

Emergency Preparedness in the State Courts

I. Introduction

A. The Courts Must Stay Open

When a disaster strikes a community, a city, a region or beyond, governmental institutions must mobilize immediately to address the urgent and compelling needs of their citizenry. Initial attention is usually focused on first responders, who may be called upon to perform lifesaving rescues and to prevent continuing damage and harm to persons and property. But recent disasters have also demonstrated that an immediate mobilization of the justice system – including the country’s state court systems – is essential to support societal stability and protect individuals, families, businesses and institutions. An operational court system capable of performing constitutionally mandated functions – initial appearances, arraignments, bond hearings, orders of protection, injunctive relief and other emergency applications – stands against the chaos created by an emergency and ensures that the judiciary can fulfill its mission of maintaining the rule of law, protecting individual rights and providing for the prompt and lawful processing of those charged with crimes. A New York Times report covering Hurricane Katrina’s aftermath illustrated what can happen to the administration of justice in the absence of a functioning court system:

At Rapides Parish Detention Center 3 in Alexandria, which normally holds convicted felons, there are now 200 inmates who arrived hot, hungry and exhausted on buses this week after being evacuated from flooded jails in New Orleans. They have no paperwork indicating whether they are charged with having too much to drink or attempted murder. There is no judge to hear their cases, no courthouse designated to hear them in and no lawyer to represent them. If lawyers can be found, there is no mechanism for paying

Draft as of Sept. 12, 2007

them. The prisoners have had no contact with their families for days and do not know whether they are alive or dead, if their homes do or do not exist.¹

The struggles of the New Orleans populace to access the courts for assistance in the aftermath of Katrina provide somber examples of how important it is to ensure functional and accessible court services in the days and weeks following a disaster, and how vital it is for courts to make the necessary preparations now, via a continuity of operations plan (COOP), to carry on with their most essential functions under all conceivable emergency conditions, from a wide-ranging natural catastrophe like Katrina to any number of less dramatic or building-specific events that can disrupt court operations.²

Disasters may provide platforms for heroic and humane actions, but unfortunately they can also be accompanied by increases in opportunistic and criminal behavior. Reports of looting and other theft, vandalism, physical assaults and gang activities all increased following Katrina,

¹ Peter Applebome and Jonathan D. Glater, *Storm and Crisis: The Lawyers; Storm Leaves Legal System A Shambles*, New York Times, September 9, 2005. These and other facts recited in connection with Katrina's aftermath were gleaned from newspaper articles and were not independently substantiated.

² This paper uses the generic term "emergency" to cover a broad range of natural and man-made disasters and catastrophes, including: acts of terrorism, nuclear events, volcanos, hurricanes, floods, tornados, earthquakes, fires, urban riots, public health crises, mass protests or demonstrations, blackouts, building and roof collapses, snow and ice storms, etc. The term also encompasses any of a wide range of less dramatic and more localized conditions such as flooded plumbing or power outages that can nonetheless significantly disrupt court operations.

Draft as of Sept. 12, 2007

precipitating an increase in arrests and detentions.³ Moreover, the Louisiana justice system struggled to account for and properly process more than 8,000 New Orleans area inmates evacuated to 34 jails around the state. The result was an influx of habeas corpus petitions from prisoners held for unlawfully long periods of time due to the absence of judicial fora to screen cases and set conditions of release, the unavailability of essential justice system personnel and court records, and the collapse of funding for the public defender system.⁴ In some cases, there was little choice but to simply release dozens of prisoners without bail after weeks or months of imprisonment, potentially creating a hazard to public order and safety.⁵ The justice system also

³ Associated Press, *New Orleans Mayor Orders Looting Crackdown*, September 1, 2005, at <http://www.msnbc.msn.com/id/9063708/from/ET> (“Mayor Ray Nagin ordered 1,500 police officers to leave their search-and-rescue mission Wednesday night to return to the streets of the beleaguered city to stop looting that has turned increasingly hostile”).

⁴ Peter Whoriskey, *In New Orleans, Justice on Trial*, Washington Post, April 15, 2006. The public defense system in the New Orleans Parishes is funded by traffic fines and fees, which shrunk to a fraction of prior levels after Katrina.

⁵ Laura Maggi, *Judge Orders Many Inmates Released Without Bail*, The Times-Picayune, December 7, 2005; Richard A. Webster, *Hurricane Katrina Throws Louisiana Justice System into Chaos*, New Orleans City Business, January 16, 2006; Gwen Filosa, *Katrina Brings Disorder to Court*, The Times-Picayune, April 17, 2006; Gwen Filosa, *Judge Threatens to Free Poor Inmates*, The Times-Picayune, April 8, 2006.

Draft as of Sept. 12, 2007

faced significant public safety challenges in accounting for defendants out on bail, convicted offenders out on parole and registered sex offenders.⁶

The tremendous stress and turmoil of a disaster also immediately impact families. As soon as the New Orleans courts relocated to temporary sites around the state, there was an increase in child custody and support cases, and when they reopened in New Orleans there was a surge of domestic violence petitions, divorce filings and custody/visitation proceedings occasioned by the relocation of custodial parents.⁷ Vulnerable children and other family members rely upon the courts to recognize their urgent and immediate needs for protection and care, and to authorize and mobilize other facets of the justice and social service systems to assist them. In the days and weeks following a disaster, the courts must be available to provide these services.

The courts must be available to address other immediate needs. In Louisiana, the courts were quickly deluged with eviction proceedings as landlords sought to take possession of properties in an effort to begin repairing and re-leasing them to new tenants.⁸ In addition, the

⁶ Brad Townsend and Lee Hancock, *A Legal Quagmire Without Precedent*, Dallas Morning News, September 9, 2005.

⁷ Lynette Clemetson, *Torn by Storm, Families Tangle Anew on Custody*, New York Times, April 16, 2006.

⁸ Trymaine Lee, *New Orleans Judge Temporarily Halts Evictions*, The Times-Picayune, October 25, 2005 (describing a “tsunami of evictions looming for thousands of city residents”).

