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The Louisiana Judiciary: In the Wake of Destruction

Greg G. Guidry*

INTRODUCTION

Hurricane Katrina stands as the most destructive natural disaster in United States history.¹ Due to the catastrophic damage inflicted throughout the coastal regions of Louisiana, Mississippi, and Alabama, it was the costliest² and most devastating Atlantic hurricane in recorded times.³ Only Hurricane Rita surpassed it as the most intense hurricane to enter the Gulf of Mexico.⁴ The combination of these two storms wreaked havoc from the eastern border of Texas to the panhandle of Florida, with the most destructive impact on the state of Louisiana.

With over one million evacuees⁵ and more than 200,000 homes destroyed in the New Orleans metropolitan area alone,⁶ the stories associated with Hurricanes Katrina and Rita are too voluminous to record. The impact and recovery differ for each person, family, business, organization, and community affected. Over the intervening years, innumerable events have been recounted

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1. See Joseph B. Treaster & N.R. Kleinfield, *New Orleans Is Now Off Limits; Pentagon Joins in Relief Effort*, N.Y. TIMES, Aug. 31, 2005, at A1 (quoting Peter Teahen, the national spokesman for the American Red Cross: "We are looking now at a disaster above any magnitude that we've seen in the United States").

2. Joby Warrick & Michael Grunwald, *Investigators Link Levee Failures to Design Flaws: Three Teams of Engineers Find Weakened Soil, Navigation Canal Contributed to La. Collapses*, WASH. POST, Oct. 24, 2005, at A1.

3. Hurricane Katrina's pressure measurement made it the fourth most intense Atlantic hurricane on record at the time. RICHARD D. KNABB, JAMIE R. RHOME & DANIEL P. BROWN, NAT'L HURRICANE CTR., TROPICAL CYCLONE REPORT: HURRICANE KATRINA 23-30 AUGUST 2005, at 6 (2006), http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf [hereinafter NHC CYCLONE REPORT: HURRICANE KATRINA]. It was also the strongest hurricane ever recorded in the Gulf of Mexico at the time. *Id.* at 7.

4. RICHARD D. KNABB, DANIEL P. BROWN & JAMIE R. RHOME, NAT'L HURRICANE CTR., TROPICAL CYCLONE REPORT: HURRICANE RITA 18-26 SEPTEMBER 2005 (2006), http://nhc.noaa.gov/pdf/TCR-AL182005_Rita.pdf [hereinafter NHC CYCLONE REPORT: HURRICANE RITA].

5. NHC CYCLONE REPORT: HURRICANE KATRINA, *supra* note 3, at 13.

6. BRIAN W. CASHELL & MARC LABONTE, GOV'T & FIN. DIV., CONGRESSIONAL RESEARCH SERV., THE MACROECONOMIC EFFECTS OF HURRICANE KATRINA 2 (2005), <http://fpc.state.gov/documents/organization/53572.pdf>.

throughout the media, while the response and recovery has been analyzed by government, non-profit and private institutions, and commentators from many professions.

The literature addressing Louisiana's court system generally focuses on the deleterious losses that paralyzed the legal community as a whole. Analysis of the judiciary's response to the two hurricanes primarily focuses on the sufficiency of preparations for efficient continuity of operations and disaster recovery. The judicial branch has been closely scrutinized for the role it played in the criminal justice system's post-disaster contingency planning and ability to adapt to adversity. The commentary sheds light on the chaos surrounding the plight of the criminally accused, who were temporarily unable to access the courts amidst the collapse of the public defender system.⁷

The purpose of this Article is to offer insight into the intimate details of the state courts' response when faced with the near collapse of the legal system's infrastructure. To be sure, the wind and flood damage resulted in many foreseeable challenges for the judicial system. Yet, the judiciary, like the other branches of state government, grappled with a vast array of post-storm issues that were not anticipated even with the recovery planning put in place after the horrific events of September 11, 2001.⁸ These post-storm issues include the magnitude of catastrophic destruction, the long-term displacement of the entire New Orleans population, the paralysis of neighboring cities and states with the mandatory evacuation of coastal communities, and the scope of inadequate governmental response. The judiciary navigated through uncharted territory in promptly addressing the logistical mayhem associated with the mass closure of courts and the displacement of Louisiana jurists.⁹ The Louisiana Supreme Court, in its capacity as administrator of justice, with the collaborative efforts of the

7. JUDICIAL ADMINISTRATOR'S OFFICE, THE SUPREME COURT OF LOUISIANA, JUSTICE AT WORK: THE STATE OF JUDICIAL PERFORMANCE IN LOUISIANA 2005–2006, at 9 (2006), http://www.lasc.org/press_room/annual_reports/reports/2005_06_jp.pdf [hereinafter JUDICIAL PERFORMANCE 2005–2006].

8. Following the events of September 11, 2001, the Louisiana courts implemented crisis preparedness procedures and training to ensure minimal disruptions of regular judicial operations and functions in the event of an emergency or disaster. Interview with John Olivier, Clerk of Court, Supreme Court of Louisiana, in New Orleans, La. (Feb. 24, 2010) [hereinafter Olivier Interview]. This included, in part, creation of an off-site computer data back-up center, implementation of an emergency communication alert system, and securing alternative work sites for staff that afforded full information and communication operations. *Id.*

9. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 9. Fifty-two percent of active Louisiana lawyers had offices in hurricane-impacted areas. *Id.*

executive and legislative branches of state government, became proficient in addressing separation of powers issues barring access to the courts in the wake of the disasters. These measures represented an attempt to ensure the full constitutional protections afforded to Louisiana citizens, including the criminally accused.

In the five years since the storms, there has been no comprehensive study documenting the supreme court's establishment of a continuity of operations, recovery measures, and the pressing issues facing the Louisiana judiciary as it prepares for the future. Hopefully, this Article will prove to be beneficial in that respect. More importantly, it is written with the hope that it will educate judicially related entities in preparing and coping with future disasters.

I. HISTORICAL BACKGROUND

A. New Orleans: The Center of the Louisiana Judiciary

The Louisiana Supreme Court is the highest state court in Louisiana and is located in the city of New Orleans. It includes seven justices who are elected for ten-year terms in partisan elections.¹⁰ The court has its legal roots in the eighteenth century French and Spanish governments that occupied the territory later acquired by the United States pursuant to the Louisiana Purchase in 1803.¹¹ The massive white marble and granite Louisiana Supreme Court building, completed in 1910, is located down the street from the historical sites that served as the headquarters of the earliest French and Spanish rulers. In addition to the supreme court, the building serves as home to the Louisiana Fourth Circuit Court of Appeal, the Louisiana Judicial Administrator's Office, the Louisiana Supreme Court Museum, the Louisiana State Law Library, and satellite offices for a small cluster of state court-related agencies.¹²

New Orleans is located at the mouth of the Mississippi River, which forms part of the largest river system on the North American continent.¹³ Being below sea level, the city has little elevation to protect from flooding, a life-threatening issue for the hurricane-prone area.¹⁴ In the late 1800s, aggressive measures were taken to

10. LA. CONST. art. V, § 3.

11. See JOE GRAY TAYLOR, *LOUISIANA, A HISTORY* 48–49 (1984).

12. Exec. Order No. KBB 04-26, La. Reg. 1947 (Aug. 20, 2004).

13. National Park Service, Mississippi National River and Recreation Area: Mississippi River Facts, <http://www.nps.gov/miss/riverfacts.htm> (last visited Mar. 31, 2010).

14. CHRISTINE F. ANDERSEN ET AL., *AM. SOC'Y OF CIVIL ENG'RS HURRICANE KATRINA EXTERNAL REVIEW PANEL, NEW ORLEANS HURRICANE PROTECTION*

reduce the city's flooding to accommodate the growing population that relocated to the bustling port along the river.¹⁵ While levees and drainage canals had already been built in many areas, land was further made available through the construction of complex wooden screw pumps, many of which were still in operation when Hurricane Katrina made landfall.¹⁶ The goal was to pump flood waters into canals, which would channel the water into Lake Pontchartrain, an outlet to the Gulf of Mexico, and surrounding swamps. These protective measures spared the city from flooding on innumerable occasions through the decades.¹⁷ However, the protection faltered in the summer of 2005 with Hurricanes Katrina and Rita. Storm surge and poorly constructed levees that breached in several locations¹⁸ quickly turned New Orleans into a soup bowl for water pouring in from Lake Pontchartrain and the Mississippi River.¹⁹ The toxic water sat for days and, in many areas, weeks until it could be pumped out.

B. Hurricane Katrina

Residents along the Gulf Coast annually adjust their daily lives in preparation for the threat of storms and hurricanes during hurricane season, the months of June through October. The year 2005 was no different. Hurricane Katrina formed as a tropical depression over the southeastern part of the Bahamas on Friday, August 23, 2005.²⁰ Although it was quickly upgraded to a tropical

SYSTEM: WHAT WENT WRONG AND WHY 8 (2007), <http://www.asce.org/files/pdf/ERPreport.pdf> [hereinafter CIVIL ENG'RS LEVEE REPORT] ("Large portions of Orleans, St. Bernard, and Jefferson parishes are currently below sea level and continue to sink. New Orleans is built on thousands of feet of soft sand, silt, and clay. Subsidence, or settling of the ground surface, occurs naturally due to the consolidation and oxidation of organic soils (called 'marsh' in New Orleans) and local groundwater pumping. In the past, flooding and deposition of sediments from the Mississippi River counterbalanced the natural subsidence, leaving southeast Louisiana at or above sea level.").

15. See generally Greg O'Brien, *Making the Mississippi River Over Again: The Development of River Control in Mississippi*, MISSISSIPPI HISTORY NOW, Mar. 2002, <http://mshistory.k12.ms.us/index.php?id=94>.

16. John McQuaid, *New Orleanian's Design Revolutionized the Netherlands*, THE TIMES-PICAYUNE (New Orleans), Nov. 13, 2005, <http://www.nola.com/printer/printer.ssf/?speced/ruinandrecovery/articles/wood.html>.

