

Emergency Management in the Courts: Trends After September 11 and Hurricane Katrina*

THOMAS A. BIRKLAND AND CARRIE A. SCHNEIDER

This article is an overview of trends in emergency preparedness and management in the courts, with a particular focus on trends following the September 11, 2001 terrorist attacks and Hurricane Katrina in 2005. We describe the common features of disasters and of the management guidance available to courts. Of particular note is the degree to which Katrina was a catastrophic event that affected a broad geographical area, while the September 11 attacks constituted a major disaster but without the widespread damage done by a major hurricane or earthquake. While much emergency planning is based in anecdote and experience, we argue that there are important research questions contained in many plans and planning-guidance documents relating to the nature and extent of emergency planning in the courts, its variability across jurisdictions, and the extent to which other branches of government consider court security a priority. Further research in these questions would better inform efforts to plan and to encourage planning for extreme events that could affect the courts.

The courts serve a central role in our constitutional democracy. Under the rule of law, people rely very heavily on the courts and on courthouses, all of which are subject to various natural, technological, or humanly caused disasters or catastrophes. Preparedness for such events is a vital government function, but it is particularly important for the courts because they must remain open to the extent possible to ensure that all people's legal rights are protected.

This article summarizes significant managerial trends in disaster management and the courts. September 11 plays a prominent role in this discussion, because much of what we present here is a summary of court emergency-planning efforts that were a direct result of September 11 (see Leibowitz, 2001). September 11 was a major focusing event (Birkland, 1997) that focused more attention on emergency management than any other event in the previous twenty-five years. The other disaster examined here is Hurricane Katrina, which so damaged both state and federal courts (as well as New Orleans and its environs generally) that many courts were not yet fully operational more than a year after the disaster.

This article thus expands upon an earlier report prepared for the Center for Court Innovation (Birkland, 2004) by considering the range of planning guidance and actions that have been taken by courts to address actual or potential disaster. The research presented here is based on secondary sources, particularly the legal press, although much of the discussion about the courts in New Orleans and in New York City after the September 11 attacks comes from interviews with court officials. The

* This research is based in part on work supported by the National Science Foundation under Grant No. SES 0522154. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the National Science Foundation.

article concludes with a brief consideration of research questions that have arisen from the September 11 and Hurricane Katrina disasters; we argue that what has heretofore been anecdotal evidence of different levels of planning and preparedness could be better understood with systematic research.

OVERVIEW: EMERGENCIES AFFECTING THE COURTS

Since at least 1989, in the wake of the Loma Prieta earthquake in California, the power of natural and humanly caused disasters to disrupt the courts' business has been understood (see generally Birkland, 1998; Boyum, 1998; Wasby, 1998a, b; Salokar,

Table 1
Important Events Affecting the Courts, 1989-2005

Year	Event	Jurisdiction	Summary of the Event	Effects
1989	Loma Prieta Earthquake	California	Magnitude 6.1 earthquake near San Francisco killed at least 63 people. Damage throughout the Bay Area. Significant disruption to transportation and utilities, but not as grave as other historic earthquakes in California.	Among the buildings damaged was that housing the U.S. Court of Appeals for the Ninth Circuit, which was required to vacate its quarters for seven years after the earthquake, and which took two years just to find temporary space adequate to its needs; in the intervening period, the court was forced to use makeshift space (Wasby, 1998).
1992	Hurricane Andrew	Florida	Category 5 hurricane that struck just south of downtown Miami. The town of Homestead and other areas were nearly or totally destroyed. The storm would have been much more serious had it struck in the more densely populated northern part of the county. Most damage was due to very high winds.	Greater appreciation for the threat of hurricanes on all sectors, including the courts. Increased efforts by the Florida courts to plan for emergencies.
1995	Bombing of the Murrah Federal Building	Oklahoma	A rental truck filled with ammonium nitrate (fertilizer) and nitromethane racing fuel exploded in front of the federal building in Oklahoma City, destroying much of the building, damaging many nearby buildings, and killing 168 people.	Greater appreciation of the threat of terrorism against federal facilities. While the courts were not located in the Murrah Building, related agencies such as the FBI and DEA were in the building.