Draft as of Sept. 12, 2007

courts have been inundated with storm-related lawsuits involving insurance coverage, victim compensation, property damage and commercial losses.⁹ The individuals, families and businesses who are parties to these actions desperately need to have them resolved as expeditiously as possible, so that financial obligations can be met and rebuilding a community can begin. The courts are responsible for providing fora to support these essential steps in reconstructing and refashioning the community.

The court's roles as a conduit for other legal and administrative functions and as repository of essential legal records also must be functional immediately after a disaster. For example, in Louisiana (as in many states), child support payments are made by the obligor through the court to the obligee. Following Hurricane Katrina, until the court system was remobilized, obligors had no clear route for making child support payments, which were so critical for the financial support of dislocated families. Many Louisiana courts also were challenged by the threatened loss of a vast quantity of paper records, which form the backbone for many legal relationships throughout the state and beyond. Although many of those records were salvaged through a professional records recovery effort, the court's ability to launch an immediate (and expensive) mission to save the records was critical.

These are but a few of the lessons learned from Hurricane Katrina. Other disasters will bring other challenges. Emergency planning is to a great extent a local activity, with each community having its own peculiar vulnerabilities. Some communities are susceptible to natural

⁹ Laura Parker, *After Katrina, Courts Flooded By Lawsuits*, USA Today, January 16, 2006.

Draft as of Sept. 12, 2007

catastrophic events because of their physical locations – on earthquake faults, adjacent to oceanic topography subject to tsunamis, or in areas of frequent and destructive storm and weather events. In today’s world, no government institution can be complacent in the face of a vast number of potential man-made and natural threats. We live in a time in which terrorist activities and public health emergencies, such as pandemic illnesses, are very real possibilities. The judiciary has an obligation to prepare as best it can to meet the challenges of providing mission essential functions in the face of any and all emergencies, from catastrophic events that bring large scale disruption and harm to the more commonly anticipated emergencies that can disrupt court operations on a more localized basis and for a limited time only. The goal of this paper is to identify what state court leaders should be doing now to ensure that their court systems are able to meet this responsibility in the future. It identifies key policies and practices designed to promote effective emergency planning and business continuity in their jurisdictions. It is not intended to be comprehensive in scope or serve as a detailed planning manual, but rather to focus the attention of court leaders on the broader policy issues that need to be addressed to ensure that the courts are functional and accessible during an emergency.

II. Leadership and Planning

A. Best Practices

Leadership is the foundation of effective emergency planning in the state courts. Each Chief Justice and State Court Administrator (SCA) needs to set the tone for the entire judicial branch by demonstrating a leadership commitment in this area and sending the message that emergency preparedness is a top policy priority that must be integrated into the court system’s

Draft as of Sept. 12, 2007

culture. The Chief Justice and SCA can assert leadership by issuing an administrative order, memorandum or letter that communicates clear and emphatic policy goals for emergency preparedness and business continuity planning at the state and local levels; that identifies the mission essential functions of the courts that these policy goals are designed to support; that authorizes the formation of a statewide committee or other body intended to carry out the leadership's goals; and that emphasizes that every court, beginning at the highest level, must have plans in place to anticipate and respond to emergencies and provide for the continuation of court operations. In the event of an actual emergency, court leaders should be as visible and engaged as possible, demonstrating a personal commitment to keeping the courts open. Court leaders can also demonstrate leadership by being visibly involved in key stages of their court system's emergency planning efforts. In this regard, each Chief Judge and SCA should be familiar with relevant federal and state materials such as the NCSC's Emergency Management Best Practices.¹⁰

B. Emergency Preparedness: Management and Administration

From a statewide perspective, each court system should institutionalize an approach to

¹⁰ Available at

http://www.ncsconline.org/WC/Publications/Comm_CtSecEMfCtsPub.pdf. The best practices can be summarized as: survey and prioritize emergency management needs; create and practice an emergency response plan; get a seat at the table; develop a plan to communicate internally; develop a plan to communicate externally; and don't let lack of resources prevent planning.

Draft as of Sept. 12, 2007

prevention, preparedness, response and recovery that will enable the courts to administer justice if and when they are confronted with a wide array of potential operational interruptions.

Whatever approach is developed, each court system must use it to set priorities and policies, implement programs, define and coordinate internal responsibilities, promote intergovernmental coordination and communication, identify and pursue federal and state resources, provide assistance to local courts, and, ultimately, help guide response and recovery efforts.

The statewide committee appointed by the Chief Justice should coordinate emergency preparedness efforts, including planning and implementation, and recommend policies and guidelines for the entire judicial branch. The Chief Justice should designate a Chief Emergency Preparedness Officer to chair this committee and be the judicial branch's point person. This individual should oversee statewide preparedness efforts and report directly to the Chief Justice and/or the SCA. He or she should be given the responsibility and corresponding authority to translate the court leadership's vision and priorities into concrete action and results. The planning process should result in a comprehensive statewide emergency preparedness plan, although it is important to recognize that the vast majority of court emergency planning will be taking place at the individual court level and central plans must therefore provide ample guidance and tools to aid in the development of local court plans. It is the task of the SCA to make sure that the statewide plan is communicated to judicial branch personnel and appropriate outside stakeholders, and that appropriate training and education programs are implemented internally to enhance the likelihood of consistent and effective responses.

Many states have existing units and systems dedicated to court security and general emergency preparedness issues. Court leaders should reexamine these groups to see whether

Draft as of Sept. 12, 2007

they should be augmented. In those states which address emergency preparedness and security separately, court leaders should consider whether these closely related areas should be combined or whether there should be closer institutional coordination.

Local courts should have their own standing committees to develop and implement court-specific plans and deal with local disaster planning issues on a continuing basis. These committees can serve as effective interfaces with other stakeholders and court officials within their jurisdictions. The specific organization and functions of these groups may differ from court to court as there is no “one size fits all” approach to emergency planning. Some groups may find it feasible to include outside agency officials in their membership, while other groups may be limited to serving as interfaces with outside agencies.

