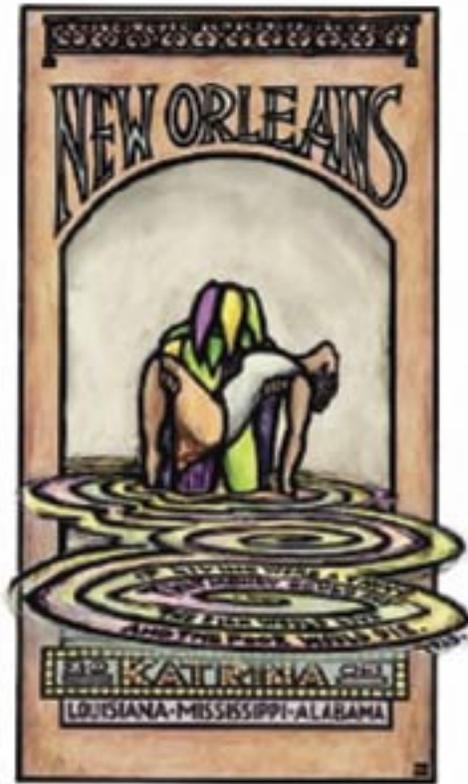


# Supplementary Report

to the Findings of the  
Select Bipartisan Committee to Investigate  
the Preparation for and Response to  
Hurricane Katrina



Presented by the Select Committee on behalf of  
Rep. Cynthia A. McKinney  
Submitted this Monday, February 6, 2006

“Struggle is a never ending process.  
Freedom is never really won.  
You earn it and win it in every generation.”

~ Coretta Scott King (1927-2006)

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## PREFACE

The corporate grip on opinion in the United States is one of the wonders of the Western world. No First World country has ever managed to eliminate so entirely from its media all objectivity - much less dissent.

~ Gore Vidal

What is particularly naïve and peculiarly vicious about the conservative behavioral outlook is that it tends to deny the lingering effect of black history—a history inseparable from though not reducible to victimization. In this way, crucial and indispensable themes of self-help and personal responsibility are wrenched out of historical context and contemporary circumstances—as if it is all just a matter of personal will.

~ Cornel West

The report you are reading comes about through my participation on the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina as a “guest,” since the Leadership of the Democratic Party chose to boycott the process. The Select Committee’s Final Report calls this approach self-defeating, “given that the Select Committee’s composition and minority subpoena authority would have given the Democrats more clout than they enjoy on any standing committee of the House.” I chose to get my foot in the door on this Committee because I knew that time was urgent for the hurricane survivors, who needed our help and our answers, and who also needed to connect with Congress. In that spirit, I urged the Committee to take the time to listen directly to some of the hurricane survivors. I also did not concur with Members on my side of the aisle who were or are holding out for an investigation by an independent commission along the lines of the deeply flawed 9/11 Commission.<sup>1</sup>

In its Report the Select Committee expresses its gratitude for the participation of minority members, including myself. In return, I wish to express my gratitude to the Committee Members, the Committee Staff and especially to Chairman Tom Davis for creating an atmosphere of constructive dialogue, for taking the effort to arrange for a Congressional Delegation to the Gulf Coast on January 19<sup>th</sup> and 20<sup>th</sup>, and in particular for agreeing to hold a special hearing at my request. At that hearing on December 6<sup>th</sup>, we heard directly from some people who rarely get the opportunity to speak to Congress and the American people. Some of their personal testimonials were shocking and disturbing, and that is precisely why I believe that they needed to be heard. I thank the Members and Guests for taking the time to listen. From this I take away some hope, for the spirit of a representative democracy can only be sustained through a constant dialogue between citizens and their elected officials.

Finally, I wish to express to Representatives Jefferson and Melancon of Louisiana, and Representative Taylor of Mississippi, my appreciation for their involvement in the Committee. While I have been engaged with the problems faced by thousands of evacuees now reside in the fourth district of Georgia, I can only imagine the enormity of the political as well as emotional

challenge faced by those dealing directly with the aftermath of the greatest natural disaster in our nation's history.