Table 1, *continued*

1997	Red River Floods	North Dakota, Minnesota	Red River floods due to rapid snow melt. Results in evacuation of 75 percent of Grand Forks. Over \$2 billion in damage in the region.	In 1997, severe flooding of the Red River, which forms the border between North Dakota and Minnesota, did billions of dollars of damage and flooded most of Grand Forks, North Dakota, the largest city in the state. The trial courts were forced to move to a town 30 miles from Grand Forks, and some criminal defendants were forced to be relocated as far as 200 miles away. This event underscored the importance of planning for the adequate housing and management of prisoners in jails, either those serving a sentence or awaiting trial (Pedeliski, 1998).
2001	September 11 attacks on World Trade Center	New York	Terrorists hijacked four jetliners, crashing two into the WTC towers, one into the Pentagon near Washington, D.C. One plane crashed in Pennsylvania. The towers collapsed, killing over 2,500 people, and doing substantial damage to infrastructure in downtown Manhattan. Access to downtown difficult because of damage and the treatment of the attack as a "crime scene."	Most courts in affected area closed for three business days; most reopened following Monday, but many personnel, public access, and communications problems remained for some weeks after the disaster. The disaster destroyed NYC's Emergency Operations Center and two court officers were killed during rescue efforts (Metropolitan Corporate Counsel, 2002).
2005	Hurricane Katrina	Louisiana, Mississippi	Category 3 (at landfall) storm; the eye passed between New Orleans and Gulfport, Miss. Major storm surge and wind damage along Gulf Coast; damage in New Orleans due to high storm surge from Lake Ponchartrain and main failures of levees in New Orleans and nearby. The City of New Orleans was 80 percent flooded. Many people forced to evacuate, and the city still is only half as populous as before the storm.	Rendered many court facilities in New Orleans and surrounding parishes unusable or inaccessible. Substantial problems with holding suspects, maintaining evidence, or conducting even routine court business.

1998; Pedeliski, 1998). A number of major disasters, and one catastrophic natural disaster, Hurricane Katrina, have had a substantial influence on the administration of justice in the communities where they struck (see Table 1).

All the events noted in Table 1 differ in important ways. However, they also have several elements in common, including the significant disruption of normal functions of government and the shifting of priorities to respond to the disaster; considerable economic disruption, ranging from business interruption to labor shortages caused by evacuations; and the extent of social disruption, including deaths and injuries, the displacement of people from their homes, uncertainty about future risks, and uncertainty about how people's lives would be during and after the recovery from the event. None of these issues were new before September 11, but the attacks directed the courts' attention to homeland security issues. This was true across all levels of government and into the private sector, although Hurricane Katrina has demonstrated the shortcomings of an overemphasis on "homeland security" at the expense of understanding and responding to natural hazards (Tierney, 2005).

Regardless of the nature of the hazard, disasters will continue to challenge court managers for many years to come. Court managers must consider a range of complex issues, from the physical design of courthouses (Daniels, 2002; Griebel and Phillips, 2001) to the physical safety of its employees and to the structure of data and communications systems and their ability to function in a disaster, to policies that balance public access with security needs. Planning and training needs will become more urgent and more specialized.

While the probability of any event hurting any one courthouse at one particular time is small, it is important to consider such hazards as what have come to be known as *low-probability, high-consequence events*, the effects of which are so grave that planning for even unlikely events is necessary. The specific type of event is less important for planning purposes than the possibility that *some* sort of damaging event might happen. The probability of risk of such an event is something that generally cannot be changed, but the *risks* posed by such events are susceptible to change through careful management and decision making.

CASE STUDIES OF COURT SECURITY

To illustrate how disaster preparedness for the courts has become an important issue, we outline two case studies: the September 11 attacks and the impact of Hurricane Katrina on the courts in New Orleans.

The September 11 Attacks and Court Security. The September 11 attacks on New York destroyed the World Trade Center complex, including a building north of the main complex, 7 WTC, which housed the New York Office of Emergency Management. Many state and federal courthouses in Manhattan are located south of 14th Street, which defined the northern limit of the area of restricted access—the "frozen zone"—that was established in the immediate aftermath of the attacks. This northern limit was moved southward to Canal Street on September 14. While the

attacks did knock out power and communications lines, the frozen zone created more operational problems than did communications and information technology problems. The Criminal Term of Supreme Court had working computers and phones on September 12, but their staff and others could not access the building, notwithstanding efforts to open up access to those with court business (Root, 2002). This constraint was eased by September 17, when the restricted zone again shrank (Birkland, 2005:1). The New York Office of Court Administration (OCA) was also located in this area, as were the New York County District Attorney's office and the Special Narcotic Prosecutor's office. The federal courts in the south-of-Canal frozen zone included the U.S. Court of Appeals for the Second Circuit and the U.S. District Court and U.S. Bankruptcy Court for the Southern District of New York. Commerce and the private bar were greatly affected, including the New York Stock Exchange. Between 14,000 and 17,000 attorneys worked in firms in the original frozen zone south of 14th Street (Root, 2002:9; Wise, 2002) At least 1,400 lawyers in and near the World Trade Center lost their records when their offices were completely destroyed (Lippman, 2002).

New York State Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman sought to keep the courts open and to maintain normal business as a symbol of the ability of the judicial system, and of our system of government in general, to continue to function in the face of terrorism. However, by 3 p.m. on September 11, the courts' leaders were forced to close the courts statewide, and attention shifted toward reopening the courts as soon as possible. All courts outside the World Trade Center exclusion zone reopened normally on September 12, and the courts in the immediate area of the attacks reopened on September 17 (Lippman, 2002:4).