17. *Id.*

18. See generally CIVIL ENG'RS LEVEES REPORT, *supra* note 14; see also Warrick & Grunwald, *supra* note 2.

19. Treaster & Kleinfeld, *supra* note 1.

20. NOAA Satellite and Information Service, Climate of 2005 Summary of Hurricane Katrina, <http://lwf.ncdc.noaa.gov/oa/climate/research/2005/katrina.html>

depression,²¹ it was not initially considered a serious threat to Louisiana. It weakened as it hit Florida on August 25, 2005, as a category one storm.²² The following day, the hurricane entered the Gulf of Mexico, where it quickly reorganized and intensified.²³ State and local officials conducted a joint press conference asking residents to voluntarily leave the city based on predictions of tumultuous winds and severe flooding.²⁴ Shortly thereafter, Max Mayfield of the National Hurricane Center (NHC) contacted the mayor of New Orleans to warn him of the potential impending disasters.²⁵ It was only the second occasion that the director of the NHC called a public leader for such a purpose.²⁶ A mandatory evacuation of the New Orleans area was called on Sunday, August 28, 2005,²⁷ after Hurricane Katrina had become a monstrous category five hurricane with wind speeds in excess of 170 miles per hour.²⁸ President George W. Bush issued emergency disaster declarations for counties and parishes throughout the Gulf Coast states, which shut down or reduced operations in various oil refineries and closed several major airports.²⁹ The presidential

(last visited Mar. 31, 2010) [hereinafter NOAA Katrina Climate Summary]; *Oversight Hearing on NOAA Hurricane Forecasting: Hearing Before the H. Select Committee for Hurricane Katrina 2* (2005) (statement of Max Mayfield, Director, Tropical Prediction Center–National Hurricane Center) [hereinafter Mayfield Statement].

21. NOAA Katrina Climate Summary, *supra* note 20.

22. *Id.*

23. *Id.*

24. LA. OFFICE OF THE GOVERNOR, OVERVIEW OF GOVERNOR KATHLEEN BABINEAUX BLANCO'S ACTIONS IN PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA (2005), <http://www.nola.com/katrina/viewhtml.ssf/?katrina/blancodocs/govsresponse.html>.

25. Mayfield Statement, *supra* note 20, at 5; *see also Katrina Heads for New Orleans*, FOX NEWS, Aug. 29, 2005, <http://foxnews.com/story/0,2933,167270,00.html> (“It’s capable of causing catastrophic damage,” Mayfield said. “Even well-built structures will have tremendous damage. Of course, what we’re really worried about is the loss of lives. New Orleans may never be the same. . . . All indications are that this is absolutely worst-case scenario,” Ivor van Heerden, deputy director of the Louisiana State University Hurricane Center, said . . .”).

26. ANDERSON COOPER, DISPATCHES FROM THE EDGE: A MEMOIR OF WAR, DISASTERS AND SURVIVAL 124 (2006).

27. Joseph Treaster & Abby Goodnough, *Powerful Storm Threatens Havoc Along Gulf Coast*, N.Y. TIMES, Aug. 28, 2005, at A1 (“Louisiana state officials said at one point during the evacuation of New Orleans on Sunday, more than 18,000 cars an hour were leaving the city.”).

28. NOAA Katrina Climate Summary, *supra* note 20.

29. Press Release, White House, Statement on Federal Emergency Assistance for Louisiana (Aug. 27, 2005), <http://georgewbush-whitehouse>.

orders did not include the coastal parishes of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, and Terrebonne.³⁰

Hurricane Katrina made landfall in Louisiana as a category three storm with sustained winds of approximately 125 miles per hour near Plaquemines Parish,³¹ and 100 mile per hour gusts in Orleans Parish.³² The water surge created a wall, estimated in some locations along the Gulf Coast to be as high as thirty feet, that obliterated everything in its path.³³ The storm moved northward inflicting heavy damage to central Mississippi.³⁴ At the end of the day, the intensity of the storm had taken an insurmountable toll on the coastal areas of south Louisiana. Storm surge and wind annihilated the lower half of Plaquemines Parish,³⁵ and the storm surge from the Mississippi River Gulf Outlet (MRGO)³⁶ overtopped the levees in St. Bernard Parish,³⁷ sending a deluge of water as high as rooftops that festered for weeks.³⁸ In Jefferson Parish, drainage pump operators were evacuated, resulting in widespread flooding.³⁹

archives.gov/news/releases/2005/08/20050827-1.html [hereinafter White House Press Release]; *see also* Treaster & Goodnough, *supra* note 27.

30. White House Press Release, *supra* note 29.

31. National Ocean & Atmospheric Administration, Hurricane Katrina-Most Destructive Hurricane Ever to Strike the U.S., <http://www.katrina.noaa.gov> (last visited Mar. 31, 2010).

32. NOAA Katrina Climate Summary, *supra* note 20.

33. *Id.* at 6.

34. *Id.* at 5.

35. Treaster & Kleinfeld, *supra* note 1.

36. The MRGO is a seventy-six-mile long outlet completed in 1965 as a navigation shortcut to the Port of New Orleans. Warrick & Grunwald, *supra* note 2. At the time of Katrina's landfall, it was virtually never used. The presence of the outlet created a funnel that accelerated and enlarged the storm surge, which impacted levees in the New Orleans area. *Id.*

37. Brian Thevenot & Manuel Torres, *Flooding Wipes Out Two Communities*, THE TIMES-PICAYUNE (New Orleans), Aug. 30, 2006, at A1. ("The scene wouldn't change . . . deep into St. Bernard Parish, where water smothered two-story houses, people and animals.")

38. Laura Parker & Alan Levin, *City's Coming Back, but not to Normal Life*, USA TODAY, Sept. 16, 2005, at A1 ("The Army Corps of Engineers said that, barring rainfall, the city will be drained by Oct. 2.")

39. *See* Kate Moran, *Jefferson Building Shelters for Operators*, THE TIMES-PICAYUNE (New Orleans), May 28, 2006, at HURRICANE PREPARATION 5 ("If faulty levees and flood walls doomed much of New Orleans and St. Bernard Parish to flooding during Katrina, it has become the accepted wisdom that neighborhoods in Jefferson Parish succumbed to water not because of failing infrastructure but because of the evacuation of 200 public employees who were supposed to keep the drainage pumps working.")

In neighboring Orleans Parish, city leaders and residents were initially relieved that the storm's perilous east side skimmed past them.⁴⁰ The sigh of relief was short lived. The next day, several breaks in the surrounding levee system were discovered.⁴¹ Eighty percent of the city was submerged, with water running as deep as twenty feet.⁴² From that day, any sense of normalcy vanished for affected Louisiana residents for months, or years in some cases. Thousands who did not heed evacuation warnings were left stranded in the heavily damaged Louisiana Superdome,⁴³ the New Orleans Convention Center, and, worse, on rooftops surrounded by the waters that engulfed the city.⁴⁴ Helpless residents were rescued by helicopters and boats of all sizes.⁴⁵ Throughout the Gulf Coast, federal and state military and police units were called in to restore order. Over 200,000 homes, mostly in New Orleans and surrounding areas, were destroyed.⁴⁶ Water, food, gasoline, and electricity, the most basic of necessities, became invaluable commodities. Urgent pleas for help were heard world-wide.

C. Hurricane Rita

Less than one month later, the coastal communities of Louisiana suffered a second natural disaster, the strongest hurricane to strike

40. Treaster & Kleinfield, *supra* note 1.

41. *Id.*; see also CIVIL ENG'RS LEVEE REPORT, *supra* note 14, at 1 (Katrina's storm surge caused over fifty different levee breaches in greater New Orleans, submerging eighty-percent the city, and two-thirds of the flooding was caused by the multiple failures of the city's flood walls).

42. Treaster & Kleinfield, *supra* note 1.

43. See Anne Rochell Konigsmark & Mimi Hall, *New Orleans Lacks Emergency Shelter as Storm Season Nears*, USA TODAY, Mar. 21, 2006, at 2A ("During Hurricane Katrina, which hit New Orleans on Aug. 29, the Superdome became a nightmare for 20,000 residents who rode out the storm there. The roof peeled off and it rained inside; the building lost power and it became dark and hot; toilets stopped working; and food and water became scarce.").

44. Bruce Nolan, *Catastrophic: Storm Surge Swamps 9th Ward, St. Bernard, Lakeview Levee Breach Threatens to Inundate City*, THE TIMES-PICAYUNE (New Orleans), Aug. 31, 2005, at A1 ("[P]eople scrambled into their attics or atop their roofs, pleading for help from the few passers.").

45. See, e.g., U.S. GOV'T ACCOUNTABILITY OFFICE, COAST GUARD: OBSERVATIONS ON THE PREPARATION, RESPONSE, AND RECOVERY MISSIONS RELATED TO HURRICANE KATRINA 1 (2006), <http://gao.gov/new.items/d06903.pdf> ("Of the estimated 60,000 people left stranded by Hurricane Katrina, over 33,500 were saved by the Coast Guard.").

46. Charles Herman, *Katrina's Economic Impact: One Year Later*, ABC NEWS/MONEY, Aug. 25, 2006, <http://abc.news.go.com/Business/HurricaneKatrina/story?id=2348619&page=1>.

the southwest area of the state in four decades.⁴⁷ Hurricane Rita formed along the Turks and Caicos Islands.⁴⁸ On September 21, 2005, sustained winds were recorded in excess of 175 miles per hour.⁴⁹ It made landfall three days later as a category three hurricane between Sabine Pass, Texas, and Johnson Bayou, Louisiana.⁵⁰ With the horrific images of Hurricane Katrina fresh in the public's mind, most residents living in surrounding communities heeded evacuation orders.⁵¹ Nonetheless, there was extensive physical damage to southwest Louisiana. Virtually all of Cameron Parish sustained heavy damage and destruction.⁵² There was extensive flooding in Lake Charles, as well as throughout Calcasieu and Vermilion Parishes.⁵³ Almost every levee in Terrebonne Parish was breached or overtopped, resulting in widespread flooding.⁵⁴ The torrential wind and rain caused two levees in Orleans Parish to refracture, causing renewed flooding in areas of Orleans and St. Bernard Parishes.⁵⁵

D. *The Aftermath of the Destruction*

Over 2,000 lives were lost as a result of the successive storms.⁵⁶ The magnitude of the physical destruction and resources needed for

47. National Weather Service Weather Forecast Office Lake Charles, LA, Hurricane Rita, http://www.srh.noaa.gov/lch/?n=rita_main (last visited Mar. 31, 2010) [hereinafter NWS Lake Charles Rita Report] ("Rita was the strongest hurricane to strike Southeast Texas and Southwest Louisiana since Hurricane Audrey in June, 1957.")

48. NHC CYCLONE REPORT: HURRICANE RITA, *supra* note 4, at 2.

49. NOAA Satellite and Information Service, Climate of 2005 Summary of Hurricane Rita, <http://lwf.ncdc.noaa.gov/oa/climate/research/2005/rita.html> (last visited Mar. 31, 2010).