Each and every court must have its own comprehensive emergency plan addressed to its particular needs and vulnerabilities. A central component of the COOP development process is for each court to take the time to identify and prioritize the functions most essential to carry out its mission. The COOP must anticipate and set forth how those functions are to be performed under various emergency conditions. Courts should not accept default emergency preparedness plans designed by other agencies, particularly if courts have not been appropriately consulted and their needs considered. Policy makers and staff from central court administration should provide practical tools to assist in the development of comprehensive local plans that are geared toward achieving the court leadership’s policy goals for emergency preparedness. In this regard, central court administration can help courts with emergency and COOP planning by issuing guidelines and comprehensive templates addressing the essential elements of effective emergency

Draft as of Sept. 12, 2007

preparedness plans.¹¹

Finally, once a plan has been developed, it is incumbent upon court leaders, whether at the state or local levels, to keep the focus on the plan and to suggest strategies to ensure that it does not just sit on a shelf but is in fact updated and rehearsed on a regular basis. It is critical that court personnel get the message that the court's plan is considered a continuous work in progress. The Chief Emergency Preparedness Officer should be required to provide the Chief Justice and SCA with regular updates or memos on the status of statewide and local planning

¹¹ A step-by-step Guide and curriculum on continuity of operations planning currently is under development by NCSC. The Guide and curriculum are being developed with funding from the Bureau of Justice Assistance. Initial versions of the Guide are planned for the Fall of 2006. For more information, contact Pam Casey at pcasey@ncsc.dni.us or Carolyn Ortwein at cortwein@ncsc.dni.us. Additionally, NACM's web site, www.nacmnet.org contains many helpful materials, including a business continuity management mini guide, a generic COOP, COOPs from specific jurisdictions, sample administrative orders, and business continuity and pandemic planning checklists and worksheets. Another excellent resource is the Court Security and Disaster Preparedness Project, a joint collaboration of American University and the State Justice Institute, which has produced, among other resources, *Planning for Emergencies: Immediate Events and Their Aftermath—A Guide for Local Courts*, <http://spa.american.edu/justice/>

Draft as of Sept. 12, 2007

efforts, including any important developments or plan revisions and rehearsals.

C. Intergovernmental Coordination: Getting a Seat at the Table

Courts cannot be an afterthought in executive branch emergency preparedness and COOPs at the state, local and federal levels. The need for comprehensive governmental coordination was never more evident than immediately following Hurricane Katrina, which demonstrated that cooperative efforts among different levels and branches of government drive an overall ability to respond to and recover effectively from a catastrophic event. Good emergency planning requires an enormous amount of advance coordination among different court levels and between the courts and a host of state and local agencies on a wide range of facility, security, law enforcement and emergency management issues. Unfortunately, many courts currently do not have a seat at the table when state and local emergency management agencies develop first response and COOPs. Indeed, many courts are not even consulted despite the fact that those plans integrally affect – and may be affected by – the courts. Part of the problem is that the field of emergency preparedness¹² has been focused largely on traditional first

¹² “Emergency preparedness” is used here in a broad sense, referring to a range of elements that address: deterrent procedures; emergency first response measures taken during an event to safeguard lives and property; post-emergency recovery directed at re-opening facilities and the resumption of normal operations; and Continuity of Operations Plans (COOPs) which are designed to assure the continuation/resumption of essential operations in response to a wide array of potential operational interruptions.

Draft as of Sept. 12, 2007

responders such as law enforcement, fire and emergency rescue personnel.¹³ Nor have the state courts been very proactive in reaching out to these agencies to help them understand how important it is to keep the courts open to address the immediate justice needs of those experiencing disaster-related upheaval. However, regular outreach and communication with emergency management officials in the jurisdiction will help ensure that the courts are perceived and treated as a priority and integrated into state and local emergency management networks and planning processes.

The Chief Justice and SCA can do much to help their courts get a seat at the table by reaching out to state leaders and state emergency management officials to educate them about the role and importance of the courts. It is recommended that the Chief Justice make a personal contact with the Governor to communicate the importance of including the judicial branch in executive branch activities involving the development of state emergency preparedness policies.

¹³ A “first responder” as defined in Homeland Security Presidential

Directive/HSPD-8 refers to those individuals who in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment, as well as emergency management, public health, clinical care, public works, and other skilled support personnel (such as equipment operators) that provide immediate support services during prevention, response, and recovery operations. Typical first responder agencies include: fire departments, Law Enforcement, emergency medical services, hospitals, public works/utility companies, public health departments, emergency management agencies, clinics, port security, school security, transportation agencies, response volunteers, etc.

Draft as of Sept. 12, 2007

Similarly, the SCA should personally contact the state emergency preparedness director to review a copy of the state's emergency plan and to make sure that there is judicial branch participation in the development of state policies and guidelines. Any deficiencies and suggestions for improvement should be communicated on an ongoing basis.

Local courts should engage in similar outreach and request meetings with relevant executive agency first response and emergency planners, request an opportunity to review their plans and any applicable intergovernmental agreements on preparedness, and work collaboratively to improve them and address judicial branch needs. It may be helpful for local courts to explore court-specific scenarios with emergency planners to illustrate instances in which the courts are critical partners with first responders and to demonstrate why the courts need to be integrated into existing command and control structures and communications systems.¹⁴

In terms of the nature of the outreach, court systems must make it a priority to develop

¹⁴ Court personnel involved in emergency management should be knowledgeable in the Incident Command System (ICS) model, the predominant approach utilized by governments at all levels for organizing responses to incidents that require coordinated efforts by a number of different agencies. Under the ICS model, a specific agency (depending on the type of incident) is selected to serve as lead agency, and a command center is established to coordinate the work of the various responding agencies and to serve as the single point of disseminating information. ICS is designed to improve coordination and eliminate the "turf" wars by identifying a lead agency and clarifying role of each non-lead agency.

Draft as of Sept. 12, 2007

positive relationships with emergency management and first responder agencies. The Florida courts, for example, have stressed a good neighbor approach, building a sense of teamwork and cooperation with executive branch agencies and inviting them to take part in the courts' emergency planning efforts, including membership in court-established policy making bodies and working groups. If there is no regular communication with other agencies within the jurisdiction, the courts can be the catalysts and take the lead in creating committees to coordinate efforts across the jurisdiction.