Despite the remarkable efforts of court employees to restore the courts to full operation, other factors, such as transportation restrictions in lower Manhattan, influenced the courts' ability to return to normal. There were considerable managerial, physical, and emotional challenges to overcome. These included communicating with the public and jurors as to the status of court operations and with the bar to provide needed information while helping attorneys recover lost records, securing and moving detainees from jail to court, restoring telephone and data communications, and ensuring that buildings were structurally and environmentally safe. These challenges occurred in an environment of increased concern about threats, the ability of personnel to manage threats, and the availability of resources to address threats effectively.

An important feature of this incident was the extent to which the courts were able to aid the bar in restoring their records. Over 1,400 attorneys had offices in the World Trade Center facility. Where records could not be accessed because they were destroyed or inaccessible in the frozen zone, the New York courts were able to aid attorneys by providing copies of materials already maintained in the courts' systems. This assistance was helpful to the attorneys but also, more to the point, made it possible for the courts to avoid issuing blanket postponements of cases, which would

have eventually led to further case backlogs. As it turned out, postponements were handled on a case-by-case basis, which significantly reduced the future backlog and preserved fundamental rights (Kaye, 2001; Metropolitan Corporate Counsel, 2002). The federal courts were similarly able to aid the bar after Katrina, although the number of displaced lawyers, and the challenges involved in locating them when they lost their homes, was much greater.

Hurricane Katrina. Hurricane Katrina was one of the costliest and most destructive natural disasters in the history of the United States. The total cost in terms of lives lost and damage to property is still unknown (Federal Emergency Management Agency [FEMA], 2005). However, early estimates indicated that the damage will cost the United States between \$150 and \$200 billion. In comparison, September 11 cost the government approximately \$63 billion (Suplee, 2005). Hurricane Katrina was, therefore, not merely a disaster; it was a catastrophe, the effects of which are still greatly felt more than a year after the storm struck the coast. A catastrophe is a disaster that, unlike the September 11 attacks or even the Loma Prieta earthquake, overwhelms the capacity of local and state governments to effectively lead response and recovery efforts (Quarantelli, 2005).

The primary damage from Hurricane Katrina came when it made landfall along the Mississippi-Louisiana border on August 29, 2005 (FEMA, 2005). While it was a strong Category Three storm one that might do substantial but not catastrophic damage, Hurricane Katrina resulted in a storm surge of up to thirty feet, which led, ultimately, to key levee failures in New Orleans, which resulted in flooding to over 80 percent of the city of New Orleans. Some neighborhoods experienced twenty feet of water.

Louisiana's court system and the U.S. Court of Appeals for the Fifth Circuit were profoundly affected. New Orleans was home to 7,500 attorneys, one-third of the state's bar. The offices of the Louisiana State Bar Association and the New Orleans Bar Association were flooded. The building housing the Louisiana Supreme Court and the Louisiana Court of Appeal for the Fourth Circuit, on Royal Street in the French Quarter, suffered minor flooding. The main problems for these courts were the buildings' inaccessibility because the city was evacuated, and few people were allowed back in quickly; the lack of utilities, power, in particular; and the impact of the storm on court personnel, all of whom were required to evacuate the city and most of whom suffered their own, often severe, property damage. City and district courts in eight parishes of metropolitan New Orleans were damaged and unusable. Over eight thousand prisoners had to be relocated, a process that was in many cases not handled well. The damage to the courts, and the disorganization that followed, was so severe that many suspects will be released because they have been held too long without charges being filed against them (Crowe, 2006). Evidence in approximately 3,000 criminal cases pending before the court system was lost, and many witnesses and victims had left the city, and even one year later, many had not returned. As a result, many cases were delayed or dismissed for lack of witnesses.

Orleans Parish (New Orleans) has separate criminal and civil courts. The civil court moved to the town of Gonzales, while the criminal court has moved from its quarters on Tulane Avenue to the Hale Boggs Federal Court Building, in a part of town far less damaged by flooding. The Louisiana Supreme Court moved its operations to temporary quarters in Baton Rouge. On October 26, the Louisiana Court of Appeal for the Fourth Circuit moved its operations to the campus of Southeastern Louisiana University in Hammond, about sixty miles from downtown New Orleans. The clerk of the fourth circuit relocated her home to Lafayette, over two hours from Hammond. The clerk was able to borrow space in the law library of the Court of Appeal for the Third Circuit, but still faced a lengthy commute to the court's offices in Hammond. The Orleans Parish criminal courts were able to resume jury trials in June 2006, but by August 2006, the court had still not fully returned to its Tulane Avenue headquarters; as of this writing some functions of the Orleans Parish civil court are still contained in the Convention Center.