Government failed the people of the Gulf Coast. That appears to be the overriding theme of the Report. It is not something we did not know. We all saw it on our television screens. But the Report of the Select Committee is stunning for presenting us with a laundry list of failures. This must be qualified, of course, to acknowledge two major successes of government in this catastrophe. First, the largest pre-storm evacuation in our nation's history went off splendidly well for the millions who had the means to evacuate. Second is the heroic performance of first responders, the Coast Guard in particular, in rescuing tens of thousands of residents stranded in their homes. Their courage and dedication is truly to be commended.

Yet putting these two successes together, we immediately see that because the evacuation plan simply did not encompass those without their own means to evacuate, namely those living near or below the poverty line, without this major failing of an otherwise stunningly successful plan, there would not have been such an urgent need for rescue teams to conduct their daring feats of bravery.

The greater failure was the government's delayed and confused response. In general, poor coordination, poor planning and execution, and inadequate efforts at communication are cited in the Select Committee Report as causes of this failure. On its own terms, the Report also does a fair job of balancing, on the one hand, the fact that Hurricane Katrina simply overwhelmed existing capacity of the Federal Emergency Management Agency (FEMA), as well as relief organizations such as the Red Cross to cope with the scale of the catastrophe, with the overall inadequacy of preparation and planning.

Even more pointed is the Committee's conclusion that the lessons learned from the "Hurricane Pam" planning and preparedness exercise conducted in July 2004 were not applied to the response to Hurricane Katrina. The Hurricane Pam exercise was specifically designed to develop planning and response to a catastrophic hurricane hitting the Louisiana coast. It anticipated a scenario even worse than what actually happened before and after Hurricane Katrina. Given "Pam's striking resemblance to Katrina in force and devastation," the Report concludes, "many have been left wondering at the failure to anticipate, and plan for... essentials." Going back further, at a recent press conference, David Walker, Comptroller and head of the Government Accountability Office (GAO) stated that the GAO had made recommendations in the wake of hurricane Andrew in 1992, and that to date most of those recommendations had not been followed up on.<sup>2</sup>

After so many tens of billions of dollars have been spent in establishing and maintaining a new super-agency, the Department of Homeland Security, attentive Americans must ask not only how such a stunning failure of government response to a natural disaster is possible, but also how it is possible that in the process of expending vast sums on new bureaucratic infrastructure charged with enhancing our safety we now learn that lessons of the past were ignored in a way that led directly to the scenario of the present failure. The Committee's Report offers at least a large part of the answer when it points repeatedly to a failure to take initiative, which can easily be interpreted as a failure of leadership. As we read in the Report:

...a dispassionate review made it clear that even an extraordinary lack of situational awareness could not excuse the feckless, flailing, and organizational paralysis evident in the documents and communications the Committee reviewed.

Leadership requires decisions to be made even when based on flawed and incomplete information. Too often during the immediate response to Katrina, sparse or conflicting information was used as an excuse for inaction rather than an imperative to step in and fill an obvious vacuum.

This brings us to the content of the present report. Surprising as the quote above may be, coming from the Majority Party, it remains in keeping with the overall approach of many previous investigations into government failures, because it seeks to address the problem in predominantly bureaucratic terms. Over the years, there has been an almost cyclical pattern of crises or scandals followed by investigations that point out failures, followed by calls for bureaucratic reform.<sup>3</sup> Just as the 9/11 Commission called for a new czar to fight terrorism and got it, the call has already gone out in response to the failure of Hurricane Katrina for the selection of a right-hand man or woman to be the President's point person in coordinating natural disasters.<sup>4</sup> Yet it becomes clear as we proceed that the Secretary of Homeland Security had this authority and failed to exercise it in this disaster.

In this report we are less interested in engaging in a debate about what bureaucratic reforms are needed to fix the problem for the future than we are in addressing areas of omission in the Select Committee Report. In general, the Select Committee Report does not seem to acknowledge the full ramifications of Hurricane Katrina, and the way in which it represents a watershed moment for our nation. The testimony taken by the Select Committee was overwhelmingly from public officials, and this gave undue place to issues of personal and bureaucratic success or failure. The hearings took place during a period of intense confusion and agony for displaced survivors, who often spoke of bewilderment at the *ongoing* failure of the government to act. Moreover, while the Report cites agencies at all levels of government for failure, it generally omits the failure of *the White House or Congress* to respond to the long-term crisis which, collectively, Hurricane Katrina, the levee failures, and the inadequate response have spawned.