50. NHC CYCLONE REPORT: HURRICANE RITA, *supra* note 4, at 2.

51. *See id.* at 8.

52. *Id.*

53. *Id.*

54. *Id.* at 7.

55. NAT'L WEATHER SERV. NEW ORLEANS/BATON ROUGE WEATHER FORECAST OFFICE, HURRICANE RITA POST-TROPICAL CYCLONE REPORT 3 (2005), http://www.srh.noaa.gov/lix?n=psh_rita.

56. As to the deaths related to Hurricane Katrina, see NHC CYCLONE REPORT HURRICANE KATRINA, *supra* note 3, at 11 ("The total number of fatalities known, as of this writing, to be either directly or indirectly related to Katrina is 1833, based on reports to date from state and local officials in five states: 1577 fatalities in Louisiana, 238 in Mississippi, 14 in Florida, 2 in Georgia, and 2 in Alabama. . . . Where Katrina ranks among the deadliest hurricanes on record in the United States is somewhat uncertain due to the unknown number of fatalities caused directly by this hurricane and by some others in the past As a result, Katrina ranks fourth or fifth on the list of the deadliest hurricanes on record in the United States."); Editorial, *Our Opinions:*

the recovery were incomprehensible. The two hurricanes combined completely destroyed an area the size of Great Britain,⁵⁷ with damage estimates in the billions of dollars. The toll on ill-equipped local and state governments resulted in the loss of the most basic of municipal services. Recovery was uncertain.

A number of Louisiana courts were profoundly damaged as a result of Hurricanes Katrina and Rita. Following the first storm, twenty courthouses in southeastern Louisiana were damaged or rendered inoperable, including the supreme court building, which was closed due to the mandatory evacuation of the city and the loss of basic services, including water and electricity.⁵⁸ The parishes of Orleans, Plaquemines, St. Bernard, and St. Tammany were hardest hit.⁵⁹ Six additional courts in the parishes of Cameron, Vermilion, Calcasieu, and Jefferson Davis were affected or heavily damaged by Hurricane Rita.⁶⁰ The district court facilities in Cameron, Orleans, Plaquemines, and St. Bernard Parishes suffered extensive physical damage.⁶¹ The Plaquemines Parish court facility was unable to be salvaged.⁶²

The damage to courthouses generally involved the destruction of their contents, including, in part, court records and physical evidence. The hardest hit municipalities sustained extensive losses

A Stormy Century, THE TIMES-PICAYUNE (New Orleans), Jan. 30, 2010, at D4 (“Hurricane Katrina made landfall as a Category 3 storm and caused . . . 1,833 deaths.”).

As to the deaths related to Hurricane Rita, see NHC CYCLONE REPORT: HURRICANE RITA, *supra* note 4, at 8 (“Seven fatalities have been directly attributed to the forces of Rita”; five casualties in Texas, and one casualty in Louisiana, Mississippi, and Florida, respectively); NWS Lake Charles Rita Report, *supra* note 47 (“Hurricane Rita caused seven direct fatalities At least 55 indirect fatalities were associated with the evacuation and aftermath . . .”).

57. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 4.

58. *Id.* at 3.

59. *Id.*

60. *Id.* at 8.

61. *Id.* at 10, 20, 21.

62. In 2001, the 112-year-old Plaquemines Parish courthouse, located in Point-a-la-Hache, Louisiana, was destroyed by fire. Louisiana State Facts and Information, Louisiana Burned Courthouses, <http://mylouisianagenealogy.com/index/html> (last visited Mar. 31, 2010). Thereafter, court proceedings were conducted at a community center, which was destroyed in Hurricane Katrina. Interview with Dorothy Lundin, Clerk of Court, Twenty-fifth Judicial District Court for the Parish of Plaquemines, in New Orleans, La. (Apr. 27, 2010). The Federal Emergency Management Agency installed seven mobile units to serve as temporary court facilities until the courthouse destroyed by the fire is redeveloped. *Id.*; see also Federal Emergency Management Agency, Public Assistance Projects in Plaquemines Parish Sept. 15, 2007, <http://www.fema.gov/xls/ehp/noma/prject/plaquemines091507.xls> (last visited Apr. 27, 2010).

to their court-related agencies. For example, in addition to the damage to its civil and criminal court complexes, Orleans Parish suffered extensive flood-related losses to its police headquarters, criminal evidence rooms, jail, district attorney's office, public defender's office, and clerk of court offices.⁶³ The parish governments of Cameron, St. Bernard, and Plaquemines Parishes sustained similar infrastructure losses.⁶⁴ Many court-related agencies were essentially shuttered closed due to the absence of a sustainable tax base to finance the operating costs.⁶⁵ Those burdened with the task of reestablishing a continuity of operations and instituting disaster recovery, namely judges, parish officials, and their support staff, were indefinitely displaced due to the loss of their homes and personal belongings, making the situation even more dire.

In north Louisiana, many parishes that did not sustain physical damage were affected by the mass temporary and permanent relocation of displaced individuals.⁶⁶ The inundation of evacuees pressed governmental services, including law enforcement, to their limits.

II. THE LOUISIANA SUPREME COURT'S IMMEDIATE RESPONSE

Immediately following Hurricane Katrina's landfall, it was obvious that the supreme court would not be returning to its New Orleans headquarters for an extended period of time. Louisiana law provides that the chief justice of the supreme court is the chief administrative officer of the state's judicial system.⁶⁷ In the summer of 2005, the supreme court's chief justice was New

63. Brandon L. Garrett & Tania Tetlow, *Criminal Justice Collapse: The Constitution after Hurricane Katrina*, 56 DUKE L.J. 127, 146 (2006).

64. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 44.

65. See, e.g., Hon. Sarah S. Vance, *Justice After Disaster--What Hurricane Katrina Did to the Justice System in New Orleans*, 51 HOW. L.J. 621, 628, 631–33 (2008) ("The staff of the [Orleans Parish] District Attorney's office was decimated because the office lost funding when the city's tax base collapsed. . . . Although Hurricane Katrina dealt a staggering blow to the District Attorney's Office, it left the New Orleans Public Defender's office even more crippled. . . . About 75% of this budget was financed through traffic court fines. After the storm, with a reduced population and reduced police force to pursue traffic violations, money for the defender system effectively dried up." (citations omitted)).

66. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 44.

67. LA. CONST. art. V, § 6 ("The judge oldest in point of service on the supreme court shall be chief justice. He is the chief administrative officer of the judicial system of the state, subject to rules adopted by the court.").

Orleans native Pascal F. Calogero, Jr., now retired.⁶⁸ Chief Justice Calogero instituted efforts in conjunction with the court's six associate justices and critical staffers to ensure a continuity of judicial operations and commencement of disaster recovery measures.⁶⁹ The justices identified the factors warranting immediate consideration: leadership, temporary court headquarters, the safety and welfare of judicial employees, communication and technological infrastructure, legal and administrative issues stemming from the non-functioning courts and the mass displacement of the legal community, and disaster recovery assistance offered by the Federal Emergency Management Agency (FEMA).⁷⁰

A. Leadership

The National Center for State Courts suggests that judicial leadership “set[s] the tone for effective emergency management” following a disaster.⁷¹ Chief Justice Calogero had initially evacuated to Houston, like thousands of other Louisiana residents, but returned shortly after the storm upon securing an apartment for his family outside of Baton Rouge. Because of the amount of time and concentrated effort that would be required, and the fact that he was dealing with the loss of personal property and displacement of family members, Chief Justice Calogero appointed then Justice Catherine “Kitty” Kimball, the court's current chief justice,⁷² to coordinate the judiciary's immediate recovery efforts.⁷³ Justice Kimball acted as judiciary liaison as governmental officials collaboratively identified problems and crafted solutions in an effort to restore law and order.⁷⁴ Justice Kimball worked tirelessly with federal and state criminal justice agencies to ensure that all possible measures were taken to protect the constitutional

68. Chief Justice Calogero was elected to the supreme court in 1972. He served as the court's chief justice from 1990 through December 2008. *About This Issue*, LA. B.J., Dec. 2008/Jan. 2009, at 248. He served as the court's chief justice from 1990 through December 2008. *Id.* at 247.

69. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 6.

70. *Id.* at 6–7.

71. National Center for State Courts, Emergency Management for Courts, http://www.ncsconline.org/Projects_Initiatives/BPI/EmergencyMngmnt.htm#ensure (last visited Mar. 31, 2010).

72. Justice Kimball was elected to the supreme court in 1992 and commenced her tenure as chief justice in January 2009. Louisiana Supreme Court, Chief Justice Catherine D. Kimball, <http://www.lasc.org/justices/kimball.asp> (last visited Apr. 8, 2010).

73. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 6.

74. *Id.* at 6, 8, 10.

entitlements afforded to each criminal defendant.⁷⁵ She directly supervised the judiciary's complex, long-term dealings with FEMA.⁷⁶

Justice Kimball met daily with Chief Justice Calogero, the supreme court clerk of court, the judicial administrator, key staffers, and the other justices, when available.⁷⁷ She diligently handled all aspects of her storm-imposed management position with the help of a handful of staffers. Justice Kimball's role as the judiciary's hurricane recovery leader is ongoing as of this writing.⁷⁸

B. Temporary Court Accommodations

The damage sustained to the supreme court building as a result of the hurricanes did not render the complex inoperable. Its closure was a consequence of the massive destruction in the city, which resulted in the rigid enforcement of the mandatory evacuation order. On the day following Hurricane Katrina's landfall, the supreme court had already investigated the feasibility of securing modular trailers to temporarily house judicial offices.⁷⁹ The justices were cognizant that the court would be unable to sustain a continuity of operations in the absence of essential court personnel.⁸⁰ Trailer placement was contingent on locating a site in

75. *Id.* at 10.

76. *Id.* at 6.

77. *Id.* at 8.

78. For commentary of Justice Kimball's personal perspective on the judiciary's response following the storms, see Molly McDonough, *Gulf Coast Courts Rode Out the Storm; Now They're Struggling to Come Back: Picking Up the Pieces*, A.B.A. J., Feb. 2006, at 41 ("Even though all my life I had heard that a hurricane would come and wipe out New Orleans, no one understood the magnitude of this disaster . . . , says Catherine D. Kimball, [then] an associate justice of the Louisiana Supreme Court. Kimball has an apartment near New Orleans, where her court is based. But her permanent chambers are in Baton Rouge, at the state's First Circuit Court of Appeal. It was from there, in the hours and days after the storm, that she made it her mission to find judges from every affected court, keep them connected and get the courts operating as quickly as possible. 'From the very first day, these courts wanted to go back to operating,' she says. 'There was a desire for normalcy that was just overwhelming.'").