The federal courts were somewhat better prepared for the storm than were the state courts, in large part because they had more options for alternate work sites. After the September 11 attacks, the Fifth Circuit Judicial Council met to discuss "terrorism and cyber attacks; chemical, biological and bomb threats; and the potential of natural disasters" and to plan for these events (*Third Branch*, 2001, emphasis added). The Court of Appeals for the Fifth Circuit moved its operations to its offices in Houston. When federal district courts had to relocate, Congress enacted legislation allowing federal courts to hold court outside their districts. For example, the bankruptcy court for the Eastern District of Louisiana relocated to Baton Rouge, in the Middle District of Louisiana (*American Bankruptcy Institute Journal*, 2005). By November, the federal courts, located in less damaged buildings on higher ground, had returned to operation.

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." Fifth Circuit chief judge Carolyn Dineen King said she learned quickly that contingency operation plans developed after 9/11 did not anticipate that employees would have to move and bring families with them and also enroll children in school. The original plan called for moving the court to a rural air-force base with unused space in Louisiana, but court staff had nowhere to live and no schools nearby, she said (MacLean, 2005:10).

Of the twelve judges on the state Court of Appeal for the Fourth Circuit, nine judges were displaced due to damage to their homes. Still, the court managed to meet once en banc in Baton Rouge and resumed operations in Hammond in October. In the intervening period, closure orders for the affected courts created legal holidays, thereby extending relevant deadlines.

SEPTEMBER 11, HURRICANE KATRINA, AND DISASTER PLANNING

September 11, Hurricane Katrina, and events that predate these disasters have led to a considerable amount of advice for court managers. A review of several representative documents (National Center for State Courts, 2002; Minnesota Conference of Chief Justices, n.d.; Florida Supreme Court, 2002; SJI Court Emergency/Disaster Preparedness Planning Project, 2005; Wisconsin Courthouse Security Resource Center, 2003) finds remarkable commonalities in these documents. These common features are outlined below. At the conclusion of this section, we briefly discuss continuity of operations planning (COOP) as a rubric under which all these activities can be gathered to focus on the need to restore the courts to operation as soon as is practicable.

Leadership. As the NCSC (2002) notes, “the court’s leaders set the tone for effective emergency management.” As Root (2002:4) notes, “the type of leadership structure in place at the time of a crisis can influence the performance of an organization during a period when its regular mode of operation is disrupted.” Following September 11, the Fifth Circuit held an emergency-planning workshop at the request of Chief Judge Carolyn Dineen King so that it could better handle threats to and the safety of those who work in and frequent the buildings. The Fifth Circuit was the first of thirteen federal courts of appeals to take this step to gage its emergency preparedness (*Third Branch*, 2002), and it paid some benefits after Hurricane Katrina.

Leadership is also important after a crisis. Chief Judge Kaye and Chief Administrative Judge Lippman immediately took action after the September 11 attacks, leading the effort to restore the downtown Manhattan courts’ ability to function. Their determination to reopen the courts was very similar to federal Chief Judge David Russell’s commitment to reopening the federal courts in Oklahoma City after the 1995 bombing of that city’s Alfred P. Murrah Federal Building (National Center for State Courts, 2002). In both cases, court 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 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.

Priorities. A key feature of leadership is setting priorities. Given limited resources, the courts and their managers cannot possibly plan for every possible threat. The courts must prioritize their emergency-management needs based on the most likely and the most injurious events that could influence the administration of justice.

As suggested by the *National Strategy for Homeland Security*, cost and efficiency considerations require that courts undertake reasonably rigorous risk assessments

before allocating scarce resources, particularly to very low likelihood threats (Office of Homeland Security, 2002:2). One can extend this logic beyond terrorism to natural disasters or to courthouse violence. For example, winter weather will likely disrupt regular business in cities and towns in northern states, but courts in these areas generally plan for these high-probability, lower-consequence events, and such events rarely put large amounts of people or property, including vital court records, at risk. Risk analyses are therefore implicit in these plans and are based on experience. By contrast, an earthquake or hurricane, while not necessarily yearly or seasonal, can put many lives at risk, destroy court facilities, and cause records to be lost. While the likelihood of such events happening in any given year is relatively low, the consequences of such events are sufficiently important that advanced training, planning, and drilling are necessary so that all will be ready to deal with these events. This is because even if the probability of a major hurricane or earthquake is low in any given year, the probability of such an event happening sometime in the next thirty or fifty years is often very high, and we have no way to predict when such an event will strike next. Of course, planning for snowstorms and earthquakes may not attract as much attention in Florida as it would in California, because the nature of the risks and of the courts' vulnerability to risk is different. This implicit risk assessment is usually reflected in planning documents and in the discussions among key court leaders.

