.L. 1728724 (E.D. La., June 30, 2007)(challenging FEMA benefits), *vacated by Ridgley vs. Fed. Emergency Mgmt. Agency*, 512 F. 3d 727 (5th Cir. 2008); *Armstead vs. Nagin*, No. 05-6438, 2006 W.L. 3861769 (E. D. La. 12/29/06)(dismissal of plaintiffs' claims that government officials, including President Bush, failed to protect citizens of New Orleans).

¹⁹⁰ See e.g. *In re FEMA Trailer Formaldehyde Product Liability Litigation*, No. 1873, 2007 U.S. Dist. LEXIS 80622 (10/24/07)(ordering transfer and consolidation of similar pending actions to the United States District Court, Eastern District of Louisiana).

¹⁹¹ See e.g., *Anderson v. Jackson*, No. 06-3298, 2007 U.S. Dist. LEXIS 9074 (E.D. La. 2/6/07)(alleged racial housing discrimination in rental property); *McWaters v. Fed. Emergency Mgmt. Agency*, 408 F. Supp 2d 221 (E.D La. 2005)(alleged violations of relief statutes and constitutional rights by FEMA); *Dickerson vs. City of Gretna*, No. 05-6667 (E.D. La.)(alleged civil and constitutional rights violations against the City of Gretna and Jefferson Parish Sheriff's Office for blockade of attempted pedestrian crossing of Mississippi River Bridge by New Orleans residents into Jefferson Parish).

official's malfeasance alleged to have caused or enhanced property damage in the New Orleans region.¹⁹² There was even a \$100 billion dollar suit that was filed in the United States Court of Claims in Washington, claiming that the refusal of the United States to improve the New Orleans levees to a state that will prevent destruction during a Category 5 hurricane constituted an inverse condemnation.¹⁹³

In light of the significant number of filings, some courts faced numerous challenges in attempting to resolve their cases. For example one challenge for the courts was combating claims of actual or apparent bias. The judges of the courts trying the cases were themselves victims of the Hurricanes. Likewise, "fair and impartial" juries had to be comprised from citizens who themselves had been impacted by the hurricanes.

In one case in federal court involving claims relating to the Mississippi River Gulf Outlet ("MRGO") and other canal breaches, lawyers representing defendants, including the federal government, moved to disqualify Judge Stanwood Duval from hearing the case on the grounds that the judge lived in the New Orleans area and had also been impacted by the aftermath of Hurricane Katrina. Judge Duval denied the motion for disqualification. The Fifth Circuit refused to overturn the decision.¹⁹⁴ Due to the nature and scope of the destruction from Hurricanes Katrina and Rita, it may be anticipated that similar motions to disqualify judges and jurors will be made in future cases. Courts will

¹⁹² *Rob Schmidt vs. The Parish of Jefferson and Aaron Broussard in his capacity as its President*, No. 625,988, 24th Judicial District Court, Jefferson Parish, Louisiana.

¹⁹³ *Nicholson vs. United States of America*, No. 05-1259 Federal Court of Claims.

¹⁹⁴ See, *Colleen Berthelot et al. vs. Boh Brothers, et al.*, No. 05-4182, United States District Court, Eastern District of Louisiana; Order of May 4, 2005 available at <http://www.laed.uscourts.gov/CanalCases/Orders/285.pdf>; review denied by United States Fifth Circuit Court of Appeal on May 23, 2006; Order of Fifth Circuit available at <http://www.laed.uscourts.gov/CanalCases/Orders/479.pdf>

have to be prepared to handle these motions and honestly assess whether the defendants may receive fair trials under the circumstances.

The courts also have been called on to evaluate legal relationships between multiple parties and sort out complex issues of causation of varying types of damage. Courts should anticipate and be prepared to undertake challenges such as determining whether insurance coverage exists and whether damage is classified as flood, wind or rising water for purposes of insurance coverage. Additionally courts should be prepared to determine whether defenses such as “Act of God” are applicable in the context of not only civil proceedings but also in the context of various other statutes such as the Oil Pollution Act and other environmental statutes.¹⁹⁵ In addition, legal issues concerning whether the consequences of certain actions were foreseeable will certainly be litigated in the courts.