Courts should consider whether there are legislative or practical strategies that may help them obtain a seat at the emergency preparedness table. For example, the New York courts obtained passage of legislation that mandates inclusion of the courts in state and local emergency planning processes.¹⁵ Court systems can also work in practical ways to improve coordination among branches and levels of government. For example, court security personnel in New York are permanently assigned to New York City's Office of Emergency Management and to the New York City Police Counter-Terrorism Task Force. These court security officers serve as points of contact, providing real-time information during emergencies, gaining vital expertise and reminding other agencies that the courts perform essential roles in emergencies.¹⁶

D. FEMA

The Federal Emergency Management Agency (FEMA), which operates under the

¹⁵ Executive Law, Article 2-B, as amended by L. 2004, ch. 42.

¹⁶ New York State Unified Court System, *Report of the Task Force on Court Security* (October 2005), at 15-16.

Draft as of Sept. 12, 2007

umbrella of the Department of Homeland Security (DHS), is critically important to disaster recovery because it coordinates all assistance provided directly by the federal government in response to declared emergencies and provides federal grants to cover many emergency costs, including repair, restoration and reconstruction of public facilities. Courts need to develop a strong understanding of FEMA's workings and of the basic legal framework governing federal disaster preparedness and recovery.

FEMA has regional offices throughout the country that each serves several states, and FEMA staff work directly with state executive agencies in each region. Courts should be proactive in developing positive relationships and contacts with those state agencies and officials which work closely with FEMA in order to set the stage for active cooperation during an emergency. Courts also should be familiar with the National Incident Management System (NIMS) inasmuch as the federal government relies on NIMS to coordinate all federal response activities and has expressly enjoined federal agencies from providing funding to state executive agencies not in compliance with NIMS.¹⁷

¹⁷ NIMS is a nationally standardized approach to incident management and response developed by the Department of Homeland Security in March 2004. It establishes a uniform set of processes and procedures that emergency responders at all levels of government use to conduct response operations. Federal agencies are required to use the NIMS framework in domestic incident management and in support of state and local incident response and recovery activities.

Draft as of Sept. 12, 2007

The Hurricane Katrina experience demonstrated that FEMA is a very complex bureaucracy and that court personnel may have difficulty navigating its many complicated and time-consuming procedural requirements. In the event of a significant disaster, state court systems would do well to consult a FEMA expert as soon as possible. The NCSC should develop a national contact list of firms and individuals with significant expertise in the legal and bureaucratic aspects of disaster recovery and in dealing with relevant federal agencies like FEMA.

E. Communication

The ability to communicate during an emergency must be given the greatest possible advance thought and preparation. Without effective communications an emergency can quickly worsen and devolve into chaos. A command and control system is a central element of any emergency response plan, but its effectiveness will depend on the ability to deliver accurate and consistent messages. Courts therefore must pre-determine to the extent possible how they will communicate internally and externally in a crisis with their own personnel, first responders, the general public, lawyers, litigants, jurors and other affected constituencies. It is important to anticipate different scenarios and to have available alternative plans for communicating with internal and external constituencies so that courts can fall back on a variety of different “high-tech and even “low-tech” communication technologies during an emergency. Finally, the court’s public information officer should be integrated into emergency preparedness and planning efforts and charged with the responsibility of carrying out public communications during a disaster.

F. Court Records and Information Systems

Court records play vital roles in the operations of institutions, the lives of individuals and

Draft as of Sept. 12, 2007

the preservation of history. Safeguarding them is an important responsibility and courts must have a written plan and a designated team responsible for salvaging and restoring court records. Similarly, information technology systems are absolutely indispensable to the courts' ability to function and serve the public. Although there are companies specializing in recovery of computer data and paper-based records, it is not always possible to recover all data and records, and such processes can in any event be very costly. Therefore, courts should engage in destruction prevention, storing records away from hazards, making back-up copies of important electronic and paper files and using remote locations as storage sites.

Where there is an emergency involving a courthouse that contains vital records, time is of the essence. One key to successful recovery is to quickly stabilize environmental conditions like heat and moisture to prevent further deterioration and/or remove damaged records to a more stable environment as soon as possible. An inventory should be made of any records that are moved as part of the recovery and restoration process. For both electronic and paper records, there are several restoration approaches depending on the magnitude and severity of the damage: air drying, freeze drying and vacuum freezing. The decision of which method to use will depend on a variety of factors: importance of records, volume of records, cost of drying/restoration method, available resources and required retention periods. This decision process can be expedited if there is pre-disaster knowledge of area businesses engaged in restoration of paper and electronic/magnetic media, including their specific capacities and rates.

G. Staffing and Human Resources

Court staffing and human resources issues require the close attention of court emergency planners. Once court planners identify and prioritize the court's primary business objectives,

Draft as of Sept. 12, 2007

they can answer key questions about what it will take to provide essential services during a crisis, including how many and which court employees will be needed to perform these tasks, and what physical and support services will be needed to support these employees.

Depending on the severity of the disaster, courts may be extremely short-staffed as employees attend to urgent personal and family matters or encounter difficulties in reporting for work. Accordingly, planners must closely examine court operations to get a complete picture of what it takes to conduct the court's most essential operations on a daily basis. They should consider how the court will operate with minimal staff, and they should convey to employees the expectation that they will have to step into different roles as part of dealing with a court emergency. The planning process should include representatives from various departments and levels within the court, with cross-training provided as needed. The COOP should address and to the extent possible identify the essential staff and skills proficiencies needed to keep the court running at the most basic level.