Because risks and vulnerabilities can be highly variable, many emergency-management experts emphasize the "all-hazards" approach to planning for, mitigating, preparing for, and recovering from any human, natural, or terrorist disaster. Such approaches to planning tend to emphasize the most common type of major disaster that could befall a court, but proponents of all-hazards planning suggest that planning for one kind of natural disaster builds capacity and capability to address a range of natural disasters as well as terrorism (Tierney, 2005). For this reason, the all-hazards approach was the foundation of much of FEMA's work in the 1990s. With September 11, attention shifted to terrorism. This increase in attention was probably disproportionate to the hazard of terrorism, compared with other hazards. This lopsided attention to terrorism to the exclusion of other hazards was amply demonstrated by the fumbling responses to Hurricane Katrina. Ultimately, court leaders need to find an efficient way to address hazards that does not leave the court vulnerable to a low-probability, but still foreseeable disaster.

In the same way that pre-disaster planning must consider priorities, post-disaster actions must address urgent matters before they address important matters. Clearly, life safety is urgent. Other urgent matters include the safeguarding of records and evidence, information flows to stakeholders such as parties before the court and the public (including jurors), and the fair treatment of prisoners and detainees. Each court must, before a disaster, understand and communicate its own priorities. In addition, these priorities will not be viewed as priorities without effective leadership.

Plans. Plans are often criticized as being static or rote exercises, but the process of planning is as important, if not more so, than the actual planning document itself.

This is why many of the guidance documents for emergency planning are so small: New York's is twenty pages, with seventy pages of practical, fill-in-the-blanks forms that people can use to customize their plans. Wisconsin's guidance document is nearly as short, but outlines the considerations that courts should address during planning. In addition, organizations such as the Institute for Building and Home Safety (2006) and FEMA publish similar templates and guidance for emergency planning that are well suited to any kind of organization, although courts must modify these more generic documents to meet their needs.

Communications. There are four elements to communication: the technologies for communicating with essential court staff, the procedures for communicating with court staff, data communications and security, and procedures for communicating with stakeholders, ranging from those with daily business (members of the bar, primarily), to those with more occasional interactions with the courts as jurors, parties to legal actions, or users of other court services.

New York's manual calls for providing key personnel with backup communications equipment, such as cellular phones, handheld radios, and voice-over-Internet protocol (VoIP) telephones. However, as September 11 and Hurricane Katrina showed, any of these technologies can fail in an emergency, and in a catastrophic event such as Katrina, these systems can fail simultaneously. Even basic two-way radios are useful only as long as the means for keeping batteries charged is available. These considerations are central to any communications plan.

Any internal communication plan needs to take into account what will be communicated and to whom. The former category includes information such as court closings and openings, instructions on whether or how to work from home, instructions on reporting to alternative work sites, and the like. The decision about whether to post this information on a Web site, or to make it available via a call-in phone number, will hinge on how important it is for each individual to receive these messages and the sensitivity of the information being communicated. More timely communication may be needed before a staff member is able to log in or call in. However, not all staff members will need the same information or the most critical, time-sensitive information. Planning must balance the costs of information dissemination against the need for information to be quickly communicated and immediately acted upon (Root, 2002:25).

If telephones are still working, bottom-up call-in systems and top-down phone trees are useful. Larger courts might use call-in systems because they require less staff participation and they are usable by displaced workers if the call-in number is not in a disaster area. This is why toll-free numbers that ring in communities far from the disaster are often used.

Most information technology departments in courts follow similar procedures to protect against hackers and other sorts of attacks. More important after both Hurricane Katrina and the September 11 attacks are routine systems of data backup. Backing up computer systems to off-site locations is essential for business continuity

if computers at the primary work site are damaged, destroyed, or inaccessible. Taking backup tapes or other records home is a sound practice if the major hazard is fire or localized flooding, but in areas where disasters can strike entire metropolitan areas, backups must be kept far away.

Finally, external communication with stakeholders has become more challenging as a result of the proliferation of communications technologies that allow supervisors to communicate with their staffs. Faxes, cell phones, pagers, computers, and other devices have supplemented regular telephones. While supporting all these communications modes may be time-consuming, these systems also provide a level of redundancy that might improve the probability of messages reaching recipients, particularly when at least one of these modes of communication has failed.

Court managers must also be prepared to communicate key information to the public and to those having business with the courts. Each stakeholder group requires a different communication strategy. Most members of the public, for example, do not have an ongoing relationship with the courts and, therefore, must be reached through the mass media. The court's chief information officer or equivalent should be prepared to provide the mass media with information about court closings, alternative locations, changes in hours, and the like. The importance of this information should be stressed to media representatives, who may not have a good sense of why it is that the courts need to communicate with the public.

Communication with stakeholder groups with an established relationship with the court is more readily maintained. Attorneys, for example, can be notified of issues relating to practice through the courts and in conjunction with the local bar association. Attorneys, in turn, will notify litigants of changes in the status and schedule of their cases. The specialized media serving the bar are particularly important channels for disseminating information on the courts' status, changes in court procedures, and other information that helped the bar understand the courts' efforts to remain in business. After the September 11 attacks, the *New York Law Journal*, a daily newspaper, was central to this information-dissemination effort.