Another significant challenge facing the courts following the hurricanes was adopting ways to manage the large number of cases that were filed. There are various mechanisms for consolidation of large numbers of cases and claims; however, many of these procedural mechanisms, such as class action suits, multi-district litigation and intra-district consolidation, have substantive limitations. Also, there are divergent views on whether centralized or decentralized litigation following mass disasters serves the best

¹⁹⁵ An analysis of the “act of god” defense in the context of environmental statutes and under state law was recently examined by two partners of the Kean, Miller law firm in articles appearing in the BNA Toxics Law Reporter. See, Esteban Herrera, Jr. “In the Wake of Katrina: The “Act of God” Defense under Select Environmental Programs Applicable in Louisiana, Vol. 20 BNA Toxics Law Reporter p. 1067 (12/8/05) and Glenn M. Farnet, “Nature’s Fury or Human Blunder? The “Act of God” Defense to Tort Suits in Louisiana”, Vol. 20 BNA Toxics Law Reporter p. 1070 (12/8/05).

interests of society due to perceived differences in the quality of decisions that are rendered.¹⁹⁶

Two cases that were filed in the United States District Court for the Eastern District of Louisiana present interesting examples of how that court managed a large number of claims in an efficient manner. One case used a traditional litigation method, the class action, to resolve thousands of claims arising out of a spill of crude oil from Murphy Oil's refinery during Hurricane Katrina. The other case involves the use of a non-traditional method of case management, intra-district consolidation for limited purposes to manage thousands of claims related to various aspects of Hurricane Katrina's aftermath.

The matter of *Patrick Joseph Turner, et al. vs. Murphy Oil U.S.A., Inc. et al*, No. 05-4206, United States District Court, Eastern District of Louisiana, was the first of several class action cases filed within days of Hurricane Katrina. The case involved claims of negligence in connection with a large oil spill that originated from Murphy Oil's refinery in St. Bernard Parish. The oil escaped from storage tanks during Hurricane Katrina and was spread by the storm surge throughout residential areas in the vicinity of the refinery. There were multiple suits filed as a result of the spill. The Turner case was the first filed case having been filed on September 9, 2005.

By November 8, 2005, upon return to the federal courthouse in New Orleans, Judge Eldon Fallon began holding monthly status conferences with litigants to manage all

¹⁹⁶ See generally, Robin J. Effron, *Disaster Specific Mechanisms for Consolidation*, 82 Tul. L. Rev. 2423 (2008)(arguing that there may be jurisdictional limitations to handling large numbers of mass disaster claims and in some instances special jurisdictional statutes have been enacted to manage such claims); Alexandra D. Lahav, *Recovering the Social Value of Jurisdictional Redundancy*, 82 Tul. L. Rev. 2369 (2008)(arguing that there are benefits to decentralization of litigation arising from mass disasters); Richard L. Marcus, *Cure-All for an Era of Dispersed Litigation? Toward a Maximalist Use of the Multidistrict Litigation Panel's Transfer Power*, 82 Tul. L. Rev. 2245 (2008).

cases involving the Murphy Oil spill. Multiple cases were consolidated with the Turner case since it was the first filed action. The plaintiffs moved for a class certification hearing. This hearing was set for January 12, 2006, a mere five months following Hurricane Katrina. In this five month period, the litigants gathered scientific evidence concerning the scope of the oil spill and its detrimental effects. Beginning on January 12, 2006, expert testimony was received by the court at a class certification hearing. On January 30, 2006, Judge Fallon issued an order certifying a class based on the evidence presented by experts at the class certification hearing. Once the class was certified, a notice program was instituted and a trial plan was developed for trying the merits of individual claims. However, before the first trial of claims took place, a settlement, in excess of \$200 million, was reached. By January 30, 2007, Judge Fallon granted final approval for the settlement.

The quick resolution of the claims involving the Murphy Oil spill has allowed many residents in St. Bernard Parish to gain certainty with respect to their future plans. Those who wish were impacted by the oil spills and wished to rebuild had a source of money to accomplish their goals. There was a “buy out” program as part of the settlement thereby allowing those who did not want to rebuild to sell their houses a determined “per square foot” price.¹⁹⁷

The Murphy Oil cases are an example of how a court can utilize available procedural mechanisms to quickly resolve a large number of claims. Unfortunately, the class action procedure utilized in the Murphy Oil litigation is not a “silver bullet” for resolving all claims. There are substantive and procedural limitations to the use of the

¹⁹⁷ Information concerning the Murphy Oil cases is available on the United States District Court for the Eastern District of Louisiana’s website at <http://www.laed.uscourts.gov/MurphyOil/MurphyOil.htm>

class action procedural mechanism in both state and federal courts. Specifically, pursuant to both state and federal procedural rules there are requirements of “numerosity,” “commonality,” and “typicality” for class certification.¹⁹⁸ These requirements cannot always be met in all cases, since individual factual and legal issues may predominate in many cases. In these cases, courts have been forced to either use alternative procedural mechanisms or develop creative ways of handling large numbers of claims.