During an emergency, essential personnel may have to work long hours under unusual or trying conditions. It is important that court administrators revisit personnel policies and reach understandings ahead of time with unions concerning issues like overtime, compensation time and salary continuation for the many employees who may be unable to report to work for a variety of reasons, such as courthouse closures, unavailability of transportation, illness, quarantine, etc. Concomitantly, they should consider how key administrative support services like payroll will continue to function and how to provide employees with necessary emergency services such as transportation. Depending again on the nature and severity of the emergency, court staff may experience emotional trauma. The Katrina experience made clear that court

Draft as of Sept. 12, 2007

emergency planners must identify and be prepared to call upon mental health professionals trained to provide crisis intervention. Finally, court emergency planners should take steps to strongly encourage or even mandate that their employees, particularly key staff, develop personal or family emergency preparedness plans. The more that court employees can minimize the adverse effects of an emergency on their family and personal lives, the more likely they will be able to report to work and stay on as needed to assist the courts in getting through the particular disruption.¹⁸

III. Funding

Courts may be able to afford many of the costs associated with emergency planning and preparedness under their existing budgets plans, but the costs of providing new training, conducting exercises, acquiring new equipment and, above all, adding new personnel or redesignating existing staff can become quite significant for already strapped court systems. Courts should determine risk and need, develop a multi-year strategic plan and be assertive in the view that state and local governments have an affirmative responsibility to provide adequate court funding to support emergency preparedness and COOP planning. Courts should present

¹⁸ Such family emergency plans and checklists are readily available on the web. For example, the American Red Cross has posted *Preparing for Disaster (A4600) (FEMA 475)* on its web site at www.redcross.org/services/disaster. NACM's members only web site contains some especially relevant resources in this regard: "Family Disaster Plan" and "Family Disaster Plan Worksheet." See www.nacmnet.org.

Draft as of Sept. 12, 2007

these costs as essential items in their budgets. Institutionalizing emergency planning into the court's annual budget process would have the added advantage of regularly bringing the issue forward, raising awareness and providing fresh opportunities to reassess and update the plan. Courts should also be assertive in seeking federal and state homeland security grant funding. In pursuing available resources, courts will always be in a better position if they take the time to carefully identify their vulnerabilities and emergency preparedness priorities.

An internal survey of COSCA's membership confirmed that the state court community has accessed very little of the federal funding and resources which have been made available for homeland security and emergency preparedness purposes. The bulk of available funding comes from DHS and is provided in the form of block grants to state executive agencies to be awarded in turn to local government units, primarily (to date) to first responder agencies. Many of these grants provide funds to enhance the capabilities of state and local governments to prepare for and respond to various terrorist acts, including chemical, biological and cyber attacks; others support the "all hazards" emergency management capabilities of state and local governments.¹⁹

The NCSC met with DHS representatives to discuss concerns about the ability of state courts to access DHS funding for emergency preparedness. For Fiscal Year 2006, State Homeland Security Grant applications call for a state court official to be a member of the state's Senior Advisory Committee, the body which drafts the statewide plan and determines most

¹⁹ Ernest B. Abbott and Otto J. Hetzel, Eds., *A Legal Guide to Homeland Security and Emergency Management for State and Local Governments*, American Bar Association (2005).

Draft as of Sept. 12, 2007

funding allocations within the state. While progress is being made, the state court community must support efforts to amend federal programs to allow state courts more direct access to federal funds. An optimal approach in this regard is the model set up by the Violence Against Women Act, which makes state and local courts expressly eligible for direct funding and sets aside a minimum of five percent of state grants for court improvement projects directed at eliminating violence against women.

FEMA's Emergency Management Institute offers useful training programs free of charge to judicial branch personnel upon approval of their applications by the state's appropriate emergency management agency. These programs cover the four phases of emergency management: mitigation, preparedness, response and recovery, and provide Incident Command System (ICS) training.²⁰ DHS also offers funding for training exercises, equipment acquisition and technical assistance, with a focus on prevention, response, and recovery from terrorism, chemical and cyber attacks.

IV. Essential Elements of Court Emergency Planning

A. Understanding the State's Legal Framework

An important element of emergency preparedness for the courts involves researching the statutory, regulatory and decisional law governing emergency powers in their states, and identifying the various actors with whom the courts will be involved. A starting point is to

²⁰ See <http://training.fema.gov/EMIWeb/EMICourses/>

Draft as of Sept. 12, 2007

review the scope of the Governor's police or emergency powers. These are usually delineated in the state constitution and/or in the state's emergency management statutes, which spell out the operational roles of the chief executive during a disaster. For the courts, it is critical to know who has the authority to waive or override certain laws. During an emergency, the Governor typically is empowered to suspend or extend statutes of limitations and other court deadlines, including speedy trial provisions in criminal and juvenile matters, but the Chief Justice and other judicial branch officials may also be authorized to toll or extend court deadlines.

Courts can save time and effort by checking with state and local government emergency preparedness agencies that may have already compiled many of these sources, but a special effort should be made to research those issues unique to the mission and functions of the judicial branch. A careful review should be made of potential legal contingencies entailed by court operations, case processing and attorney regulation, including the legal procedures that will need to be followed.

Each state court system should create a handbook that contains the jurisdiction's applicable laws and addresses the issues, policies and systems that may be called into play by an emergency. Some examples of relevant issues include: relief from statutory requirements for competitive bidding in the procurement of office space and essential services and supplies; spending restrictions and emergency borrowing; personnel compensation and personnel policies and procedures; and requirements for creation of a proper court record. The handbook also should contain sample draft orders or forms to deal with, among other questions, modification of court deadlines, court closures, changes in court location and venue, jury selection, case scheduling, bar admission standards, and loss of attorney offices and case files.

Draft as of Sept. 12, 2007

The NCSC can be helpful to the state court community by compiling a comprehensive online database of executive and court orders previously issued around the country in different emergency situations.

B. Basic Checklist for State Courts

Again, it is absolutely necessary that each court have in place a well-understood emergency response plan and COOP to help it respond effectively to emergencies, restore operations and continue court business. Development of courthouse COOPs should be based on templates to ensure comprehensiveness and consistency. There is a wealth of relevant materials on the web and in the appendix to this paper which address the essential elements of court emergency planning. A comprehensive summary of these elements is not possible here given the limited scope of this paper and the fact that each emergency is necessarily unique and will suggest different answers and approaches to the challenges presented, but this section aims to provide some basic guidance.