79. Olivier Interview, *supra* note 8.

80. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 8; see also Thomas A. Birkland & Carrie A. Schneider, *Emergency Management in the Courts: Trends After September 11 and Hurricane Katrina*, 28 JUST. SYS. J. 20, 27 (2007) ("[C]ourt leadership inspired all members of the court community to work together to reopen the courts. Court managers are also important leaders. In the Louisiana cases, the clerks of court and their staffs took major leadership roles in a wide range of activities. These ranged from working with the IT staff

close proximity to available housing and related amenities, such as schools, for displaced court employees and their families.⁸¹ Within a matter of hours of the subject being raised, various sites were considered, some even inspected,⁸² including England Air Park located in Alexandria, Louisiana.

Less than forty-eight hours after Hurricane Katrina struck, the court set up interim offices at the Louisiana First Circuit Court of Appeal courthouse.⁸³ The building offered an adequate amount of space and court-related necessities to resume operations. Justice Kimball already had an existing office in the courthouse,⁸⁴ which was conveniently located near the Louisiana State Capitol Building and Annex, allowing easy accessibility to the offices of the governor and legislature.⁸⁵

Several of the displaced justices, including Chief Justice Calogero, had established offices at the first circuit less than a week after Hurricane Katrina's landfall.⁸⁶ The convenience of communal space afforded the necessary interaction between the justices and key staff. While engaging in recovery efforts, the justices, as early as two weeks after the storm, began to meet weekly in Baton Rouge to handle pending emergency administrative and writ matters.⁸⁷ However, the court's temporary move to Baton Rouge was problematic for court personnel. It

to ensure that critical computers were recovered from buildings to ensuring that payroll systems were in place and finding all court personnel. These challenges were not as severe after September 11, because the attacks did not directly affect many residential areas, nor did they as severely affect telecommunications and utilities as did Hurricane Katrina.”).

81. Olivier Interview, *supra* note 8; see also Birkland & Schneider, *supra* note 80, at 26 (“The physical damage done by the storm was compounded by the effect of devastation at this scale on New Orleans as a community. Many people had been relocated, or had left New Orleans with no clear plan for returning. The storm therefore presented a greater challenge than most court leaders had anticipated. For example, ‘For both state and federal courts, the surprising discovery was that the biggest obstacle to gearing up was not court infrastructure as much as finding staff housing and a place to send their children to school.’”).

82. Olivier Interview, *supra* note 8.

83. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 6.

84. JUDICIAL COUNCIL OF THE SUPREME COURT, SUPREME COURT OF LOUISIANA: ANNUAL REPORT 2 (2005), http://www.lasc.org/press_room/annual_reports/reports/2005_Annual_Report.pdf [hereinafter JUDICIAL COUNCIL, 2005 ANNUAL REPORT].

85. See Downtown Development District: The Sights & Sounds of Downtown, Interactive Map to Explore Downtown Baton Rouge, <http://www.passionforprogress/index.cfm?md=directory> (last visited Apr. 23, 2010).

86. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 8.

87. *Id.*

quickly became apparent that their families would need more permanent housing. Like so many cities in Louisiana, Baton Rouge was inundated with displaced families from the coastal areas. The lack of available housing and schools, coupled with fruitless negotiations with FEMA for temporary housing, prevented the return to work of many employees.⁸⁸

The court managed to secure office space for employees who were able to acquire housing in the Baton Rouge area. Several essential employees were located at the first circuit, and office space was leased for other personnel, primarily those employed in the judicial administrator's office.⁸⁹ The first circuit permitted two trailers purchased by the supreme court to be placed on the courthouse lawn.⁹⁰ The trailers served as the location for court filings and additional office space.⁹¹ When the supreme court returned to New Orleans, the units were utilized by the Orleans Parish Criminal District Court, which sustained extensive damage to its courthouse.⁹²

C. Supreme Court Personnel

The initial order of business for the supreme court was establishing contact with its employees. Their welfare and safety were of imminent concern both prior to and after the storms made landfall. As it had done many times before upon the threat of an approaching storm, the supreme court had implemented its usual disaster precautions on Friday, August 26, 2005.⁹³ The court ensured that it had updated contact information on each staff member, and it advised staffers to refer to the court website in the event that the courthouse closed.⁹⁴ To assure the availability of funds for its employees, the court directed the processing of payroll for state judges and court personnel on Saturday, August 27, 2005, three days early.⁹⁵

Due to these precautionary measures, the court was able to make contact with all of its staff within a week following Hurricane Katrina.⁹⁶ All reported that they were safe, but many had

88. *Id.*

89. *Id.* at 7.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 6.

94. *Id.*

95. *Id.* at 7.

96. *Id.*

lost their homes.⁹⁷ They were displaced throughout the country and, in light of the mandatory evacuation in New Orleans and the surrounding areas, unable to return home for the foreseeable future.⁹⁸ Measures were taken to assure employees of the security of their jobs. Salaries continued to be paid for a period of sixty days.⁹⁹ Aware that displaced personnel had limited attire and funds, the supreme court provided uniform shirts to those employees that were able to return to work.¹⁰⁰ Flexible leave policies were imposed to meet the needs of those unable to return to work.¹⁰¹ The supreme court also made group counseling available to staff members who had suffered personal losses as a result of the storms.¹⁰²

Anticipating the return of the court to New Orleans, efforts began to secure housing for employees in the city. Arduous negotiations ensued with FEMA to secure trailers in the New Orleans area.¹⁰³ This effort failed, and the court acquired space at a local hotel.¹⁰⁴ This housing permitted the court to open more quickly. Despite their personal tribulations, ninety-five percent of the staff returned when the supreme court building was reopened during the first week in December, only three months after Hurricane Katrina.¹⁰⁵ There was no significant break in the court's operations due to the hard work and dedication of judicial personnel.

D. Technology and Communication

Hours following the storm's landfall, there were reports of looting in the area near the supreme court building.¹⁰⁶ Eight critical servers were the source of judicial administrative and business records, attorney bar rolls,¹⁰⁷ and, most importantly, over twenty years of judicial filings¹⁰⁸ (averaging 3,000 cases filed per year).¹⁰⁹

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* at 8.

104. *Id.*

105. *Id.* at 9.

106. Tim Greene, *Courting Disaster During Katrina*, NETWORK WORLD, Aug. 21, 2006, <http://www.networkworld.com/research/2006/082106-katrina-recovery-court.html>.

107. *Id.*

108. Olivier Interview, *supra* note 8.

Due to the mass destruction to lower courts and attorneys' offices, the court's records in many instances provided the only evidence of filings and attorney certification. Moreover, cellular phone communication was erratic. The court's servers were needed to reestablish ongoing electronic communication with the court's staff, members of the bar, and litigants.

Justice Chet Traylor, now retired,¹¹⁰ formerly of the Louisiana State Police, directed the recovery of this critical equipment.¹¹¹ The state police had located the supreme court's director of technology at a campground where he had evacuated with his family.¹¹² Joined by a state police SWAT team and Louisiana National Guardsmen, the director and the computer security officer for the judicial administrator's office were given one hour to retrieve from the supreme court building the servers and necessary network gear, in addition to critical files.¹¹³ They were cloaked in body armor and surrounded by law enforcement as they approached the building.¹¹⁴ The surrounding area did suffer from looters, but the courthouse was untouched.¹¹⁵ The most difficult problem was gaining entry into the secured building in the stifling heat.¹¹⁶

After recovering the servers, the court's technology director and the judicial administrator's computer security officer were able to have the court and the judicial administrator's office back online ninety-six hours after the storm.¹¹⁷ A new network was created that permitted the justices to resume handling cases.¹¹⁸ The court's website became the primary source of information for lower courts, attorneys, and the general public. Notices of the closure and reopening of courts, suspension of legal deadlines, and available recovery resources were posted on the site.¹¹⁹ A temporary e-mail address, which was advertised over television and radio, was

109. Peter Haas & Linus Chow, *Agile Government: Portal and BPM Buoy the Supreme Court of Louisiana's Post Katrina*, BPM STRATEGIES, Nov. 2007, at 15.

110. Justice Traylor's supreme court tenure was from January 1997 through May 2009. See Press Release, Louisiana Supreme Court (Mar. 16, 2009), http://www.lasc.org/press_room_releases/2009/2009-07.asp.

111. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 7.

112. Greene, *supra* note 106.

113. *Id.*; Olivier Interview, *supra* note 8.

114. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 7.

115. Greene, *supra* note 106.

116. *Id.*

117. Haas & Chow, *supra* note 109; Olivier Interview, *supra* note 8.

118. Greene, *supra* note 106.

119. See JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 7.

created for the purpose of responding to inquiries and requests for information.¹²⁰ Each judicial district appointed one representative to facilitate ongoing communication with the supreme court.¹²¹ This was crucial in preparing orders for court closures and assessing the extent of damage to the lower courts.

E. Legal and Administrative Issues

Lack of access to the courts and the mass displacement of the legal community raised numerous administrative and legal issues that jeopardized the restoration of order and functionality to the judiciary and legal profession. These matters called for the supreme court's quick and thoughtful attention at the same time it was establishing its temporary headquarters, attempting to communicate with its staff and members of the judiciary, and assessing physical damage to the lower courts.

1. Court Closures and Tolling of Deadlines

On September 2, 2005, the supreme court began issuing a series of orders involving the closure of the court. The court was closed for all non-emergency filings through December 5, 2005, the date that the supreme court building reopened.¹²² Court staff assisted the affected lower courts with the preparation and execution of orders closing their respective courts.¹²³ Additionally, an order was issued postponing the supreme court's scheduled September oral arguments.¹²⁴ They were later rescheduled and conducted at the court's temporary Baton Rouge headquarters in late November, amazingly, only three months after Hurricane Katrina's landfall.¹²⁵

The judiciary was reliant upon the executive and legislative branches of government to accomplish the resumption of court operations. Courthouse closures prevented access to the courts.

120. *Id.* at 8.

121. *Id.*

122. See Supreme Court of Louisiana Order (Sept. 27, 2005) (supreme court closure through October 25, 2005); Supreme Court of Louisiana Order (Oct. 25, 2005) (closure extended through November 25, 2005, but accepting filings at its temporary Baton Rouge location).

123. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 9.

124. See Supreme Court of Louisiana Resolution and Temporary Rule (Oct. 3, 2005).

125. Press Release, Louisiana Supreme Court (Nov. 23, 2005), http://www.lasc.org/press_room_releases/2005/2005-16.asp [hereinafter Nov. 23, 2005 Press Release]; JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 8.