The death toll from Katrina stands at over 1,300. But the more astonishing figure is the number of missing, which varies between 3,000 and 6,600 souls, depending upon the source. According to the U.S. Department of Health and Human Services, about 500,000 people, including survivors and those who came to their rescue, may need mental health services.<sup>5</sup> The term "Katrina Stress" has become current, and the level of suicide among survivors is reportedly very high. Calls to the National Suicide Prevention hot line more than doubled in September of 2005,<sup>6</sup> and have stayed high.

Tens of thousands of evacuees living in hotels and motels with their accommodations provided by FEMA face eviction on March 1, 2006. Many have already been evicted. Attorneys for the Lawyers' Committee on Civil Rights have expressed concern that unless urgent action is taken, we may soon see a new class of "Katrina Homeless" in America.

The current and pressing issues of ensuring or restoring survivors with their basic rights of access to housing, education, voting and the right of return may sit outside the narrow window of the ten days before and after the storm that the Select Committee was charged with investigating, but this should count as a major omission, for our government continues to fail the survivors, and at points in this report we will be stepping outside the box, as it were.

In a recent speech, President George W. Bush spoke of how reconstruction of the Gulf “would provide a ‘fantastic opportunity’ for private businesses and investment. ‘There is going to be a building boom down here. It’s going to be an exciting time,’ he said. Bush suggested that the \$85 billion in assistance already pledged by the Federal Government was sufficient. He added: “‘I’m sure there’s still concern about the future, but the eyes have cleared up’”<sup>7</sup> To suggest that none are still crying or in pain is an insult to the dignity of the survivors. A greater insult is the fact that while the Bush Administration seems unwilling to spend the sums necessary to prevent tens of thousands of poor, mostly African-American survivors from being turned out onto the streets, the reconstruction efforts he is excited about involve giving multi-billion dollar, sweetheart, no-bid contracts<sup>8</sup> to firms like Halliburton, a company currently facing multiple investigations of fraud. For example, a Pentagon audit of the giant firm is now calling into question more than a billion dollars’ worth of the company’s bills in Iraq.<sup>9</sup> The Select Committee Report steers clear of this scandal. The only conflict of interest involving contractors that is dealt with concerns companies pursuing contracts with both local and federal government at once.

Initially, less than three per cent of contracts went to minority-owned businesses, where the usual minimum was five per cent.<sup>10</sup> In a situation where minority businesses were hurt the worst, and where returning residents needed those contracts to help get their businesses up and running again, the favoritism towards big, outside contractors over local businesses added insult to injury. Harry Alford, President of the National Black Chamber of Commerce, testified before the Select Committee that, as he sees it, Washington has been in bed with a contractors’ cartel since Desert Storm. Having hijacked the contracting process, this cartel controls the distribution of contracts regardless of price, quality or due diligence. Various mechanisms exist to make it too expensive for minority business owners to do business. We have also talked with experts and business owners who complain about the subcontracting system, whereby big companies like Bechtel or EEC get contracts to do cleanup work at between \$24 and \$44 per square yard, but subcontract this out to smaller contractors often hiring minimum wage workers at between \$4 and \$7 per yard. This is far too high a level of overhead to make sense. Additionally, reports indicate that the chain of subcontracting can result in delays of payments for workers, or one case involving Latino immigrant workers, no payment at all.<sup>11</sup> Arnold Baker, an African-American business owner in New Orleans, had \$600,000 worth of sand confiscated from his premises by authorities to fix the breaches in the levees. He has yet to receive any promise of reimbursement.<sup>12</sup>

If our government can afford to ignore billions of dollars of waste to corrupt no-bid, sweetheart deal contractors, then certainly whatever the local, state and Federal authorities deem necessary for relief and reconstruction efforts should be supplied by the Federal Government, given its failure to respond adequately, in light of prior warnings.