Take Steps Now

- X Identify and assess the full range of risks and threats the court faces, the likelihood of each threat and the likely consequences of each emergency
- X Focus on disaster prevention and deterrence for vulnerable functional capacities and facilities by installing security measures, off-site storage of vital records, etc.
- X Secure alternative facilities now and enter into advance memoranda of understanding to avoid competition for scarce facilities/services later on
- X Stock and maintain emergency equipment such as first aid kits, flashlights, etc.
- X Focus now on redundancy of computer data systems and vital court records. Back-up court data on daily basis in locations remote from main operations
- X Strongly encourage or mandate that employees and key staff have individual emergency preparedness plans in place for themselves and their families

Plan Testing

- X Conduct evacuation drills to rehearse and test plans to confirm roles and responsibilities and ensure effectiveness of key communications systems

Draft as of Sept. 12, 2007

- X Ensure that responsible personnel rehearse the response plan
- X Pay special attention to communications
- X Convey importance of planning to staff

Responding to Courthouse Emergencies

- X Every court must have an evacuation plan to get people to safety, notify emergency responders and salvage vital records and physical assets.
- X Who is in charge? In a crisis, command and control is essential. People need to know who is in charge immediately. The command center coordinates response and recovery efforts, communicates with essential court and emergency personnel, assigns tasks and tracks progress. A thorough plan will include alternative command sites.
- X Notification. Once a command center is established, key staff need to be kept apprised of the status of the emergency and told whether, when and how to report. A key element is a “phone tree” that lists who needs to be contacted first and who is responsible for contacting who. The phone tree should include home and cellular phone numbers, pagers and other contact information. Court leaders and key staff, including security personnel, should all be provided with the current phone tree lists ahead of time.
- X Develop a system for identifying the location and status of employees in the aftermath of an incident.
- X Have a designated assembly site so that building occupants know where to go during an evacuation.

Communications

- X Technology and procedures must be in place to permit internal and external communications with employees, public safety agencies and essential service providers
- X All potential contingencies must be considered and addressed, from temporary disruption to complete technological failure
- X Back-up communications systems are essential. Provide key personnel with back-up equipment: cell phones, laptops, hand-held radios, satellite phones, voice-over internet phones, etc.
- X Establish courtwide toll-free employee call-in system and website for each facility to provide emergency-related information
- X Establish protocols for documenting and keeping current employee telephone and address contact lists
- X Designate appropriate persons authorized to carry out public communications on behalf of the courts. This may be a public information officer (PIO) or other individual conversant with how to carry out public communications during an emergency
- X The PIO should make arrangements with radio and television stations to broadcast information.
- X Communication and coordination with the Bar is important. Courts will need to work hand in hand with the Bar on issues of mutual concern: court closures, alternate court sites, alternate court procedures, emergency orders, court deadlines, pro bono assistance

Draft as of Sept. 12, 2007

to victims, etc.

Immediate post-event recovery

- X General cleanup to make the courthouse habitable
- X Reopening court buildings and restoring operations
- X Getting staff back to work
- X Transporting records that have to be restored

Continuity of Operations (COOPs)

- X The COOP's objective is to ensure that the functions most essential to the court's mission will continue to be performed with minimal disruption under distressed conditions and/or in alternate locations.
- X Each court must identify and prioritize the key staff and skill sets required to keep the court functioning at the most basic level and plan for how to replace those employees and carry out those skill sets during an emergency
- X The COOP should prioritize which operations must be restored immediately and which can be deferred or phased in at later times.
- X Mission essential functions typically encompass initial appearances, arraignments, bond hearings, domestic orders of protection, civil injunctions and other emergency relief.
- X The COOP should delineate lines of authority and delegations of authority. Who will have decision making authority? Under what circumstances? Over what areas?
- X Each court must identify and arrange in advance for services and operations needed to support mission essential functions at alternate locations, such as information technology capabilities, telephones, security, prisoner transportation, alternate housing and transportation for staff, salary continuation, crisis counseling, etc.
- X The COOP should be reviewed and updated annually

Records Preservation

- X Courts must prepare for the possibility that access to computer data and paper records will be limited or nonexistent during a disaster.
- X Courts must determine which business documents and processes are essential and consider how they can be performed and maintained manually.
- X It is important to ensure that the most important data and court records are backed up on a regularly scheduled basis at a remote location.
- X Courts must be prepared to act as quickly as possible after the damage to salvage records, stabilize environmental conditions and begin the restoration process.
- X Advance identification of restoration experts and trained court personnel is helpful
- X Where access to records or restoration of records is not possible, the courts should contact other justice system agencies who keep copies of those records

V. Looking ahead: Flu Pandemic

Draft as of Sept. 12, 2007

In November 2005, the White House released the *National Strategy for Pandemic Influenza*, followed in May 2006 by the *Implementation Plan for the National Strategy for Pandemic Influenza*.²¹ These reports predict that an influenza pandemic could be comparable in impact to a war. In a worst case scenario, a flu pandemic in the United States alone could kill two million people, infect 50 million and put 40% or more of the workforce out of commission. It is impossible to predict the timing and severity of the next pandemic, including whether the current avian flu strain (H5N1) will infect humans in large numbers. However, history strongly suggests that we are due for a new pandemic, as they occur approximately every 35 years and the last one occurred in 1968.

Just as with emergency preparedness in general, the main objectives of court pandemic planning efforts must be to keep the state courts' essential functions operational so that society will continue to have access to justice and the health and safety of the general public can be protected. An influenza pandemic will place enormous strains on state judicial systems. In preparing for a pandemic, certain basic scenarios can be anticipated.

- X Large numbers of emergency filings involving petitions for isolation of ill persons and for quarantine of exposed but not yet ill persons, as well as for enforcement of court-imposed restrictions. Significant increases in probate, custody and dependency matters are expected.
- X As many as 40% of judges, attorneys, court staff and jurors will be unavailable.
- X Dramatic limitations on face to face contact, with significant impairment of the courts' ability to perform mission essential functions like trials and hearings.
- X Significant impairment to public infrastructure, including public transportation.

²¹ <http://www.whitehouse.gov/homeland/pandemic-influenza-implementation.html>

The *Implementation Plan* contains more than 300 recommendations for action by the public and private sectors to prepare for an influenza pandemic.

Draft as of Sept. 12, 2007

- X These conditions could persist for as long as 12 to 18 months and the outbreak is likely to come in two or more waves.
- X Vaccines may not be available for six months and will be dispensed on a priority basis to first responders such as medical staff and law enforcement.