Immediate action had to be taken to suspend the tolling of legal deadlines for the filing of new cases and those pending in the court system. The governor issued several executive orders, which suspended for a period of three months all legal deadlines not constitutionally mandated.¹²⁶ The supreme court would later issue a resolution and temporary rule allowing trial and appellate court judges to lift or shorten the legal deadline suspension outlined in the governor's executive orders as courthouses began reopening.¹²⁷ A special session of the Louisiana Legislature convened in November 2005.¹²⁸ One of the first measures it took was to ratify the governor's suspension orders and to extend some legal deadlines until January 3, 2006, with a possible extension in certain circumstances to June 1, 2006, for the six parishes hardest hit.¹²⁹

2. Criminal Justice System

Following Hurricane Katrina, approximately 8,000 prisoners from devastated areas were relocated by the Department of Public Safety and Corrections to thirty-four facilities across Louisiana.¹³⁰ Due to the chaotic circumstances surrounding the mass evacuation, thousands of prisoners were unaccounted for in the correctional system for extended periods of time.¹³¹ The courts were unable to enforce reasonable compliance with the basic criminal procedural requirements as a result of the prisoner displacement. Inmates were in the custody of the state's correctional agencies. District court facilities, district attorney' offices, and public defender offices were under the supervisory and financial control of local

126. See Exec. Order No. KBB 05-32, La. Reg. 2169 (Sept. 6, 2005) (suspended legal deadlines until September 25, 2005); Exec. Order No. KBB 05-48, La. Reg. 2352 (Sept. 23, 2005) (extended Executive Order Number KBB 05-32 and acknowledged the supreme court's constitutional authority to shorten or lift the suspension of deadlines through court order); Exec. Order No. KBB 05-67, La. Reg. 2675 (Oct. 19, 2005) (legal deadline suspension extended to November 25, 2005).

127. See Supreme Court Louisiana Resolution and Temporary Rule (Oct. 3, 2005).

128. See Exec. Order No. KBB 05-67, La. Reg. 2675 (Oct. 19, 2005) (announcement of extraordinary legislative session convening November 6, 2005, through November 18, 2005).

129. See LA. REV. STAT. ANN. §§ 9:5821--:5825 (2009).

130. Paul Purpura, *Inmates Freed After Months, Post-Katrina, Many 'Lost in the System,'* THE TIMES-PICAYUNE (New Orleans), Dec. 23, 2005, at B1.

131. Associate Justice Catherine Kimball, Supreme Court of Louisiana, Remarks at the Meeting of the New York Bar Associations (Mar. 23, 2007) [hereinafter Justice Kimball Speech].

municipalities,¹³² whose infrastructures collapsed in the aftermath of the storms.¹³³ These factors, coupled with the devastated courts' inability to conduct criminal cases outside of their jurisdiction,¹³⁴ created impediments to the recovery of the criminal justice system beyond the power and control of the supreme court.

The legislature in its special session responded to some of the concerns with the enactment of the Criminal Justice Emergency and Disaster Act, crucial legislation ensuring continuity in the disposition of criminal cases following an emergency or disaster.¹³⁵ It allows the supreme court to suspend habeas corpus rights in the event of governor-declared state emergencies.¹³⁶ The law also vests in the supreme court the power to hold emergency court proceedings at alternative locations outside of the jurisdiction where the inmate was subject to criminal prosecution.¹³⁷ Following the passage of this legislation, the supreme court was able to

132. See HOUSE LEGISLATIVE SERV., LA. HOUSE OF REPRESENTATIVES, STATE & LOCAL GOV'T IN LOUISIANA: AN OVERVIEW 1B-13 (2007), http://house.louisiana.gov/SLG/PDF/2008-2012_State&Local_Final.pdf [hereinafter LA. HOUSE OF REPRESENTATIVES GOV'T OVERVIEW] ("Louisiana does not have a unified state court funding system. The operations of district, parish, and city courts are primarily funded by local governments.").

133. James Podgers et al., *Long Road to Recovery: Victims of Hurricane Katrina Face Legal Issues at Every Turn*, A.B.A. J., Feb 21, 2006, http://www.abajournal.com/magazine/article/long_road_to_recovery/ ("Further complicating efforts to recover from Katrina is the fact that the institutional infrastructure in the Gulf Coast region was devastated along with the lives, property and businesses of residents. Government agencies were overwhelmed, courts closed and many lawyers displaced along with their clients.").

134. See LA. CONST. art. 1, § 16; see, e.g., *State v. Ring*, 461 So. 2d 1162, 1165 (La. App. 3d Cir. 1985) ("All trials must take place in the parish where the offense occurred."), *writ denied*, 465 So. 2d 732 (La. 1985).

135. LA. CODE CRIM. PROC. ANN. arts. 941–944 (2008).

136. See LA. CODE CRIM. PROC. ANN. art. 944(A) (2008) ("[T]he supreme court may order emergency sessions of court at a location or locations which are both feasible and practicable outside the parish or territorial jurisdiction of that court. This determination shall be based upon emergency or disaster circumstances, including but not limited to the lack of a readily available alternative location to conduct court within the parish, terrorist events, enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other natural or manmade causes resulting in the displacement of thousands of residents and the destruction of or severe damage to courthouses and other facilities supporting the criminal justice system.").

137. LA. CODE CRIM. PROC. ANN. art. 945(A) (2008) ("Venue for criminal prosecutions in an affected court shall be changed by operation of law to the parish where the affected court is ordered to conduct criminal sessions for the duration of the emergency sessions. Criminal proceedings may take place in a parish other than the parish where the crime was committed if the supreme court has ordered emergency sessions of that court in another parish pursuant to Article 944 or as otherwise provided by law.").

appoint ad hoc judges to hold bond and bail hearings for displaced inmates in various parts of the state,¹³⁸ and district courts could proceed with criminal trials outside of their jurisdictions.¹³⁹ In fact, at one point, the Orleans Parish Criminal District Court was conducting proceedings in several different jurisdictions throughout Louisiana.¹⁴⁰

3. Bar Association

The Louisiana State Bar Association (LSBA) assists the supreme court with its constitutional responsibility to regulate the practice of law.¹⁴¹ In addition to serving its members in their professional practice, the LSBA attempts to ensure access to attorney representation.¹⁴² Following Hurricane Katrina, the supreme court immediately established contact with the LSBA to assess the losses to the legal profession as a whole, the services needed to assist licensed attorneys victimized by the storm, and the measures needed to restore adequate attorney representation in the state.¹⁴³ After setting up temporary offices in Lafayette with little more than half of its staff, the LSBA estimated that fifty-two percent of its 17,047 members engaged in the practice of law had offices in hurricane-impacted areas.¹⁴⁴ Displaced attorneys had no access to their client files and court calendars.

138. See Calogero Keynote Address, *infra* note 143; see also JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 8.

139. See Calogero Keynote Address, *infra* note 143.

140. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 23.

141. See LA. CONST. art. V, § 5(B).

142. Louisiana State Bar Association, The Mission of the Louisiana State Bar Association, <http://www.lsba.org/2007InsideLSBA/insidethebar.asp> (last visited Mar. 31, 2010) (“The LSBA ensures that every individual who needs a lawyer has one.”).

143. Chief Justice Pascal Calogero, Supreme Court of Louisiana, Keynote Address at the National Organization of Bar Counsel Conference (Feb. 8, 2006) [hereinafter Calogero Keynote Address]; JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 9.

144. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 9 (Fifty-two percent of active lawyers in Louisiana had offices in hurricane-impacted areas.); Justice Kimball Speech, *supra* note 131 (17,047 active lawyers in Louisiana at the time of Hurricane Katrina); see also Sheryl B. Shapiro, *American Bar Associations’s Response to Unauthorized Practice Problems Following Hurricane Katrina: Optimal or Merely Adequate?*, 20 GEO. J. LEGAL ETHICS 905, 906 (2007) (“Similarly, in Louisiana, at least 50 percent of the state’s practicing lawyers lost homes, offices, or both. There were about 8,000 lawyers practicing in the New Orleans metropolitan area before Katrina, and the best estimates are that at least half were still gone months after the storm.” (footnotes omitted)).

The LSBA's earliest effort was to create a website message board for attorneys to establish communication with their clients and other members of the profession.¹⁴⁵ It also opened a business center to provide to displaced attorneys access to computers, work space, meeting rooms, and legal research tools.¹⁴⁶ The association established a legal assistance call center where members of the bar tirelessly volunteered time to those seeking help in the wake of the storms.¹⁴⁷ Other states' supreme courts issued orders that allowed attorneys displaced by Hurricane Katrina to practice law provisionally in their new locations.¹⁴⁸ Many lawyers received offers of assistance in setting up temporary offices from out-of-state attorneys.¹⁴⁹ The shortage of available Louisiana licensed attorneys in the face of a dramatic increase in the need for pro bono legal counsel for hurricane victims resulted in the supreme court's approval of temporary rules allowing qualified out-of-state attorneys and non-admitted lawyers to provide pro bono civil legal assistance in storm-related matters.¹⁵⁰ The first rule was enacted in October 2005.¹⁵¹

145. LA. STATE BAR ASS'N, BD. OF GOVERNORS TELEPHONE CONFERENCE SEPT. 6, 2006 MINUTES (2005), <http://www.lsba.org/2007documents/minutes/Sept62005minutes.pdf>.

146. Birkland & Schneider, *supra* note 80, at 30.

147. Elizabeth Foote, *18 Months and Counting: Cooperative Efforts Keep Disaster Legal Assistance Call Center Available to Help Citizens*, LA. B.J., Feb./Mar. 2007, at 340–41.

148. See Press Release, National Center for State Courts, News Alert! Hurricane Katrina/Hurricane Wilma Updates (Jan. 31, 2006), www.ncsonline.org/What'sNew/NewsAlerts/NewsAlertKatrina.html (Sixteen states issued orders allowing attorneys displaced by Hurricane Katrina to practice law provisionally); see also Shapiro, *supra* note 144 (article dedicated to the discussion of multijurisdictional practice issues raised by Hurricanes Katrina and Rita and the ABA's efforts to avoid similar problems through the enactment of model rules).

149. Shapiro, *supra* note 144, at 906.

150. See also JUDICIAL COUNCIL OF THE SUPREME COURT, SUPREME COURT OF LOUISIANA: ANNUAL REPORT 4 (2008), http://www.lasc.org/press_room/annual_reports/reports/2008_Annual_Report.pdf [hereinafter JUDICIAL COUNCIL, 2008 ANNUAL REPORT] (emergency pro bono rule enacted to allow out-of-state attorneys to donate time to assist hurricane victims).