Another extremely important aspect of Hurricane Katrina that the Select Committee Report effectively ignores is the range of releases of hazardous and toxic materials into the environment along the Gulf Coast. The Environmental Protection Agency (EPA) is basically shrugging off what may turn out to be the biggest environmental disaster in our nation's history. In the shadow of so many other controversies, this issue has received scant attention from any quarter.

Hurricane Katrina represents a watershed moment, as many have observed, because it has forced Americans to confront the taboo on discussions of race and poverty at home. The Select Committee's Report elected not to tangle with these issues in any depth. This supplementary report sees these as two major omissions, and it will begin by addressing them. We will look at these issues through some of the survivors' narratives of being evacuated or detained, including the abysmal state of prison conditions in New Orleans.

In his early work *The Theory of Moral Sentiments*, Adam Smith suggested that human beings are generally inclined to have great sympathy for those who have suffered great loss because they have fallen from a high to a low social condition, because they can imagine the magnitude of the loss, but are far less inclined to have much sympathy at all for those who, starting in a low position, fall a bit lower. Perhaps this explains how some Americans can be so callous as to travel to New Orleans to take bus tours of the devastated Lower Ninth Ward, without bringing material aid or volunteering to help in the clean-up. And perhaps Smith's observation sheds light on the current plight of survivors.

The issues that were washed ashore by Hurricane Katrina will continue to confront us many years to come. While driving through one neighborhood full of gutted houses after another in New Orleans, or along the Mississippi coast where piles of debris sit where so many old, antebellum houses once stood, or when confronting the harsh plight faced by so many evacuees in temporary and very tenuous housing, it can be easy to become simply overwhelmed at the thought of the task ahead. The work of the Select Committee ends on February 15. The enormous challenge of confronting the issues raised in these reports does not.

Cynthia A. McKinney  
Member of Congress  
February 6, 2006

Note: The focus of this report is on New Orleans, for reasons that should quickly become apparent to the reader. A broader and more balanced geographical approach was intended, and with more time, could have been achieved.

## 1. HURRICANE KATRINA, POVERTY AND RACISM

### Poverty and Race in New Orleans

Before Hurricane Katrina, there was another hurricane, a slow-moving economic hurricane bringing greater levels of poverty to the working-class cities like New Orleans. 2005 was the fourth consecutive year of increasing poverty in America, with one million additional Americans falling below the poverty line.<sup>13</sup> Seventy per cent of employees in the New Orleans Metropolitan Area are (or were) working class, defined as “those people with relatively little power at work” and whose incomes are typically below \$40,000 per year. Poverty is something that happens to working class people, not middle class or corporate elite people. Specifically, those employed in the lowest-paid occupations such as health support, “food preparation, building maintenance, personal care, and sales” may have “occupations that pay from \$12,000 to around \$18,000 a year—at best not enough to bring a family of four out of poverty.”<sup>14</sup> Being poor does not mean someone is not working. It means that a family is not earning enough income to really get by.

Below is a table of the 2004 demographics for employed adults from selected parishes within Metro New Orleans:

<b>Parish</b>	<b>White</b>	<b>%</b>	<b>Minority</b>	<b>%</b>
Jefferson	155,422	74%	54,654	26%
<b>Orleans</b>	<b>64,066</b>	<b>34%</b>	<b>123,689</b>	<b>66%</b>
Plaquemines	8,030	77%	2,050	23%
St. Bernard	25,959	90%	2,787	10%
St. Charles	16,776	77%	5,072	23%
St. James	5,072	56%	3,997	44%
St. John the Baptist	11,358	59%	7,890	41%
St. Tammany	80,178	89%	9,838	11%