One such approach, voluntary intra-district consolidation with bell weather trials, was utilized by Judge Stanwood Duval in the matter of *Colleen Berthelot et al. vs. Boh Brothers, et al.*, No. 05-4182, United States District Court, Eastern District of Louisiana. In the Berthelot case, which was also subsequently styled *In re Katrina Canal Breaches Litigation*, consolidation occurred through an assignment process that was agreed to by all of the active judges of United States District Court for the Eastern District of Louisiana. The cases consolidated consisted of both individual cases as well as class actions asserting claims based on multiple aspects of the post-Katrina aftermath. In March 2006, Judge Duval grouped consolidated cases according to the levee that was alleged to have failed (17th Street Canal, London Avenue Canal and Industrial Canal)¹⁹⁹ Claims alleging damage that arose from the Mississippi River Gulf Outlet (“MRGO”) were subsequently consolidated with one another for pre-trial purposes.²⁰⁰ Later, the court consolidated all canal breach cases irrespective of the particular canal levee that was breached.²⁰¹ As additional suits were filed more diverse issues arose, including

¹⁹⁸ See, Federal Rule of Civil Procedure 23 and Louisiana Code of Civil Procedure Art. 591 *et seq.* and

¹⁹⁹ See, March 24, 2006 Order of Judge Stanwood Duval in *In re Katrina Canal Breaches Consolidated Litigation*, No. 05-4182 (E.D.La. 2006).

²⁰⁰ See, April 12, 2006 Consolidation Order of Judge Stanwood Duval in *In re Katrina Canal Breaches Consolidated Litigation*, No. 05-4182 (E.D.La. 2006).

²⁰¹ See, May 1, 2006 Order of Judge Stanwood Duval in *Sanchez v. Boh Bros. Constr. Co.* No. 05-4182 (E. D. La. 2006).

issues pertaining to insurance coverage, governmental liabilities and immunities, dredging and maintenance of canals. Consequently, on October 2, 2006, Judge Duval further classified the cases within five sub-categories: 1) Levee cases, 2) Insurance Cases, 3) MRGO cases, 4) first responder cases, and 5) dredging cases.²⁰² Additional sub-categories for the St. Rita Nursing home cases, barge cases and the Road Home Program cases were added in September and October, 2006.²⁰³ Once the cases were consolidated and organized in this fashion, the court could proceed with addressing various legal and factual issues in an orderly fashion.²⁰⁴ However, though the court has used an intra-district consolidation, it is likely that it will take several years for all issues arising in the consolidated cases to be resolved. Time will tell whether the intra-district consolidation utilized by the Eastern District in the *In re Katrina Canal Breaches* Litigation has resulted in an efficient handling of the different types of claims arising from Hurricane Katrina.

G. Lessons Learned from Hurricanes Katrina and Rita

Hurricanes Katrina and Rita further focused courts, as well as attorneys, on preparations for disasters. The lessons learned by other courts following September 11th had already begun to be discussed and implemented by courts throughout the United

²⁰² See, July 19, 2006 and October 20, 2006 Orders of Judge Stanwood Duval in *In re Katrina Canal Breaches Consolidated Litigation*, No. 05-4182 (E.D.La. 2006).

²⁰³ See, October 20, 2006 and September 18, 2007 orders of Judge Stanwood Duval in *In re Katrina Canal Breaches Consolidated Litigation*, No. 05-4182 (E.D.La. 2006) and *Louisiana v. AAA Insurance*, No. 07-5528 (E. D. La. 2007).