151. See Supreme Court of Louisiana Order, Emergency Pro Bono Civil Legal Assistance Rule (Oct. 10, 2005); Supreme Court of Louisiana Order, Supplemental Emergency Pro Bono Civil Legal Assistance Rule (Jan. 20, 2006); Supreme Court Order, Supplemental Emergency Pro Bono Civil Legal Assistance Rule (Jan. 17, 2007); see also JUDICIAL COUNCIL, 2008 ANNUAL REPORT, *supra* note 150, at 4 (As of 2008, 198 out-of-state attorneys sought admission under the Emergency Civil Pro Bono Rule to donate time to assist hurricane victims.).

The LSBA sponsored courses in criminal indigent defense for those willing to volunteer their time to help reestablish the criminal justice system.¹⁵² In June 2006, the supreme court created a legal assistance rule to permit non-admitted lawyers, under the supervision of a Louisiana lawyer, to render temporary pro bono criminal legal services to indigent persons arrested or charged with crimes in Orleans Parish.¹⁵³

The supreme court eased the professional requirements imposed on Louisiana's licensed attorneys. It issued an order suspending continuing legal education and financial obligations for the year 2005.¹⁵⁴ The court also requested that all state court judges waive the dress code for displaced attorneys.¹⁵⁵ Judges were also asked to exercise patience with lawyers who were excusably tardy for court proceedings attributable to traffic congestion in newly overcrowded cities and who requested continuances due to lost files and an inability to locate clients and trial participants.¹⁵⁶

The Committee on Bar Admissions, an arm of the LSBA, had administered the bar examination in July 2005¹⁵⁷ to those seeking admission to the practice of law in Louisiana. Less than two months following Hurricane Katrina's landfall and amidst judicial recovery operations, the supreme court conducted a bar admission ceremony in Baton Rouge for those who satisfied the requirements for admission to the state's legal profession.¹⁵⁸ However, numerous bar exams administered in the summer had been destroyed in flood waters.¹⁵⁹ For the first time in history, the supreme court allowed individuals seeking admission to retake portions of the bar examination.¹⁶⁰ A second admission ceremony was held in November 2005 for those applicants satisfying the prerequisites for admission.¹⁶¹

152. Vance, *supra* note 65, at 647 & n.243 (citing Press Release, Louisiana State Bar Association, Hurricane Katrina Relief Seminar at Tulane Law School (Mar. 20, 2006)).

153. See Supreme Court of Louisiana Order, Temporary Emergency Pro Bono Criminal Legal Assistance Rule for Orleans Parish (June 23, 2006).

154. See Supreme Court of Louisiana Order (Sept. 26, 2005).

155. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 9.

156. Chief Justice Pascal Calogero, Supreme Court of Louisiana, Remarks at the Southwest Louisiana Bar Association 2006 Bench Bar Conference (Apr. 21, 2006) [hereinafter Chief Justice Calogero Speech].

157. *Id.*

158. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 9.

159. *Id.*

160. *Id.*

161. *Id.*

F. FEMA Disaster Assistance

In the first days following the storm, the supreme court established contact with representatives from FEMA, the beginning of a relationship that continues as of this writing. The federal agency dispatched representatives specialized in court disaster recovery.¹⁶² Monetary assistance was immediately sought on behalf of the state courts for the costs associated with the temporary relocation of courthouses, housing, reestablishment of operations, and damage to court facilities.¹⁶³

This effort was complicated by the fact that, unlike the supreme court and the five circuit courts of appeal, which are funded by state tax dollars,¹⁶⁴ the funding for district courts is at the discretion of local governments through revenues ordinarily generated by tax assessments, traffic fines, and court costs.¹⁶⁵ In most cases, parish attorneys, coroners, sheriffs, clerks of court, and court staff share the same revenue source as the courts.¹⁶⁶ Thus, although the supreme court is vested with the judicial power to do all that is reasonably necessary for the exercise of the function of the courts, the restoration of full judicial district court operations was dependent on the local municipalities, many of which had sustained catastrophic damages. This separation of powers issue placed the court in the dilemma of being responsible for the operation of the districts, which are funded by a number of municipalities beyond the court's control.

With the assistance of FEMA, state courts temporarily relocated to various cities throughout south Louisiana. The fourth circuit established operations on the campus of Southeastern Louisiana University in Hammond, approximately forty minutes from New Orleans.¹⁶⁷ The Orleans Parish Civil District Court moved to Gonzales, about sixty miles outside of New Orleans.¹⁶⁸ The Orleans Parish Criminal District Court conducted legal proceedings at various sites to accommodate displaced inmates, even after it moved its central operations to the federal courthouse

162. Olivier Interview, *supra* note 8.

163. Chief Justice Calogero Speech, *supra* note 156.

164. I. Jackson Burson, Jr., *Not Endowed by Their Creator: State Mandated Expenses of Louisiana Parish Governing Bodies*, 50 LA. L. REV. 635, 673–74 (1990).

165. *Id.*; see also LA. HOUSE OF REPRESENTATIVES GOV'T OVERVIEW, *supra* note 132, at 1B-13.

166. Burson, *supra* note 164, at 643, 675.

167. Birkland & Schneider, *supra* note 80, at 26.

168. See, e.g., JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 23.

in New Orleans.¹⁶⁹ The establishment of temporary court operations required innumerable jurists and their staff to travel hours to and from work due to the limited availability of housing. To ease this burden, lower courts in the unaffected and less affected areas opened their doors to judicial employees, making available office space, law libraries, and computers.¹⁷⁰

Members of the supreme court met with FEMA representatives several times per week.¹⁷¹ The process involved incalculable delays for countless reasons.¹⁷² The agency's high attrition rate contributed in large part to the frustration.¹⁷³ FEMA was ill-equipped to respond to a disaster of such catastrophic proportions.¹⁷⁴ Notwithstanding, supreme court personnel involved in the FEMA process are in unanimous agreement that the agency's representatives shared the judiciary's vision of complete and speedy restoration of court operations.¹⁷⁵

III. PROGRESS: DISASTER RECOVERY AND CONTINUITY OF OPERATIONS

The supreme court returned to New Orleans on December 5, 2005.¹⁷⁶ The occasion was marked by a commemorative celebration, the Red Mass of the Healing and Renewal of New Orleans, at the St. Louis Cathedral,¹⁷⁷ the sight of countless gatherings of similar importance during the long history of the state of Louisiana and the city of New Orleans.¹⁷⁸ Upon this return, the suspension of non-emergency court filings was lifted, and judicial review was given to the deferred writs applications. Efforts were made by the court to resume its pre-storm docket schedule,¹⁷⁹

169. *Id.*

170. *Id.* at 26–27.

171. *Id.* at 8.

172. Meeting between Supreme Court of Louisiana Executive Staff and Angelique Roche & Ben Billings, Office of U.S. Senator Mary Landrieu, Louisiana Judiciary's Progress Post-Hurricanes Katrina & Rita (Nov. 23, 2009) [hereinafter LASC/Sen. Landrieu Meeting]

173. *Id.*

174. Lisa Stark, *FEMA Was Unprepared for Katrina Relief Effort, Insiders Say: Bureaucracy, Budget Cuts Said to Contribute to Slow Response*, ABC NEWS, Sept. 8, 2005, <http://abcnews.go.com/print?id=1108268>.

175. LASC/Sen. Landrieu Meeting, *supra* note 172.

176. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 9.

177. Nov. 23, 2005 Press Release, *supra* note 125.

178. See Cathedral-Basilica of Saint Louis King of France: History of the St. Louis Cathedral (last visited April 24, 2010), http://stlouiscathedral.org/early_history.html.

179. Annually, the court holds thirty-three to thirty-five weekly conferences to consider and vote on writ filings, usually voting on more than 100 writ

although it continued daily consideration of the numerous administrative matters related to the judiciary's disaster recovery.

By the summer of 2006, each of the lower courts that had sustained damage had reopened for business, but not all in their pre-storm facilities.¹⁸⁰ Many affected courts returned to their original courthouses, several while repairs continued. State courts resumed operations despite the continued displacement of jurists and staff. Like the supreme court, some courts acknowledged a need for mental health assistance for their employees by offering classes on coping in the aftermath of the traumatic events.¹⁸¹ Attracted by affordable housing in less flood-prone communities, many Orleans, Jefferson, and St. Bernard Parish employees moved to other parishes after losing their homes and personal belongings. Permanent relocation added hours of daily commute time in most instances.

The courts responded to the shifts in population attributable to the storms. Several courts retained bilingual personnel due to an increase in the Hispanic community resulting from post-hurricane employment opportunities.¹⁸² On a larger scale, population changes have required the judiciary to continually monitor the apportionment of judges among the network of state courts. In 2006, the legislature authorized the Louisiana Supreme Court's Judicial Council to conduct a review of the judicial districts and provide recommendations on the appropriate number of district court judgeships within each district based upon caseload,

applications per conference. See JUDICIAL ADMINISTRATOR'S OFFICE, THE SUPREME COURT OF LOUISIANA, JUSTICE AT WORK: THE STATE OF JUDICIAL PERFORMANCE IN LOUISIANA 2006-2007, at 13 (2007), http://www.lasc.org/press_room/annual_reports/reports/2006_7_jp.pdf [hereinafter JUDICIAL PERFORMANCE 2006-2007]. The court also holds at a minimum seven oral argument sittings each year with approximately twenty to twenty-four cases argued each cycle. *Id.* Ordinarily, writ applications that are granted are scheduled for oral argument on the next available docket, and the opinions are usually handed down within twelve weeks of the oral argument. *Id.*

180. Justice Kimball Speech, *supra* note 131.

181. See JUDICIAL PERFORMANCE 2005-2006, *supra* note 7, at 7 (supreme court offered counseling to its employees impacted by the storms); see also JUDICIAL PERFORMANCE 2006-2007, *supra* note 179, at 95 (Jefferson Parish offered mental health assistance to employees following the hurricanes.).