In the 2000 census, over 67 % of the population of the City of New Orleans (Orleans Parish) was African-American, 28% were white, 3% Latino and 1.28% “of two races,” perhaps representing the “Creole” population.<sup>16</sup> Creoles have historically been a privileged group within New Orleans Society, and the Mayor of New Orleans since 1978 has been a person of color, or rather a “creole of color.” Ernest Nathan Morial (1978-1986), Sidney Barthelemy (1986-1994), Marc Morial (1994-2002) and C. Ray Nagin (2002-) have all been light-skinned Creoles. But outside of New Orleans they are widely perceived as black. The percentage of minorities (most of whom are black) living below the poverty line in the City of New Orleans is of course higher than the number of poor whites. But it may be surprising to some to learn that *for the Greater New Orleans Area in the wake of Katrina, a greater number of whites (85,000) live below the poverty line than do minorities (65,000).*

When the levees broke, the flooding in the City of New Orleans became the focus of media attention, and while other parishes experienced major flooding, Orleans Parish was hit the worst. With two thirds of the population of Orleans Parish being African-American, media cameras portrayed a situation where blacks were the primary victims. The drama unfolding in the City of New Orleans drew attention away from the complete destruction of Plaquemines Parish which, stretching south along the Mississippi and surrounding wetlands, took the brunt of the storm surge, and the equally devastating flooding of St. Bernard's Parish.

Yet low income whites are not the only ones who experienced this invisibility. 124,000 Latinos made up three per cent of Louisiana's population. Throughout the Gulf Coast Region some 145,000 Mexicans live and work, and 40,000 Mexicans were displaced by Katrina out of New Orleans alone. Native Americans along the coast were hit terribly hard, including:

the Parch Band Creek Indian Tribe in Alabama; the Coushatta Indian Tribe, Jena Band of Choctaw, and the Tunica-Biloxi Tribe in Mississippi. For one tribe near Chalmette, Louisiana, the local high school served as a tribal morgue, holding the bodies of Native American workers, including shrimpers and other fishermen, who were drowned in the flooding of New Orleans.<sup>17</sup>

**Dr. Robin Rose** of Oregon has been trying to get assistance for three small native groups in southern Mississippi had their communities literally washed away in the storm surge: the Pointe ou chien Tribe, the Iles des Jean-Charles Tribe and the Band of the Biloxi Chittamach are all tribes registered with the state, but because they have not been able to get Federal recognition, federal assistance has not been forthcoming.

Nearly 50,000 Vietnamese fisherman in Louisiana and the oldest community of Filipino shrimpers in the North America were displaced by the storm.<sup>18</sup> We heard very little about any of these peoples on *CNN* or *Fox* or *ABC*.

After the Select Committee Delegation stopped to visit the breach at the Industrial Canal along the western edge of the Lower Ninth Ward, where we witnessed the total destruction that was unleashed when the levee broke, releasing a twenty foot wall of water that leveled the immediate neighborhood (taking the highest death toll), our bus drove eastward to St. Bernard's Parish where the damage was basically just as severe. We were joined on the bus by St. Bernard Parish President, Junior Rodriguez, who told us that of over 6,000 homes in the parish, only four were not heavily damaged by the flood. Debris was everywhere and only a few homes were occupied. President Rodriguez did not mince words with our delegation, and he spelled out all the problems and runaround he was facing in dealing with FEMA, problems very similar to those facing the residents of Orleans Parish.<sup>19</sup>

The suffering of the residents of St. Bernard's parish, where 90% of the residents are white, draws to our attention to the fact that poverty is not racially specific, and nor is the vulnerability associated with it. When ex-FEMA Director Michael Brown testified before the Select Committee, Rep. Gene Taylor of Mississippi asked if he realized that Katrina hit at the end of the month, and that many of those living on fixed incomes, such as retirees, had already made their monthly purchases, and might not have foreseen the need to keep their gas tank full for the

possibility of an evacuation. Taylor suggested that FEMA did not take into consideration that many of those who stayed behind, black and white, were persons of limited means. Poverty increases a person's likelihood of being a victim during the storm, and after.