Because of the significant damage to the legal community in Louisiana, a communication system was also necessary to communicate with members of the bar. The federal courts, under a special master, established a communication system under a court order issued by Judge Richard Haik of the Western District of Louisiana. This communication center provided a point of contact for the displaced members of the federal bar, and provided assistance with, among other things, reconstructing files and reestablishing contact with other displaced counsel. The Louisiana Bar Association opened a business center for displaced lawyers, which provided access to work space, the Internet, meeting rooms, and online legal research tools. This business center was important in helping members of the bar reestablish contact with each other.

Jurors are a particularly important group with which open communication must be maintained. During the September 11 attacks, impaneled and potential jurors

made extraordinary efforts to appear at courthouses to discharge their duties (Root, 2002:3). This tendency may reflect the belief, deeply held on the part of most Americans, that the jury system is a pillar of American civil society. Given jurors' efforts in this regard, it is important that courts quickly and efficiently let jurors and potential jurors know whether their service will be required, when they may return to service, and where they should go if an alternate court site is established. Witnesses must also be informed as to the status of the courts. In Louisiana, the Orleans Parish Criminal Court established a toll free call-in line for grand and petit jurors, attorneys, and witnesses, and another line for defendants, specialty court clients, and those owing fees and fines.

Continuity of Operations. Continuity of operations is an important aspect of management in all levels of government (Federal Emergency Management Agency, 1999; Peterson, 2003a, b; Verton, 2002), including the judiciary (Peterson, 2003c) and the private sector. It is particularly relevant to large firms in sectors such as finance, which learned years ago that a continuity of operations plan (COOP) is important when disaster threatens to slow or halt business. However, this interest in and implementation of business continuity planning and operations in the private sector is uneven, as firms confront the same resistance, uncertainties, and resource constraints as in the public sector (Harris, 2003; Kotheimer and Coffin, 2003; Stahl, 2001). The emergency plan elements outlined above are important parts of COOPs because the COOP creates the conditions for an orderly response to and recovery from a disaster. New York's Office of Court Administration requires that New York City courts file their COOP with the deputy chief administrative judge (DCAJ) for the New York City courts and the chief of public safety.

Continuity of business planning will vary depending on the nature of a court, the nature of the guidance documents and other resources drawn upon for the planning, and the nature of the hazards or other threats to operation present at the courthouse. Many of the guidance documents list COOP separately or mention it as a parallel process to emergency planning in general. This separation of COOP from other planning is inefficient because the goal of planning is to ensure the minimal disruption of regular operations and the continued operation of vital functions of the court. But COOP has often been considered separately because of its initial focus on finding alternate work sites for staff, where information and communications systems are running and can, as seamlessly as possible, restore operations. The activation of a COOP must be coordinated among all key actors because of the activation of such work sites.

While some courts may deem alternative work sites needlessly redundant, experience has shown that natural hazards, in particular, can affect broad areas, so a long distance between the regular and alternative work sites is often the best assurance that the alternative site will be functional. The North Dakota courts learned the importance of having an alternative courthouse after the Red River Floods in 1997.

It appears that in both the North Dakota and Hurricane Katrina cases, alternative worksite planning was either not undertaken or was insufficient in the face of the scale of the disaster.

The COOP is also vital to effective recovery and restoration. Traditionally, recovery is often thought of as a facilities question: are the courthouse and its related infrastructure (phone, data, power, and the like) safe and sufficient for the restoration of normal business? Clearly, this is an important question. After the September 11 attacks, court facilities in lower Manhattan had to be concerned with these and other considerations, including public-health matters and the structural soundness of their facilities. This latter consideration is often a major part of recovery after natural disasters, as experienced by the North Dakota courts after the 1997 floods (Pedeliski, 1998) and by the U.S. Court of Appeals for the Ninth Circuit in San Francisco, which was displaced for nearly a year after the 1989 Loma Prieta earthquake (Wasby, 1998a). One reason for the slow return of the courts to the Royal Street building in New Orleans was concern over the safety of electrical and plumbing systems, even as the floodwaters receded and utilities were restored.

CONCLUSION: PROGRESS, CHALLENGES, AND RESEARCH NEEDS

As in so many aspects of American life, September 11 was a catalytic event in the history of court security in the United States. The experience gained and shared has been put into effect by many courts. Training and planning efforts have proliferated, and it is plausible to argue that court staff and leaders are now more familiar with emergency procedures than ever before. However, considerable challenges remain for courts in disaster areas. Hurricane Katrina teaches us that *catastrophic* disasters, that is, disasters that severely impede a community's ability to use its own resources to respond and recover, will disrupt the courts for weeks or even months. It appears that planning for a disaster of the scale of Hurricane Katrina was not undertaken by the Louisiana courts, but, in fairness, it should be noted that planning by all institutions at all levels of government was found to be wanting after this disaster.