182. See, e.g., JUDICIAL PERFORMANCE 2006-2007, *supra* note 179, at 47, 71, 131-32 (The Louisiana Fourth and Fifth Circuit Courts of Appeal and the Jefferson and Orleans Parish Criminal District Court provide for bilingual or multilingual services to court patrons.).

population, and other pertinent factors.¹⁸³ This in-depth review is ongoing today.¹⁸⁴

As the courts reestablished operations, their dockets were inundated with hurricane-related claims. The following types of cases are just a small sampling. Evacuee families sought preliminary injunctions against hotels that engaged in price gouging.¹⁸⁵ Landlords seeking to place abandoned rental properties back into commerce sought the eviction of their lessees.¹⁸⁶ Property owners instituted construction-related claims.¹⁸⁷ Class action litigation was instituted against chemical refineries for storm-related spillage.¹⁸⁸ Some cases focused on the patient care administered by medical providers¹⁸⁹ and nursing home owners.¹⁹⁰ Law enforcement personnel sought review of civil service disciplinary sanctions imposed for abandonment of duties.¹⁹¹ Litigation was instituted to contest the unavailability of public health care due to hospital closures.¹⁹² Courts were deluged with

183. The supreme court created the Judicial Council pursuant to Louisiana Supreme Court Rule XXII. LA. HOUSE OF REPRESENTATIVES GOV'T OVERVIEW, *supra* note 132, at 1B-5. It consists of not more than seventeen voting members, generally serving for three terms, that include the jurists, legislators, and one non-lawyer citizen. *Id.* Its essential function is to study judicial organization, rules, and practices; to formulate methods for simplifying judicial procedure, expediting the transaction of judicial business and correcting faults in the administration of justice; and to make an annual report. *Id.* The legislature codified the Judicial Council's involvement in the process of altering a territorial jurisdiction and creating a new judgeship, judicial district, and judicial court. *Id.* In the event a change is proposed, the Judicial Council organizes an evaluation team to investigate such and make a recommendation to the full council. In turn, the Judicial Council presents the team's findings and makes a recommendation to the legislature. *Id.* With few exceptions, no new judgeships have been created without a recommendation from the Judicial Council based on specific criteria showing the need for additional judgeships. *See also* LA. REV. STAT. ANN. § 13:61 (Supp. 2010)

184. JUDICIAL COUNCIL, 2008 ANNUAL REPORT, *supra* note 150, at 2-3 (reapportioning of judicial districts continually addressed by judiciary).

185. Adrian Angelettee, *Judge Blocks Try by Hotel to Evict Storm Evacuees*, THE ADVOCATE (Baton Rouge), Oct. 21, 2005, at 13A.

186. *Id.*; *see also, e.g.*, Strickland v. Gordon, No. 2009-CA-0856, 2010 WL 726521 (La. App. 4th Cir. Mar. 3, 2010).

187. *See, e.g.*, Nuerge v. Coldewy Corp., 14 So. 3d 39 (La. App. 5th Cir. 2009).

188. *See, e.g.*, Vekic v. Shell Pipeline Co. LP, No. 08-C-1469, 2009 WL 213105 (La. App. 4th Cir. Jan. 29, 2009).

189. *See, e.g.*, *In re A Matter Under Investigation*, 15 So. 3d 972 (La. 2009); *In re A Matter of An Offense Under Investigation*, 926 So. 2d 493 (La. 2006).

190. *See, e.g.*, Berthelot v. Patient's Compensation Fund Oversight Bd., 977 So. 2d 967 (La. App. 1st Cir. 2007), *writ denied*, 976 So. 2d 720 (La. 2008).

191. *See, e.g.*, Leblanc v. Dep't of Police, 972 So. 2d 398 (La. 2007).

192. *See, e.g.*, Leblanc v. Thomas, 23 So. 3d 241 (La. 2009).

insurance cases, with the most notable being *Sher v. Lafayette Insurance Company*, where it was determined that homeowner insurance policies did not have to cover flood damages caused directly by the levee breaches in the wake of Hurricane Katrina.¹⁹³ To accommodate litigants already victimized by the storms, appellate courts adopted policies promoting expedited consideration of storm cases.¹⁹⁴

The state's juvenile courts recognized the dire consequences for the children victimized by the storms. Courts undertook the commendable challenge of reconnecting biological families and seeking homes for more than 300 foster children.¹⁹⁵ The Court Improvement Program of the supreme court joined efforts with state and community social service departments to create the Connections for Permanency Program.¹⁹⁶ The intent of the project was to connect children in state custody with biological or foster family members, or other persons willing to be a permanent connection for a child.¹⁹⁷

IV. THE COLLAPSE OF THE INDIGENT DEFENDER SYSTEM

The destruction left in the wake of Hurricanes Katrina and Rita created the unprecedented challenge of deciding how to react to the disasters while providing constitutional protections afforded to thousands of accused in the state's criminal justice system. Hurricane Katrina created an unmanageable situation with the mass evacuation of thousands of inmates from the Orleans Parish Prison, the country's eighth largest penal institution,¹⁹⁸ to dozens of facilities throughout the state. The evacuation was under exigent circumstances and, as such, chaotic. There was no segregation of inmates based on the seriousness of offense. Thus, those with municipal traffic violations were housed with hardened

193. *Sher v. Lafayette Ins. Co.*, 988 So. 2d 186, 195 (La. 2008) (The supreme court upheld an insurer's flood exclusion stating, "Even if the exclusion only referred to natural, rather than man-made floods, the flood at issue was not caused by man. The flood was caused by Hurricane Katrina, *not* by man. The levees did not cause the flood, they, whether through faulty design, faulty construction, or some other reason, failed to *prevent* the flood.").

194. *See, e.g.*, JUDICIAL PERFORMANCE 2006–2007, *supra* note 179, at 45–46 (The Louisiana Third and Fourth Circuit Courts of Appeal adopted special procedures to expedite Katrina-related cases.).

195. JUDICIAL PERFORMANCE 2006–2007, *supra* note 179, at 28–29.

196. *Id.*

197. *Id.*

198. *See* Orleans Parish Criminal Sheriff's Office, Orleans Parish Criminal Sheriff Marlin N. Gusman, http://www.opcso.org/index.php?option=com_content&view=article&id=145&Itemid=197 (last visited Mar. 5, 2010).

offenders.¹⁹⁹ Nor was there a separation based on stage of prosecution. As such, inmates arrested, but not arraigned, were held with those criminally charged.²⁰⁰ The absence of records identifying the inmates, their offense, and their status in the legal system created a logistical disaster.²⁰¹ Moreover, the relocation of inmates was only one factor contributing to the problems in the criminal justice system. The storm's damage closed courthouses and jails; displaced jurists, witnesses, and potential jurors; and compromised files, records, and evidence.²⁰²

State and local governments were grappling with so many financial and infrastructure issues that it became difficult to comply with speedy trial guarantees. The inability to access the courts caused a case backlog of more than 3,000 cases in New Orleans, resulting in many defendants charged with minor crimes being imprisoned for a longer time than the statutory maximum sentence.²⁰³ The majority of the inmates incarcerated in Orleans Parish Prison were arrested in the days prior to the storm for minor offenses, such as criminal trespass, public intoxication, or disorderly conduct.²⁰⁴ Of these, many had not been brought before a judge or formally charged and would have only been subject to a ticket.²⁰⁵ Hundreds of these defendants languished in the system for months.²⁰⁶ Delays, the loss of evidence, and displaced witnesses raised viable concerns about the fairness of criminal proceedings.

199. Justice Kimball Speech, *supra* note 131.

200. *Id.*

201. *Id.* Post-evacuation efforts to identify inmates by a system of colored arm bands were met with resistance due to the antics of inmates stealing bands from individuals facing less serious offenses. *Id.*

202. Chief Justice Pascal F. Calogero, Supreme Court of Louisiana, 2007 State of the Judiciary Address to the Joint Session of the House and Senate Louisiana Legislature (May 8, 2007), available at http://www.lasc.org/press_room/press_releases/2007/2007-09.asp (May 8, 2007) [hereinafter 2007 State of the Judiciary Address].

203. See Purpura, *supra* note 130.

204. Garrett & Tetlow, *supra* note 63, at 8.

205. *Id.*

206. See Amber McIlwain, Abandoned Behind Bars—Hurricane Katrina's Prisoners, THE TIMES, Oct. 17, 2006, <http://business.timesline.co.uk/tol/business/law/article600447.ece?> (last visited Apr. 26, 2010) (“Twelve months [since Hurricane Katrina] and hundreds of prisoners still remain incarcerated, having already greatly exceeded what they would have served had they pleaded or been found guilty, but more disturbing is that most have not even been charged yet.”); see also Henry Weinstein, Louisiana Official Opens Probe of Court System, L.A. TIMES, Feb. 24, 2006 at A23 (court appointed special master “estimated that as many as 4,500 people had been ‘sitting in jail for up to six months and haven’t seen a lawyer during that time’”).

However, it was the lack of legal representation that most seriously threatened the integrity of the legal process for many accused. The inability to access the courts with the assistance of reliable counsel was a major impediment to many of the accused individuals asserting constitutional violations, such as their right to a speedy trial.²⁰⁷ Most of the accused, especially those from the New Orleans area, lacked resources to retain a private criminal defense lawyer.²⁰⁸ In 2005, more than eighty percent of defendants from Orleans Parish were indigent and entitled to use the Orleans Indigent Defender Program (OID).²⁰⁹ Most of the OID's funding came from the collection of court costs on traffic fine assessments.²¹⁰ This source of funding became virtually non-existent immediately after the storms.²¹¹ The number of public defenders decreased from forty-two to seven immediately after the storm.²¹²

The health of local indigent defender systems has been a longstanding concern to the courts.²¹³ The Louisiana Constitution requires that the legislature provide for a uniform system of

207. See Garrett & Tetlow, *supra* note 63, at 3, 30, 31 (“With local courts closed and with a skeletal public defender, procedure rights had no practical significance. . . . [O]nce identified, most of the thousands of detainees had no defense lawyer to raise constitutional claims Constitutional rights to due process, access to counsel and courts and speedy trial played little role in safeguarding rights of thousands detained after Katrina. The system simply collapsed with courts conducting no hearings, no trials and with no defense counsel available.”); see also Weinstein, *supra* note 206, (Orleans Parish criminal court judge issued a formal policy statement that “it was ‘of utmost importance’ that adequate funding be provided to New Orleans indigent defense office ‘with deliberate speed . . . because the United States Constitution and the Louisiana Constitution guarantee the right to effective assistance of counsel to indigent persons’”).

208. Garrett & Tetlow, *supra* note 63, at 7.

209. Michael Perlstein, *Public Defender Cases In Limbo, Indigent Program Broken, Judge says*, THE TIMES-PICAYUNE (New Orleans), Feb. 11, 2006, at METRO 1.

210. Phyllis E. Mann, *Hurricanes Katrina and Rita—A Year Later in Louisiana*, CHAMPION, Feb. 2006, at 6, 7; see also Weinstein, *supra* note 206, (“Louisiana is the only state that uses traffic fines as the main source of funding for indigent defense. The system has been criticized in a host of studies.”).