Income or class divisions in America increasingly cut across ethnic and racial divisions. Consider that while minorities make up 37% of the workforce in the New Orleans Metropolitan Area, minorities hold fully 26% of higher-paying managerial and professional jobs. ***Across the United States, 75% of minorities do NOT live below the poverty line.*** Moreover, of the all those who do live below the poverty line in America, two-thirds are white. "Racism continues to operate and accounts for the fact that poverty is experienced *disproportionately* among blacks and Hispanics (and among women because of sexism). But we should not allow this comparatively heavy burden among minorities to blind us to the full realities of poverty in America."<sup>20</sup>

### **Racial Stereotyping and Racism**

Hurricane Rita didn't care if you were rich or poor, as the equal destruction of the homes of the very wealthy and working class residents of the Mississippi coast will testify. But the flooding of New Orleans—because it hit predominantly African-American neighborhoods the worst, and because poverty *is* highest among blacks—seemed to reinforce widely held preconceptions that equate being "poor" with being "black." There was justifiable frustration expressed by many whites at the way the media shaped perceptions of the disaster by focusing on black poverty and black suffering while lower income whites in both rural and urban areas felt abandoned by emergency responders, as in many cases they were. Hurricane Rita, which struck the coasts of Texas and Louisiana on September 24, 2005, did little damage to cities or oil refineries, but it caused significant new flooding in rural areas and in other areas exacerbated rural flooding initially resulting from Hurricane Katrina, devastating many rural and mostly white communities and causing significant damage to hospitals. Undoubtedly part of the reason for a delay in meeting the needs of these communities was that responders were still overwhelmed by the magnitude of Katrina's impact.

At the same time, however, attributing black suffering primarily to poverty not only reinforces negative racial stereotypes of blacks, it also makes it very frustrating for blacks and other minority persons who have been the victims of treatment motivated by racial hatred if all of their suffering is simply attributed to their poverty, which is already assumed. The media coverage of the aftermath of the hurricane tended to reinforce such racial stereotypes of Blacks. For example, in one of his running commentaries, *CNN* anchor Wolf Blitzer stated: "You simply get the chills every time you see these poor individuals ...so many of these people, almost all of them we see, are so poor and they are so black."<sup>21</sup>

Racial stereotyping was starkly evident in the use of the term "refugees" that was typically used to describe black residents seeking to evacuate. The term "refugee" denotes a person crossing a national border in search of security. Thus the use of the

term “refugee” to describe survivors may have served to create confusion in the minds of casual observers of television reports, by equating them with, for example, Haitian refugees seeking asylum in the United States, wave after wave of whom have been historically denied their requests for asylum. Workers and volunteers at evacuation shelters in Louisiana and Texas “heard loud and clear from those living there that the government, the media and everyone else should call them something other than refugees. ‘We ain’t refugees. I’m a citizen,’ insists Annette Ellis.” One day, after getting an earful from a crowd of 800 at the Bethany World Prayer Center in Baker, Louisiana, President Bush went live on television to urge the practice be stopped.<sup>22</sup> Usage of the term “refugee” fell precipitously. Here we must commend the President for at least taking some initiative.

Another area of apparent racial stereotyping involves reports of widespread looting. While blacks who commandeered supplies during the storm were called “looters”, at least one television report showed white survivors “taking” supplies from a store. *USA Today* quoted one resident who compared the looters to cockroaches.<sup>23</sup> Most incidents of the goods taken during the storm were taken to address human needs in a crisis. Food and clothing were stolen for family and neighbors. Doctors who raided pharmacies for medicines to treat their patients are praised in the *Select Committee Report*. Dire circumstances make for dire methods. However, as one commentator writes, even violent crimes were undertaken for reasons that are understandable, given the circumstances. “Carjackers were looking for cars to get out. Pirates were looking for boats.” Looting has occurred in many previous crises. Yet it was clear from their statements that neither none of the major players from Bush to Chertoff to Governor Blanco were prepared for Hurricane Katrina.

I don't mean that they failed to anticipate the magnitude of the flooding; we knew that already. I mean that they have no idea how easily a natural disaster can turn human beings into a second-wave destructive force. They don't understand that disasters often bring out the worst in us, that the human dynamics are collective, and that ‘responsibility’ is quickly swamped. If you don't understand these dynamics, you can't plan for them. You end up pleading for ‘personal responsibility’ when what you needed was air drops and the National Guard.