It is encouraging that some court systems and justice system leaders have already begun to prepare for the next pandemic,²² and that important work is underway at the national level,²³ but it is vital that each and every state court system plan for a pandemic. Some states, including Indiana, have already developed comprehensive public health law bench books which familiarize judges with the jurisdiction's laws governing public health emergencies, the legal issues arising from isolation and quarantine proceedings, such as whether such proceedings will be criminal or civil in nature and whether it will be necessary to appoint counsel, and the interplay between the courts and public health officials.²⁴ The bench books also contain helpful templates, including

²² Florida State Courts Strategy for Pandemic Influenza (March 2006).

²³ On May 24-25, 2006, members of COSCA or their representatives attended a Symposium on "Preparing the Justice System for a Pandemic Influenza and Other Public Health Emergencies," which was sponsored by the U.S. Department of Justice's Bureau of Justice Assistance (BJA).

²⁴ The *Public Health Law Bench Book for Indiana Courts*, available at www.publichealthlaw.info/, is a particularly comprehensive and helpful document which provides a model for other state court systems. One of the authors was former Indiana County Court Judge Linda L. Chezem.

Draft as of Sept. 12, 2007

model court orders governing isolation and quarantine. Each state court system should begin the process of developing a public health emergency bench book and otherwise provide judges and court staff with appropriate training in this complex area.²⁵

As in the emergency preparedness context, courts should ensure that there is a statewide process to coordinate internal and external planning efforts and to recommend pandemic-specific policies and guidelines for inclusion in state and local emergency response plans and COOPs. Moreover, courts should lay the foundation now for the kind of coordinated multilevel and multiagency responses that will be required to keep the courts open and maintain the rule of law in the face of widespread death and illness and major disruption to the infrastructure and economy. Interbranch relationships developed in the emergency preparedness context will remain relevant and valuable, but specific outreach and coordination should be undertaken with regard to state and local public health officials.

VI. Recommendations

In view of the many important and difficult challenges identified in the preceding discussion, the following recommendations address how COSCA and CCJ, in partnership with

²⁵ A particularly helpful resource is the Center for Public Health Law Partnerships, www.publichealthlaw.info/, funded by the Center for Disease Control, which will work with state court systems to develop educational programs and materials such as public health law bench books for judges.

Draft as of Sept. 12, 2007

NCSC, can support the state court community in meeting the vital goal of being prepared to keep the courts open and provide access to justice in the face of an emergency.

Conference of Chief Justices

The Chief Justice of each state should provide leadership to highlight the importance of emergency preparedness for the judicial branch and insure that the following steps have been taken in his or her state.

- A. A statewide planning committee should be created to coordinate emergency preparedness and recommend policies and guidelines for the judicial branch;
- B. The state's high court should adopt a comprehensive statewide emergency preparedness plan to encourage and guide the development of local plans for any buildings in the state in which judicial proceedings take place and/or judicial branch personnel are located;
- C. The Chief Justice should designate one person who serves as the point of contact on issues of emergency preparedness for the judicial branch and who should report either to the Chief Justice or the State Court Administrator (SCA);
- D. Personal contact should be made by the Chief Justice with the Governor to communicate the importance and need for the judicial branch to be included in all executive branch activities involving the development of state policies on emergency preparedness and to coordinate an inter-branch response;
- E. The Chief Justice and/or SCA should take an active role in fostering the development of local emergency preparedness and COOP plans and in ensuring that such plans are rehearsed and kept up to date; and
- F. The Chief Justice and/or SCA should affirm that state and local governments have an affirmative responsibility to provide adequate court funding to support court emergency preparedness and COOP planning and these items should be regularly included in the courts' budget process.

Conference of State Court Administrators

Each SCA should insure that the following steps are taken in his or her state:

- A. The statewide emergency preparedness plan adopted by the state's high court should be communicated to all judicial branch personnel and training and education programs should be developed at the state level to enhance the likelihood of a consistent and effective response;
- B. The SCA should personally contact the state emergency preparedness director designated by the executive branch, review a copy of the state's emergency plan, and insure that there is judicial branch participation in the development of state policies and guidelines;
- C. The SCA should insure that periodic assessments of state and local efforts of emergency preparedness for the judicial branch are carried out and deficiencies are noted for improvement;
- D. The SCA should insure that the technical capacity to communicate between key state-level judicial branch personnel is in place and that communication policies by and between judicial branch employees and the public are in place;

Draft as of Sept. 12, 2007

- E. COSCA should support the work of its Security and Emergency Preparedness Committee and work toward the implementation of the joint CCJ/COSCA Resolution 17, “In Support of the Importance of Court Security”; and
- F. Each state court system should develop public health emergency bench books which cover the jurisdiction’s public health laws and the legal issues surrounding isolation and quarantine proceedings, and contain helpful templates, including model court orders governing isolation and quarantine.

National Center for State Courts: The NCSC should provide assistance to the state courts as follows:

- A. Model policies for state and local emergency preparedness plans, COOP plans, and security plans should be developed and made available to local courts on NCSC website;
- B. The ICM course on emergency preparedness should be developed for delivery as a web-based course and should include as one of its components targeted assistance for local court officials in the development of local court emergency preparedness, COOP and security plans;
- C. NCSC should designate staff to serve as liaisons with federal agencies, especially the US Department of Homeland Security (particularly the Office of Grants and Training), that are involved in federal disaster planning and response, so as to be able to provide more effective assistance to state courts when such issues arise;
- D. NCSC should research the technical possibility and capacity of the Center to act as an emergency back-up for communications for states which are experiencing disasters and have lost communications capacity;
- E. NCSC should act as the central repository of all judicial branch emergency preparedness plans adopted by each state; and
- F. NCSC should develop for the benefit of state courts a national contact list of consultants with significant expertise in the legal and bureaucratic aspects of disaster recovery and in dealing with important federal agencies like FEMA.

Federal Agencies

- A. COSCA and CCJ, in partnership with NCSC, should urge DHS to adopt regulations which require the inclusion of state court representatives, appointed by the Chief Justice, in the process of drafting and adopting the statewide emergency plans required and reviewed by the agency;
- B. COSCA and CCJ, in partnership with NCSC, should urge the Department of Homeland Security to adopt regulations which require that the state judicial branch have representatives designated by the Chief Justice on each state’s advisory committee required by the department.