211. *Id.*

212. Perlstein, *supra* note 209.

213. See JUDICIAL COUNCIL OF THE SUPREME COURT, SUPREME COURT OF LOUISIANA: ANNUAL REPORT 1 (2007), http://www.lasc.org/press_room/annual_reports/2007Annual_Report.pdf (judiciary cites concerns regarding indigent defender system's inadequate funding and necessary reforms); 2007 State of the Judiciary Address, *supra* note 202 (In 2005, the judiciary implored the legislature to establish an indigent defender system that prevents multiple trials for the benefit of victims and the innocent deprived of their liberties.).

securing and compensating qualified counsel for indigents accused in criminal prosecutions.²¹⁴ The harsh lessons learned in the aftermath of the storms dictated that the three branches of government collaborate to create a cohesive contingency plan for the criminal justice system in the event of future disasters.

Months after the hurricanes, Vice-Admiral Thad Allen, Chief of Staff for the U.S. Coast Guard assigned to direct the national disaster recovery, established a federal task force specifically designed to address the area's criminal justice system.²¹⁵ The Southeast Louisiana Recovery Task Force on Criminal Justice (Task Force) is composed of law enforcement officials, district attorneys, indigent defenders, judges, and clerks of court.²¹⁶ The Task Force provides a unique opportunity for dialogue among its members.²¹⁷ It has various committees, and Justice Kimball serves as chair of the judicial committee.²¹⁸ The Task Force provides a vehicle for securing grant money,²¹⁹ obtaining experts from the Department of Justice's Bureau of Justice Assistance to study and make recommendations in overhauling the indigent defender system, and assisting with the FEMA transactions.²²⁰ The Task Force continues to serve a vital role in the improvement of the criminal justice system.

In 2007, the Louisiana Legislature responded to the criminal justice crisis with the enactment of the Louisiana Public Defender Act.²²¹ The legislation created a statewide indigent defender board vested with broad regulatory and enforcement capabilities.²²² The intent of the enactment is the delivery of indigent defender services.²²³

Other agencies are working to avoid the problems brought to light by the storms. Most importantly, state and local correctional

214. LA. CONST. art. I, § 13.

215. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 10.

216. *Id.*

217. *Id.*

218. *Id.*

219. *See, e.g., id.* (The supreme court applied for and obtained a \$950,000 grant to establish an Orleans Parish Criminal Justice Recovery Resource Center. It provides the Orleans Parish criminal justice system with much needed resources, such as temporary support staffing and consultant services (i.e., secretaries, transcribers, and translators), technical assistance, and investigation of additional funding or grant opportunities.)

220. JUDICIAL PERFORMANCE 2005–2006, *supra* note 7, at 10.

221. 2007 La. Acts No. 307, § 1 (codified as amended at LA. REV. STAT. ANN. §§ 15:141–184 (2005 & Supp. 2010)).

222. *See* LA. HOUSE OF REPRESENTATIVES GOV'T OVERVIEW, *supra* note 132, at 1B-6.

223. *Id.*

systems and law enforcement agencies are devising and testing contingency plans for the evacuation of inmates.²²⁴ These measures, coupled with the supreme court's authority to establish courts outside of jurisdictional limits in times of emergency,²²⁵ will ensure the continuity of judicial operations.

V. PREPARING FOR THE FUTURE

The federal judiciary has designed Continuity of Operation Plans (COOP) to preserve its court system in the event of a disaster.²²⁶ The planning applies to the internal actions of a court to ensure that the capability exists to maintain essential functions in response to a comprehensive array of possible interruptions to court operations, such as natural and man-made disasters, inoperable facilities, or outbreaks of sickness and violence.²²⁷ The federal judiciary's adopted policy is that with an effective COOP plan, courts can perform their essential operations from alternative operating sites during an emergency situation.²²⁸

In 2003, the Louisiana Supreme Court began the task of devising its own COOP,²²⁹ using as guides the models adopted by the federal courts and the model recommended by the National Center for State Courts.²³⁰ Unfortunately, the court's integral plan was partially incomplete when operations shut down with the approach of Hurricane Katrina in the summer of 2005.²³¹ The absence of a comprehensive COOP hampered the reestablishment of judicial functions, but aspects of the uncompleted plan proved to be beneficial in many respects. For example, temporary courthouse locations were already inspected months prior to the storms.²³²

224. See Welcome to Orleans Parish Criminal Sheriff's Office, Videos-OPSCO: Oct. 2009 Community Report, <http://www.opcso.org> (last visited Mar. 5, 2010).

225. See LA. CODE CRIM. PROC. ANN. arts. 941-956 (2008).

226. George B. Huff, Jr., *Planning for Disasters: Emergency Preparedness, Continuity Planning, and the Federal Judiciary*, 45 JUDGES J. 7, 7-8 (2006).

227. *Id.* at 9-10.

228. *Id.* at 9.

229. See E-mail from John T. Olivier, Supreme Court Clerk of Court, Supreme Court of Louisiana, to National Courts of Appeal Clerk of Courts, (Oct. 4, 2005, 15:15 CST) (on file with the author) [hereinafter Olivier E-mail].

230. Olivier Interview, *supra* note 8.

231. Olivier E-mail, *supra* note 229. (In response to a request for a COOP model from a Tennessee judicial employee, the supreme court clerk of court responded that, at the time Hurricane Katrina hit, the court's COOP was scheduled to be presented to the justices for approval on September 21, 2005.)

232. Olivier Interview, *supra* note 8.

Retention of satellite phones due to the anticipated loss of cellular communication had already been explored.²³³

The supreme court has strongly urged parish governments to allocate funds to local courts for the adoption of a COOP disaster plan. The Louisiana District Judges Association has made earnest efforts to this end.²³⁴ Several state courts, including the supreme court, have successfully completed and continue to revise their respective newly adopted COOP plans.²³⁵ Other courts are still in the planning stages, with progress being dictated by the availability of financial resources.²³⁶

One of the most noticeable deficiencies in the supreme court's disaster recovery and continuity of operations plan was the court's total dependency on technology equipment and hardware located in a geographical area commonly subject to flooding and torrential hurricanes. As a consequence, the court's entire network system was rebuilt to provide for the full real-time replication of data for a backup site and laptop computers.²³⁷ A second technology center was constructed in an undisclosed location in North Louisiana to serve as a backup technology hot site in the event of an emergency.²³⁸ The disaster center's system consistently replicates the information stored on the court's primary network servers.²³⁹ Therefore, in the event that the New Orleans data servers are disabled for any purpose, including a natural disaster, the emergency backup system can be engaged in less than one hour,²⁴⁰ without the loss of court data or the ability to electronically communicate.²⁴¹ Anticipating the unavailability of personnel,

233. Olivier Interview, *supra* note 8.

234. See LA. DIST. JUDGES ASS'N, *DISASTER RECOVERY TEMPLATE: A GUIDE TO PREPAREDNESS* (2006).

235. See, e.g., *JUDICIAL PERFORMANCE 2006–2007*, *supra* note 179, at 72–74, 98, 104 (District courts in Calcasieu and St. Tammany Parishes and the East Baton Rouge Juvenile Court reported that they had implemented a COOP.).

236. See, e.g., *id.* at 104 (La Salle Parish preparing a COOP based on availability of resources).

237. Greene, *supra* note 106.

238. *Id.* The fourth and fifth circuits, both being located in the New Orleans metropolitan area, are subject to perils of flooding and hurricane activity. Like the supreme court, the two appellate courts constructed a secondary technology center for emergency operations. Telephone Interview with Peter Haas, Director, Supreme Court of Louisiana Technology Department, in New Orleans, La. (Feb. 26, 2010).

239. Greene, *supra* note 106.

240. *Id.*

241. See, e.g., Press Release, CA, Louisiana Supreme Court Disaster Recovery Plan Prevails When Hurricane Gustav Forces Evacuation: Leverages CA's Disaster Recovery Software to Successfully Protect all Data, Emails and Keep Communications Open throughout Storm (Sept. 10, 2008), *available at*

technology staff was cross-trained for various tasks outside of their area of expertise, including how to recover data systems should both the sites become inoperable.²⁴²

The proactive steps taken since the summer of 2005 by state courts to improve their disaster recovery and continuity of operation plans proved useful when Hurricane Gustav forced a mandatory evacuation of parts of Louisiana in late August of 2008.²⁴³ Several courts, including the supreme court, successfully and effectively implemented the course of action devised by their respective COOP plans.²⁴⁴ While Hurricane Gustav was certainly not welcome, it afforded state courts the opportunity to battle-test their latest efforts to improve their disaster recovery systems and, subsequently, tweak their plans in preparation for the next emergency.

CONCLUSION

With the approach of the fifth anniversary of Hurricanes Katrina and Rita, the judiciary should not allow the vital lessons learned in the wake of the destruction to fade from consciousness. The Louisiana court system was faced with the unprecedented tasks of responding to two of our nation's greatest natural disasters, while maintaining the integrity of judicial operations statewide. Let us reaffirm our dedication to the administration of justice and commemorate the tragic events by diligently preparing for future emergencies.

<http://investor.ca.com/releasedetail.cfm?ReleaseID=333517> ("Throughout the storm, [the justices] kept email communications with all their constituencies--including the lower courts, residents, justices, local authorities and lawyers.").

242. Greene, *supra* note 106.

243. See Tim Greene, *Katrina Whipped Louisiana Court into Shape for Gustav: Gustav had Nowhere Near the Effect on the Louisiana Supreme Court Of Katrina*, COMPUTERWORLD, Sept. 22, 2008, <http://computerworld.co.nz/news.nsf/printer/D002D7C7A2248DABCC2574C80079C336> ("[T]he chief justice accessed servers in New Orleans throughout the storm to reach files needed to write and issue emergency orders waiving enforcement of certain state laws, such as the right to be arraigned within 72 hours of arrest."); see also Mark Fontecchio, *Data Center News: Louisiana Supreme Court Applies Disaster Recovery Lessons to Gustav*, SEARCHDATACENTER.COM, Sept. 29, 2008, <http://searchdatacenter.techtarget.com/news/article/0,289142,sid80gci1332536,00.html>.

244. See, e.g., JUDICIAL COUNCIL, 2008 ANNUAL REPORT, *supra* note 150, at 85, 89, 142 (The New Orleans Municipal Court, Orleans Parish Criminal District Court, and Fifteenth Judicial District Court reported successful activation of emergency preparedness plans.).