It's not like this hasn't happened before. The 1977 New York City blackout led to an epidemic of stealing. The mayor of Charleston, [South Carolina], during Hurricane Hugo says FEMA was clueless about law and order during that 1989 crisis. He thinks we need a military unit to take charge of these situations. That may be going a bit far, but we certainly need to think more systematically about the human dynamics of natural disasters. We run computer models of hurricanes, levee breaches, and flooding. What about isolation, desperation, looting, fighting, and shooting? It took the mayor of New Orleans three days to tell his cops to switch from rescue operations to controlling post-hurricane crime. Why? Because crime wasn't in the model.<sup>24</sup>

Recommendation: When the *National Response Plan* and/or other disaster preparedness plans are revised, they need to be updated to anticipate looting as a highly probable and often rational

response to scarcity by individuals in an emergency. Rights of property must not supersede the right to food, water and medicine, i.e. the right to survive, especially not during a declared emergency.

After Katrina, as the media hyped up reports of looting and presented black looting as mindless thuggery, an overall climate of fear was created, causing responders from both relief and law enforcement units, including the National Guard, to delay entry.

There still seem to be conflicting accounts of the level of street violence during the storm. The rumor of children being raped in the Superdome does indeed appear to have been just a wild rumor. But our office has received numerous calls claiming that some of the accounts that have now been dismissed as unsubstantiated by the media. One source says women at the Convention Center witnessed rapes, that women made sure to sit in groups, that inside the Convention Center, where it was pitch black, escaped prisoners roamed freely, and that at the height of it, only eight police officers were present before the rescue. During the Committee Delegation's meeting with first responders, the officer in charge of Special Forces at the Convention Center was asked how many people died. He could not say, he told us, but his men did remove any number of bodies, some with stab wounds. Survivors with direct experience who we have talked to are often loathe to get into the details, simply describing the conditions inside the Superdome or the Convention Center as "very bad."

Below we will also discuss below prisoners who had to escape from prisons in order to save their lives because they were left to die in the floodwaters. Regardless, the absence of any Federal forces on the ground in New Orleans for over a week, when National Guard forces were overstretched, left the situation in chaos.

**Barbara Arnwine**, President of the Lawyers Committee on Civil Rights, in testifying before the Select Committee, commented on the impact of rumors and stereotyping by saying that it is typical for rumors to spread in a crisis, but that in the case of Hurricane Katrina the rumors were racially charged. They amounted to allegations of massive criminal and subhuman activities by blacks. The rumors instilled fear and panic in aid workers, who then became reluctant to enter African-American communities to provide assistance. Ms. Arnwine believes that had there been a strong Federal presence sooner, providing security and communications, the rumors would have quickly died down.

Ms. Arnwine also noted that this did not apply only to New Orleans. Communities throughout the Gulf Coast Region saw no presence of staff from FEMA or its principal subcontractor, the Red Cross, for as long weeks after the storm in some cases. She pointed out that the majority African-American residents of Gulfport, Mississippi, a town whose majority of African-American residents have long been familiar with racial stereotyping and governmental indifference, were essentially overlooked by the Red Cross, which preferred to establish its operations either in white towns or in the white part of town. Thus African-American churches came to the rescue of those hardest hit by the storm, using their limited resources to provide food and medicine, as well as shelter and transportation.<sup>25</sup> Given the scale of need, some churches went bankrupt. Although a Federal policy was established to compensate the churches for their

losses, Arnwine told the Committee that poor communication and racist assumptions concerning the likelihood of fraud have made it virtually impossible for these churches to get reimbursed.

Recommendation: FEMA or any agency that replaces it must be directed to produce impact and implementation policy studies aimed at producing emergency preparedness and response policies that address the particular needs of minority communities.

Recommendation: Congress should pass legislation to set procedures for protecting the civil liberties of minorities during an emergency situation. Armed forces and police should be on notice that individual acts of blatant discrimination or abuse of minorities will result in serious punishments, and systemic abuse will result in loss of financial support. Private relief organizations with discriminatory relief practices should be subject to review and possible loss of contracts.