Congress

- A. COSCA and CCJ, in partnership with NCSC, should urge Congress to insert language in all federal agency appropriations which benefit state and local governments and have impact on state court operations, to the effect that the agency provide for the

Draft as of Sept. 12, 2007

- participation of state judicial branch representatives in the state-level committees required by the agency;
- B. COSCA and CCJ, in partnership with NCSC, should work to ensure that state courts are authorized to apply directly for DHS funding currently available only to each state's Security Administrative Agency for security and emergency preparedness;
 - C. COSCA and CCJ, in partnership with NCSC, should encourage Congress to adopt a funding model which is similar to that provided in the Violence Against Women Act, which establishes a minimum amount of funding to be provided to the judicial branch in all emergency preparedness grant programs of FEMA and DHS.

VII. Conclusion

This country's courts must be ready and able to function in the immediate aftermath of a catastrophic event. An operational court system is an essential component of a stable public safety network. An operational court system is also needed to support a return to societal stability following the predictable chaos caused by a disaster.

As outlined in this paper, courts must engage in extensive preparation and planning to ensure that they can perform the critical functions required of them. Relationships with partner agencies must be improved and new relationships formed. But courts cannot attain an adequate level of disaster preparedness and then turn their attention elsewhere. To be effective, emergency preparedness and planning must be an unceasing part of what state court systems do to serve the public—anticipating the unexpected on behalf of the safety of the people who work in and use the courts, and on behalf of the millions of people who rely on the courts to help get them through the consequences of a disaster.

The state courts and state court employees are dedicated to support their communities and to provide justice to those who need their services. The actions of court employees after Hurricane Katrina, as described by Louisiana State Court Administrator Hugh Collins, illustrate this commitment:

Draft as of Sept. 12, 2007

There have been a lot of stories about the Louisiana judicial system in the aftermath of Hurricane Katrina, but I have yet to see commentary on the remarkable work of dedicated court employees immediately after the storm and it is a story worth telling. For example, the City of New Orleans at one point announced that it would no longer fund any of its court employees. Still, when court employees were needed at the bus terminal, the facility then handling all criminal bookings and first appearances, all available and able court employees reported to work with no guarantee that they would ever be paid. These court employees kept the judicial system alive and I am so proud of every one of them.

DRAFT

Draft as of Sept. 12, 2007

Court Emergency Preparedness and Continuity of Operations Planning Resources

9-11 Summit Website, <http://www.9-11summit.org/> (provides a large compendium of court emergency management materials, including planning manuals, templates, checklists, etc.)

Abbott, Ernest B. & Hetzel, Otto J., Eds., *A Legal Guide to Homeland Security and Emergency Management for State and Local Governments*, American Bar Association (2005).

American Bar Association, *Hurricane Katrina Disaster Resources*, <http://www.abanet.org/katrina/lawyerspractice.html> (web site contains many disaster recovery and preparedness resources for lawyers and courts).

American Bar Association State and Local Government Law Section, *Checklist for State and Local Government Attorneys to Prepare for Possible Disasters*, <http://www.abanet.org/statelocal/disaster.pdf>

American Red Cross, *Preparing for Disaster*, www.redcross.org/services/disaster

American University and State Justice Institute Court Security and Disaster Preparedness Project, *Planning for Emergencies: Immediate Events and Their Aftermath—A Guide for Local Courts*, <http://spa.american.edu/justice/csdp.php> (this web site provides access to other relevant reports and materials on court emergency planning)

Department of Homeland Security, <http://www.dhs.gov/dhspublic/index.jsp>

FEMA, *Emergency Management Guide for Business & Industry*, <http://www.fema.gov/pdf/library/bizindst.pdf>

Florida State Courts Emergency Preparedness Main Page, http://www.flcourts.org/gen_public/emergency/index.shtml, (includes the 2002 report of the Florida Supreme Court Workgroup on Emergency Preparedness, *Keep the Courts Open*, as well as administrative orders, planning templates and other relevant materials).

Huff, *Planning for Disasters: Emergency Preparedness, Continuity Planning and the Federal Judiciary*, *The Judges Journal* (Winter 2006).

Judicial Education Reference, Information and Technical Transfer Project (JERRIT), *Project Report Developing and Evaluating Courthouse Security and Disaster Preparedness: A Collaborative Process Between State and Federal Courts*, <http://jeritt.msu.edu/resources.asp?page=12>

Lemon & Huff, *The Flood and the Legal Deluge*, *The Judges Journal* (Winter 2006)

Draft as of Sept. 12, 2007

National Association of Court Managers, www.nacmnet.org (the members only section of the web site contains many helpful materials, including a business continuity management mini guide, a generic COOP, COOPs from New Mexico, Florida and Louisiana, sample administrative orders, business continuity and pandemic planning checklists and worksheets, and tabletop exercises).

National Center for State Courts, *Emergency Management for Courts Best Practices*, www.ncsconline.org (web site also contains links to many relevant articles and materials)

New York State Unified Court System, *Report of the Task Force on Court Security* (October 2005), <http://www.nycourts.gov/reports/index.shtml>

Strandberg, Keith W., *Disaster Preparedness*, Courts Today (Jan/Feb 2006)

Court Pandemic Planning Resources

Bureau of Justice Assistance, *Preparing the Justice System for a Pandemic Influenza and other Public Health Emergencies*
http://www.ojp.usdoj.gov/BJA/pandemic/pandemic_main.html

Center for Public Health Law Partnerships
<http://www.publichealthlaw.info/>

Centers for Disease Control and Prevention, U.S. Department of Health and Human Services

<http://www.cdc.gov/germstopper/pdf/work.pdf>
<http://www.cdc.gov/flu/pandemic/healthprofessional.htm>

Florida State Courts Strategy for Pandemic Influenza: Keeping the Courts Open in a Pandemic,

http://www.flcourts.org/gen_public/emergency/index.shtml

National Strategy for Pandemic Influenza and Implementation Plan for the National Strategy for Pandemic Influenza

<http://www.whitehouse.gov/homeland/pandemic-influenza.html>
<http://pandemicflu.gov>

Public Health Law Bench Book for Indiana Courts

<http://www.publichealthlaw.info/>