²⁰⁴ See e.g., *In re Katrina Canal Breaches Consolidated Litigation*, 647 F. Supp. 2d 644 (E. D. La. 11/18/09)(finding Corps of Engineers' failure to maintain and operate MRGO properly was a substantial cause for breaches of levee and subsequent flooding and Corps was not entitled to Flood Control Act immunity); *In re Katrina Canal Breaches Consolidated Litigation*, 601 F. Supp. 2d 809 (E.D. La. 3/5/09)(finding that Louisiana's Valued Policy Law only applies to fire insurance policies); *In re Katrina Canal Consolidated Litigation*, 2008 W.L. 2186400 (E.D. La. 5/27/08)(dismissing certain claims asserting that the United States failed to adequately prepare for and respond to Katrina based on sovereign immunity); *In re Katrina Canal Breaches Consolidated Litigation*, 577 F. Supp. 2d 802 (E. D. La. 5/2/08)(finding statutory governmental immunity for flood damages does not apply to flood damages caused by negligent design, maintenance and operation of navigation canal).

States. Some courts, like the federal courts, were better prepared than the state courts when Hurricane Katrina struck. However, Hurricanes Katrina and Rita certainly caused the courts in Louisiana to take decisive steps to prepare for future disasters. Courts in other states, including those in Texas have also recognized the lessons of Hurricanes Katrina and Rita and have taken steps to improve their disaster preparations.

Attorneys are also more focused on disaster planning. One author has argued that disaster planning is a component of an attorney's ethical obligations to properly manage the affairs of his clients.²⁰⁵ Others have begun to write and teach about the importance of continuity of operations plans for law firms.²⁰⁶

Law firms throughout Louisiana have improved existing disaster and continuity of operations plans or implemented such plans in the event that they did not have them before Hurricanes Katrina and Rita. For example, the law firm of Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman, L.L.P. has improved its disaster recovery plan. The improvements include pre-existing contracts for ancillary facilities from which attorneys from the firm's New Orleans office may work in Baton Rouge in the event of another large scale evacuation. Also, a plan is in place to back up servers at remote locations and access computer information in the event of an emergency. There is also a communications system in place with multiple redundancies whereby employees of Kean

²⁰⁵ See, Brenna G. Nava, *Hurricane Katrina: The Duties and Responsibilities of an Attorney in the Wake of a Natural Disaster*, 37 St. Mary's L.J. 1153 (2006).

²⁰⁶ See generally, Laura Walker Plunkett, Walter F. Wolf III, and Kathryn M. Knight, *When Disaster Strikes: Disaster Planning for Lawyers*, 20 Prob. & Prop. 57 (2006)(discussing the importance of disaster preparedness and disaster recovery planning and the elements to consider in developing plans for law firms); Glenn C. McGovern, *Suffering Total Destruction of Your Law Office and Client Base After a Catastrophic Disaster*, 41 Tort Trial & Ins. Prac. L. J. 799 (2005-2006)(discussing author's experience with rebuilding his law practice after Hurricane Katrina); Laura DiBiase, *When Disaster Strikes-Strike Back!*, 22 FEB Am. Bankr. Inst. J. 14 (2003)(discussing importance of disaster recovery planning); and Barry D. Bayer, *Contemplating Katrina: Law Office Disaster Recovery*, Law Office Technology Review (2005) available at 2005 WL 2675077 (discussing disaster recovery planning in conjunction with law office technology).

Miller can obtain information concerning firm operations in the event of an emergency.²⁰⁷ Other firms in vulnerable areas have followed suit and have similar plans.

Following Hurricane Katrina, it became evident that the judicial branch in Louisiana needed to improve its disaster planning. According to Judge Madeleine Landrieu, Judge of the Orleans Parish Civil District Court, she discussed the need for the state court system to be better prepared for disasters with Chief Justice Calagero of the Louisiana Supreme Court. Following Hurricanes Katrina and Rita, the task of preparing disaster planning and recovery plan guidance for the district courts was assigned to the Louisiana District Judges Association, a non-profit organization composed of over 200 district judges.²⁰⁸

On October 28, 2005, at the first meeting of the Louisiana District Judges Association following Hurricanes Katrina and Rita, Judge Fredricka Wicker of the 24th Judicial District Court and President of the District Judges Association appointed a committee to study and implement a disaster preparation planning for the district courts. Judge Landrieu was appointed chairperson of the new Disaster Recovery Planning Standing Committee of the Louisiana District Judges Association. The Disaster Recovery Planning Committee soon thereafter began the work of developing a model continuity of operations plan for Louisiana's district courts.

The Disaster Recovery Planning Committee recognized that while all courts share similar core functions, differences do exist among the individual courts and a single plan would not be adequate to address the needs of the various district courts. Therefore, the

²⁰⁷ Information based on author's personal experience.