The possibility remains that Hurricane Katrina may serve the same catalytic role, at least for courts along the Gulf Coast, that September 11 served for the New York courts. The extent to which September 11 or Katrina were indeed important "focusing events" that led to policy change (Birkland, 1997, 2006) are open research questions. Experience with other disasters suggests it is likely that attention to the issues raised by these disasters has already faded, and that the initial impetus for addressing preparedness for terrorism and natural disasters has become overtaken by the usual day-to-day pressures of the courts' business.

The sorts of prescriptions contained in various guidance documents are based on sound anecdotal evidence that court leadership is generally inattentive to terrorism or natural hazards, and that other branches of government are inattentive to these issues *as they relate to the effective operation of the courts*. There are, therefore, important resource constraints created by the dependency of other branches or agen-

cies of government to act; these dependencies range from the simple matter of having the county as the courthouse landlord to more complex questions of interagency and interbranch coordination of emergency planning, provision of resources for planning and continuity of operations planning, and the like.

While the prescriptive literature on court security is certainly useful, more research needs to be done on key questions on courthouse security. These include:

- What are the most common threats to court security?
- What are the most *consequential* threats to court security?
- How do these threats vary by jurisdiction?
- Is planning uniform within or between jurisdictions? What explains the variation in planning? Leadership differences? The nature of the courts' organization in a state?
- Are "lessons" really "learned" from past events? Or are lessons or aphorisms merely observed, without any fundamental action being taken?

No one scholar or institution can take on these questions, but the questions suggest a two-pronged research agenda that addresses two broad questions: What works in the way of emergency planning? and How and to what extent are plans considered, drafted, adopted, and implemented? September 11 and Hurricane Katrina are but two very rich cases from which scholars and court administrators could draw to address these questions. In particular, after Hurricane Katrina it is important to understand whether any post-September 11 "lessons" were "learned" in time for Katrina, and whether and to what extent the NCSC's best practices and other guidance tools were applied. Only through this sort of evaluation will we be able to assess progress toward better preparedness for a wide range of threats to the courts. **jsj**

REFERENCES

- American Bankruptcy Institute Journal* (2005). "Congress Considers Katrina Impact," 24:8 *American Bankruptcy Institute Journal* 3.
- Birkland, T. A. (2004). *Emergency Planning and the Judiciary: Lessons from September 11*. New York: Center for Court Innovation.
- (1998). "Disaster and the Courts' Agenda," 37:4 *Judges' Journal* 7.
- (1997). *After Disaster: Agenda Setting, Public Policy and Focusing Events*. Washington, D.C.: Georgetown University Press.
- Boyum, K. O. (1998). "Understanding Disasters and Other Impacts on Courts: Overview, Comparisons, and Propositions," 37:4 *Judges' Journal* 12.
- Crowe, R. (2006). "One Year Later: Big Easy's Court System Still in State of Emergency; Judge Looking at Releasing Some Prisoners Jailed Before Katrina but Still Not Charged," *Houston Chronicle*, August 27, p. A19.
- Daniels, S. H. (2002). "Better Blast Resistance Coming Soon to Facade," *Engineering News-Record* 248, no. 11, p. 39.

- Federal Emergency Management Agency (2005). "About Hurricane Katrina." http://www.fema.gov/hazards/floods/recoverydata/katrina_about.shtml (accessed January 5, 2006).
- (1999). Federal Preparedness Circular FPC 65. Washington, DC: FEMA. <http://www.fas.org/irp/offdocs/pdd/fpc-65.htm> (accessed December 13, 2003).
- Florida Supreme Court, Workgroup on Emergency Preparedness (2002). "Keep the Courts Open"—*Final Report*. Tallahassee: Florida Supreme Court. <http://www.9-11summit.org/materials9-11/911/acrobat/27/P3%26C10EmergencyPreparednessPlans/FloridaFinalReport.pdf> (accessed December 1, 2003).
- Griebel, M., and T. S. Phillips (2001). "Architectural Design for Security in Courthouse Facilities," 576 *Annals of the American Academy of Political and Social Science* 118.
- Harris, R. (2003). "What Price Security?" 19:9 *CFO* 54.
- Institute for Business and Home Safety (2006). *Open for Business Disaster Planning Toolkit*. Tampa, FL: Institute for Business and Home Safety.
- Kaye, J. S. (2001). "Coping with Disaster," 3 *Journal of Appellate Practice and Process* 453. <http://www.9-11summit.org/materials9-11/911/acrobat/26/P1LeadingtheCourts/KayeCoping.pdf> (accessed December 1, 2003).
- Kotheimer, C. J., and B. Coffin (2003). "How to Justify Business Continuity Management," 50:5 *Risk Management* 30.
- Leibowitz, W. R. (2001). "Thinking About Law Firm Security After September 11th: Law Library Resource Exchange." <http://www.llrx.com/features/lawfirmsecurity.htm> (accessed December 1, 2003).
- Lewis, J. (2000). "Fire in the Courthouse," *County, a Publication of the Texas Association of Counties*, September/October, p. 17.
- Lippman, J. (2002). "September 11th: The New York Experience." <http://www.9-11summit.org/materials9-11/911/acrobat/26/P1LeadingtheCourts/911NYExperience.pdf> (accessed September 25, 2003).
- MacLean, P. A. (2005). "After Katrina: Federal Courts in Gulf Coast States Have Reopened, but Louisiana State Courts Are Still in Disarray," *Broward Daily Business Review*, November 9, p. 10.
- The Metropolitan Corporate Counsel (2002). "The Honorable Judith S. Kaye: New York's Justice System—A Tower of Strength in the Aftermath of 9/11 and into the Future," *Metropolitan Corporate Counsel*, June, p. 46.
- Minnesota Conference of Chief Justices (n.d.). *Court Security Manual*. <http://www.9-11summit.org/materials9-11/911/acrobat/26/C6NewThreats/MinnesotaCtSecurityManual.pdf> (accessed December 1, 2003).
- National Center for State Courts, Best Practices Institute. (2002). *Emergency Management for Courts*. Williamsburg, VA: National Center for State Courts. http://www.ncsconline.org/Projects_Initiatives/BPI/EmergencyMngmnt.htm#ensure (accessed November 21, 2003).
- Office of Homeland Security (2002). *National Strategy for Homeland Security*. Washington, DC: Office of Homeland Security.