²⁰⁸ Author's interview with Hon. Madeleine Landrieu, February 2009.

Disaster Recovery Planning Committee developed a “templet” for a model continuity of operations plan rather than a single uniform plan.²⁰⁹

In addition to developing a templet for a continuity of operations plan for the district courts, the Disaster Recovery Planning Committee worked with the District Judges Association’s web site committee to develop a web site that would be accessible by district judges throughout the state to obtain information concerning disaster planning. The web site can also be used for internal communication among judges during times of emergency.²¹⁰

From October 2005 until May 2006, the District Judges Association worked diligently to develop the model templet for district court continuity of operations plans. By May 2006, in advance of the 2006 hurricane season, the templet was finished and distributed to the district courts. The templet includes sections that contain forms and suggestions for developing chain of command and communication plans to be utilized during times of emergency. Also included are templets of orders, such as closure orders, to be used during times of emergencies. Suggestions are also made for completing risk assessments, defining mission critical systems, developing critical resources inventories and making plans for obtaining required resources during times of emergency. Disaster recovery worksheets and various checklists are also included in the templet.

According to Judge Landrieu, some, but not all, of the district courts have now developed their own continuity of operations plans.²¹¹ The Civil District Court in New Orleans now has such a plan. According to Judge Landrieu, a copy of the plan is kept in

²⁰⁹ Hon. Madeleine Landrieu, Chairman’s Remarks to the Louisiana District Judges Association (copy in author’s file).

²¹⁰ The District Judges Association’s website contains secure access sites in which particular issues and ideas may be exchanged.

²¹¹ Author’s interview with Hon. Madeleine Landrieu, February 2009.

a brief bag in her chambers and in the event of an emergency she is able to pick up the brief bag and take it with her. Other judges have made similar arrangements.²¹²

Disaster preparation and planning has also been refined at the Louisiana Supreme Court. According to the Hon. John Olivier, the Supreme Court's continuity of operations plan is now in place to facilitate functioning during emergencies.²¹³ In addition, the Louisiana Supreme Court has improved its technology systems and implemented changes to better manage future disasters. Computer information is now backed up on remote servers and computer equipment has been pre-positioned in Baton Rouge for use during emergencies. The court is also working on a "virtual court" computer platform that will allow its members to conduct business from remote locations during times of emergencies.²¹⁴

Following Hurricanes Katrina and Rita courts still are issuing closure orders in the event of emergencies in order to protect rights. Closure orders similar to the orders issued following Hurricanes Katrina and Rita were entered by a number of courts, including the Louisiana Supreme Court when the Louisiana coast was struck by Hurricanes Gustav and Ike in 2008.²¹⁵

Other states have also learned from Hurricanes Katrina and Rita. Texas is one example. By order dated November 20, 2007, the Texas Supreme Court created the Task Force to Ensure Judicial Readiness in Times of Emergency.²¹⁶ The charge given to the

²¹² Author's interview with Hon. Madeleine Landrieu, February 2009.

²¹³ Author's interview with Hon. John T. Olivier, February 2009.

²¹⁴ Annual Report 2006 of the Judicial Council of the Supreme Court, available at: http://www.lasc.org/press_room/annual_reports/reports/2006_Annual_Report.pdf (discussing steps the court has taken in disaster planning since Hurricanes Katrina and Rita)

²¹⁵ See, Hurricane Gustav and Hurricane Ike closure orders available at the Louisiana Supreme Court website <http://www.lasc.org>

²¹⁶ A copy of the order establishing the task force is available on the Texas Supreme Court's web site at <http://supreme.courts.state.tx.us/emtf/about.asp>

task force was to design and implement an emergency program to prevent or manage disruptions to court operations throughout the State of Texas during times of emergency. The scope of emergencies for which the task force was to plan included hurricanes, pandemics, acts of violence and cyber threats. Following formation of the task force, several committees were formed including committees to address the following: 1) border issues, 2) coordination with other branches of government, 3) legislation and judicial procedures and 4) technology. The Texas Task Force to Ensure Judicial Readiness in Times of Emergency met regularly throughout the remainder of 2007 and the beginning of 2008 and subsequently produced an interim continuity of operations plan for the Texas courts.²¹⁷ The Texas Task Force to Ensure Judicial Readiness in Times of Emergency has also developed additional guidance information for courts which is posted on the Texas Supreme Court's website.²¹⁸ Other courts continue to work on emergency continuity of operations plans.

²¹⁷ A copy of the Texas Task Force to Ensure Judicial Readiness in Times of Emergency's Interim Continuity of Operations Plan is available at

<http://www.supreme.courts.state.tx.us/emtf/pdf/IntPlan072208.pdf>

²¹⁸ See, <http://www.supreme.courts.state.tx.us/emtf/resources.asp>

V. CONCLUSIONS

Although Louisiana's judicial system was impacted by Hurricanes Katrina and Rita in 2005, the Louisiana courts have recovered from the aftermath of the storms. The federal courts in Louisiana were better prepared before Hurricanes Katrina and Rita and having learned lessons from the September 11th attack and other disasters such as the Oklahoma City bombings. The federal judiciary was encouraged to develop emergency plans well in advance of Hurricanes Katrina and Rita. These plans were in place at the time Hurricane Katrina struck Louisiana. Having already gone through the planning process, even though the existing plans had to be altered due to the circumstances presented following Hurricane Katrina, the federal courts were able to quickly resume operations following the storms.

The state courts in Louisiana had not reached the level of planning that their sister federal courts had reached, although judicial planning for emergencies was certainly a work in progress, at least at the Supreme Court level, prior to Hurricane's Katrina and Rita. Communications and displacement from their home bases of operation for prolonged periods of time presented the most significant challenges to the state courts following the hurricanes. After Hurricanes Katrina and Rita the state courts at all levels appear to have advanced their respective disaster planning and appear to be better prepared to handle adverse impacts from disasters in the future.

VI. RECOMMENDATIONS

Despite the recovery of the Louisiana Judicial System following Hurricanes Katrina and Rita, there is still room for improvement to better prepare for future disasters.

Unlike the federal courts which have implemented mandatory electronic case filing, the state courts have yet to follow suit. Courts in vulnerable areas should consider implementing electronic filing and record management so that records can be protected in the future. This task will largely fall on the Clerk of Courts of Louisiana, separate elected officials. The Clerk of Court's offices have their own budgets though and may have different priorities.

Like the courts, attorneys have started to improve their disaster preparations. Further research is warranted to determine the scope of these preparations. Attorneys in Louisiana are subject to mandatory continuing legal education requirements under rules imposed by the Louisiana Supreme Court.²¹⁹ Since attorneys are a vital component of the judicial system as a whole, the Louisiana Supreme Court should consider requiring periodic courses addressing disaster planning for attorneys and law firms as a part of its mandatory continuing education requirements.

Although the Louisiana Legislature has enacted statutes authorizing district courts to conduct criminal proceedings and allowing clerks of court to conduct operations outside their respective jurisdictions during times of emergency, the Legislature should consider enacting legislation to clarify that courts in affected areas may also conduct civil proceedings outside their respective parishes during times of emergency.

There are still questions concerning the scope of disaster planning by individual courts in Louisiana. Further research is warranted to determine whether all Louisiana

²¹⁹ See, Louisiana Supreme Court Rule XXX available at <http://www.lasc.org/rules/supreme.asp>

courts have now developed continuity of operations plans and whether the courts periodically review and update these plans and if so how often.

Additionally, further research is warranted to determine how many cases specifically addressing legal issues associated with Hurricanes Katrina and Rita have been filed with the district and appellate courts in Louisiana and how efficiently the courts are resolving these cases.

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APPENDIX A

LIST OF CONGRESIONAL HEARINGS ON HURRICANE KATRINA

- September 14, 2005: Senate Committee on Homeland Security and Governmental Affairs, Hearing on “Recovering from Katrina: The Next Phase”.
- September 15, 2005: House Government Reform Committee, Hearing on “Back to the Drawing Board: A First Look at Lessons Learned from Katrina”.
- September 20, 2005: Senate Commerce, Science, and Transportation Committee, Disaster Prevention and Prediction Subcommittee, Hearing on “The Lifesaving Role of Accurate Hurricane Prediction”.
- September 22, 2005: House Select Committee on Hurricane Katrina, Hearing on “Predicting Hurricanes: What We Knew About Katrina.”
- September 27, 2005: House Select Committee on Hurricane Katrina, hearing on “Katrina: The Role of the Federal Emergency Management Agency”.
- September 29, 2005: House Energy and Commerce Committee, Environment and Hazardous Materials Subcommittee, Hearing on “Hurricane Katrina: Assessing the Current Environmental Status.”
- October 6, 2005: Senate Committee on Homeland Security and Government Affairs, Hearing on “Hurricane Katrina: How is FEMA performing its mission at this stage of recovery?”
- October 7, 2005: House Science Committee, Hearing on NOAA Hurricane Forecasting.
- October 18, 2005: House Transportation and Infrastructure Committee, Subcommittee on Economic Development, Public Buildings and Emergency Management, and on Water Resources and Environment, Joint Hearing on “A Vision and Strategy for Rebuilding New Orleans”.