- Pedeliski, T. B. (1998). "A Case of Judicial Restoration: A Court System Responds to and Recovers from the Red River Flood of 1997," *37:4 Judges' Journal* 17.
- Peterson, R. E. (2003a). *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges*. Washington, DC: Congressional Research Service.
- (2003b). *Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress*. Washington, DC: Congressional Research Service.
- (2003c.) *Emergency Preparedness and Continuity of Operations (COOP) Planning in the Federal Judiciary*. Washington, DC: Congressional Research Service.
- Post, L. (2005). "Lawyers' Life After Katrina: Survival; Solos, Small Firms Taking Biggest Hit," *National Law Journal*, September 27, p. 1.
- Quarantelli, E. L. (2005). *Catastrophes Are Different from Disasters: Some Implications for Crisis Planning and Managing Drawn from Katrina* Social Science Research Council. <http://understandingkatrina.ssrc.org/Quarantelli> (accessed October 21 2005).
- Root, O. (2002). *The Administration of Justice Under Emergency Conditions*. New York: Vera Institute of Justice. <http://www.9-11summit.org/materials9-11/911/acrobat/26/C1TheAftermath/VeraInstituteLessonsFollowingAttack.pdf> (accessed December 1, 2003).
- Salokar, R. M. (1998). "After the Winds: Hurricane Andrew's Impact on Judicial Institutions in South Florida," *37:4 Judges' Journal* 26.
- SJI Court Emergency/Disaster Preparedness Planning Project (2005). *Planning for Emergencies: Immediate Events and Their Aftermath: A Guideline for Local Courts*. Washington, DC: Justice Programs Office, School of Public Affairs, American University.
- Stahl, S. (2001). "What's Your Disaster Plan? May Become Newest Refrain," *InformationWeek*, November 26, p. 8.
- Suplee, W. Z. (2005). "Dramatic Events Don't Usually Call for Dramatic Actions," *Legal Intelligencer*, September 13, p. 5.
- The Third Branch* (2002). "Fifth Circuit First to Gauge Emergency Preparedness," *Third Branch*, April. <http://www.uscourts.gov/ttb/apr02ttb/papertrail.html#gauge>
- (2001). "Emergency Preparedness in the Judiciary," *Third Branch*, November. <http://www.9-11summit.org/materials9-11/911/acrobat/26/C1TheAftermath/EmergencyPreparednessinJudiciary.pdf> (accessed December 1, 2003).
- Tierney, K. J. (2005). "The Red Pill," Social Science Research Council. <http://understandingkatrina.ssrc.org/Tierney/> (accessed October 21 2005).
- Verton, D. (2002). "Wartime CIOs Alter Security Strategies," *36:15 Computerworld* 14.
- Wasby, S. L. (1998a). "Disruption, Dislocation, Discretion, and Dependence: The Ninth Circuit Court of Appeals and the Loma Prieta Earthquake," *37:4 Judges' Journal* 33.
- (1998b). "The Effect of Disasters on Courts: An Introduction," *37:4 Judges' Journal* 4.
- Wisconsin Courthouse Security Resource Center (2003). *Courthouse Security Manual*. Madison: Wisconsin Courthouse Security Resource Center.
- Wise, D. (2002). "OCA Reports Operations Return to pre-9/11 Capacity," *New York Law Journal*, September 11, p. 4