- October 19, 2005: House Select Committee on Hurricane Katrina, Hearing to review hurricane relief response, focusing on the role of the Homeland Security Department.
- October 20, 2005: House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment, Hearing on “Expert Views On Hurricane and Flood Protection and Water Resources Planning for a Rebuilt Gulf Coast,” Part I.
- October 27, 2005: House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment, Hearing on “Expert Views on Hurricane and Flood Protection and Water Resources Planning for a Rebuilt Gulf Coast,” Part II
- November 2, 2005: Senate Environment and Public Works Committee, Hearing on Hurricane Katrina Response.
- November 3, 2005: Senate Homeland Security and Government Affairs Committee, Hearing on “Hurricane Katrina: Why Did the Levees Fail?”
- November 9, 2005: Senate Environment and Public Works Committee, Hearing on a Comprehensive and Integrated Approach to Meet the Water Resources Needs in the Wake of Hurricanes Katrina and Rita.
- November 17, 2005: Senate Environment and Public Works Committee, Hearing to Evaluate the Degree to which the Preliminary Findings on the Failure of the Levees are Being Incorporated into the Restoration of Hurricane Protection.

APPENDIX B

LISTING OF INDIVIDUALS TESTIFYING BEFORE CONGRESSIONAL COMMITTEE HEARINGS INVESTIGATING HURRICANE KATRINA

As of mid-November, 2005, the following individuals had testified before the
United States Congress:

Dan Hitchings-	Director Task Force HOPE United States Army Corps of Engineers
Dr. Thomas F. Zimmie, PhD-	Department of Civil and Environmental Engineering Rensselaer Polytechnic Institute and Member of National Science Foundation Investigative Team on Failure of Levees
Dr. Sherwood Gagliano, PhD	Coastal Environments Inc. (Baton Rouge)
Larry Roth, P.E.	Deputy Executive Director American Society of Civil Engineers
Joseph Suheyda, PhD	Emeritus Engineering Professor, L.S.U.
Robert Verchick	Professor of Loyola University Law School
George Dunlop	Principal Deputy Assistant Secretary (Civil Works) U.S. Army
Maj. Gen. Don T. Riley	Director of Civil Works, U.S. Army Corps of Engineers
Anu Mittal	Director, Natural Resources and Environment Division, U.S. General Accountability Office
Windell Curole	General Manager, South Lafourche Levee District
Peter Brink	Sr. Vice President for Programs, The National Trust for Historic Preservation
Scott Faber	Water Resources Specialist, Environmental Defense
Steve Ellis	Vice President, Taxpayers for Common Cause
Nils Diaz	Chairman, Nuclear Regulatory Commission

Sandy Baruah	Acting Assistant Secretary of Commerce, Economic Development
Dale Hall	Director, U.S. Fish and Wildlife Service
David Winstead	Commissioner Public Buildings Service of the General Service Administration
Ray Nagin	Mayor of New Orleans
Kim Dunn Capital	Deep South Center for Environmental Justice
William Hines	Director, Greater New Orleans, Inc.
William Capka	Acting Administrator Federal Highway Administration
Lt. Gen. Carl A. Strock	Commanding General, U.S. Army Corps of Engineers
Marcus Peacock	Deputy Administrator, U.S. EPA
John Paul Woodley	Assistant Secretary for Civil Works, Department of Army
David Radcliff	President and CEO of Southern Company
Stanley S. Litow	Vice President, Corporate Community Relations, IBM Corporation
Kevin T. Regan	Regional Vice President, Starwood Hotels
Jason F. Jackson	Director of Business Continuity, Global Security Division, Wal-Mart Stores, Inc.
Max Mayfield	Director Tropical Prediction Center/National Hurricane Center, National Weather Service, National Ocean and Atmospheric Administration, U.S. Dept. of Commerce
Marc L. Levitan	Director of L.S.U. Hurricane Center
Carl P. Siess, Jr.	Associate Professor of Civil Engineering, L.S.U.

Dr. Keith G. Blackwell	Coastal Weather Research Center, University of South Alabama
Patrick C. Roberts	President of the Florida Association of Broadcasters
Hon. Pete Wilson	Former Governor of California
Hon. Patricia Owens	Former Mayor, Grand Forks, North Dakota
Hon Marc Morial	President and CEO of National Urban League and Former Mayor of New Orleans
Iain Logan	Operations Liason, International Federation of Red
Marty Bahamonde	Regional Director, External Affairs, Region One, Federal Emergency Management Agency, U.S. Department of Homeland Security
Dr. Ivor van Heerden, PhD	Leader, Team Louisiana, Forensic Data Gathering Task Force on Levee Failures in New Orleans
Dr. Paul Mlaker, PhD, P.E.	Senior Research Scientist, U.S. Army Corps of Engineers Research and Development Center
Dr. Raymond B. Sneed, PhD	Team Leader, National Science Foundation Investigative Team on Levee Failures in New Orleans
Dr. Peter Nicholson, PhD	Team Leader, Levee Assessment Team, American Society of Civil Engineers
Rear Admiral Robert F. Duncan	Commander, Eighth Coast Guard District, U.S. Coast Guard
Captain Bruce C. Jones	Commanding Officer Coast Guard Air Station New Orleans, U.S. Coast Guard
Captain Frank M. Paskewich	Commander, Coast Guard Sector New Orleans, U.S. Coast Guard
Dr. Denise J. Reed	Professor, Geology Department, University of New Orleans
Dr. William Walker, PhD	Executive Director, Mississippi Department of Marine Resources

Sidney Coffee	Executive Assistant to Hon. Kathleen B. Blanco, Governor of Louisiana
Hon. Kathleen B. Blanco	Governor of Louisiana
Benjamin Grumbles	Assistant Administrator, Office of Water, U.S. EPA
John Felmy	Chief Economist, American Petroleum Institute
Gary P. LaGrange	Port of New Orleans
J. Stephen Perry	President and CEO New Orleans Metropolitan Convention and Visitors Bureau
W. Paul Farmer	Executive Director and CEO of American Planning Association
Mtumishi St. Julien	Executive Director, Finance Authority of New Orleans
Wynton Marsalis	Musical Artist, New Orleans Native
Hon. Mitchell J. Landrieu	Lieutenant Governor of Louisiana
Dr. Roy K. Dokka, PhD	Department of Engineering, L.S.U.
Raymond Butler	Executive Director, Gulf Coast Intercoastal Canal Association
Erik D. Olson Mayor Bill Rutledge	Sr. Attorney, Natural Resources Defense Council National Rural Water Association
Mayor Eddie Favre	National Rural Water Association
Dr. Stephen E. Ragone, PhD	Director of Science and Technology, National Ground Water Association
Hon. Karen K. Gautreaux	Deputy Secretary, Louisiana Department of Environmental Quality
Dr. Henry Falk, M.D., M.P.H.	Director, Coordinating Center for Environmental Health and Injury Prevention, Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry, U.S. Department of Health and Human Services

Michael Voisin

Chairman, Louisiana Oyster Task Force, Owner of
Motivatit Seafood, Inc.

Jerome Ringo

Chairman of Board of National Wildlife Federation

VITA

Charles McCowan III is a resident of Baton Rouge, Louisiana. Charles earned his Bachelor of Science degree in political science in 1986 from Louisiana State University and his Juris Doctorate, *cum laude*, from Tulane University School of Law in 1989. Charles is a practicing attorney and has been a member of the Louisiana State Bar Association and American Bar Association since 1989. Charles is licensed to practice law before all Louisiana State Courts as well as the United States Supreme Court, the United States Fifth Circuit Court of Appeal, the United States District Court for the Eastern District of Louisiana, the United States District Court for the Middle District of Louisiana and the United States District Court for the Western District of Louisiana.

Charles is a partner in the law firm of Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman, L.L.P. where he has maintained an active law practice in the area of oil and gas and environmental law since 1989. Charles is the recipient of the New Orleans Chapter of the Federal Bar Association's 2009 Camille Gravel Award for pro bono public service.