FEMA's website directs viewers to support Operation Blessing, a \$66 million dollar relief organization founded by religious businessman Pat Robertson. Shortly after Hurricane Katrina hit, Operation Blessing was featured prominently on FEMA's list of charitable organizations taking donations.<sup>26</sup> Only a week before Katrina hit, Robertson was brazenly calling for the assassination of a sitting head of state: Hugo Chavez of Venezuela. "We have the ability to take [Chavez] out, and I think the time has come that we exercise that ability," said Robertson.<sup>27</sup> When Ariel Sharon suffered a stroke in January, Robertson expressed similar ill, suggesting God had smote the Israeli Prime Minister when he told his television viewers: "He was dividing God's land, and I would say, 'Woe unto any prime minister of Israel who takes a similar course to appease the [European Union], the United Nations or the United States of America.'"<sup>28</sup> How can FEMA in good conscience direct traumatized disaster survivors into the hands of an organization run by a man who so plainly advocates murder by assassination and wishes death upon the suffering? We have no idea what Mr. Robertson did with the money, but we know this: Operation Blessing didn't show up to help out in mostly African-American neighborhoods.

In fact, African-Americans in New Orleans were on their own, much as the *Times-Picayune* predicted they would be. Writing in July 2005 the paper wrote:

City, state and federal emergency officials are preparing to give the poorest of New Orleans' poor a historically blunt message: In the event of a major hurricane, you're on your own. In scripted appearances being recorded now, officials such as Mayor Ray Nagin, local Red Cross Executive Director Kay Wilkins and City Council President Oliver Thomas drive home the word that the city does not have the resources to move out of harm's way an estimated 134,000 people without transportation.<sup>29</sup>

Recommendation: Future emergency preparedness planning must include the provision of transportation for the elderly, the infirm and those without their own means of locomotion, as well as the placing of Disaster Recovery Centers (DRCs) as near as is feasible, to enable these evacuees to return to their homes as quickly and easily as possible.

When the storm hit, residents of Algiers, a mostly African-American community just north of Gretna, and of the Lower Ninth Ward, formed their own relief organization: the Common Ground Relief Collective (CGRC), in the absence of private or public relief assistance. On September 5<sup>th</sup>, a week after Katrina made landfall, local Algiers activist Malik Rahim and three of his colleagues started their efforts with just \$50.

Mr. Rahim's name was among those on a list of speakers which our office suggested speakers for hearings, should any be held during the Select Committee's Delegation to the Gulf Coast on January 19-20, 2006. As the Select Committee elected not to hold hearings, we arranged a community event at a local church to take the testimony of the speakers.<sup>30</sup>

**Sakure Kone**, a member of CGRC spoke on behalf of Mr. Rahim at our meeting, and the section that follows is drawn from his comments.

In flooded Algiers, the needs of the people were vast. The only thing working was the telephone. No stores, hospitals or clinics were open and there was no presence by officials. Malik Rahim put out a call by phone to his contacts across the country. Initially, paramedics arrived and met immediate needs by making door-to-door house calls. Mr. Rahim belonged to a local mosque: Mosque Bilal. At Mr. Rahim's suggestion, the officials at the mosque opened its doors to the public to serve as a free medical clinic. As more doctors, nurses and med students showed up to volunteer, the clinic became fully operational, seeing between 120 and 125 patients per day. The call had also gone out for food and water and these began arriving from all over the country. Mr. Rahim then set up a distribution center in his own home. To meet the intense demand, another distribution center and clinic was established across the river in the Lower Ninth Ward.

CGRC held discussions with government officials, but no governmental assistance to these efforts was forthcoming, perhaps due to CGRC's "no strings attached" policy with regard to assistance. "We were there for one purpose and one purpose only," said Kone, "and that is to meet the health, food and water needs of the community." Since September 5<sup>th</sup>, CGRC's volunteers have numbered 800, with 350 on hand as of January 19<sup>th</sup>, and a thousand more expected during spring break. CGRC currently serves over 300 meals at a time to local residents, and its volunteers have gutted, sanitized and refurbished dozens of homes, including homes in the Lower Ninth Ward that the City of New Orleans says it intends to bulldoze, though a court injunction has put a temporary halt on this.<sup>31</sup>

**Stephen Bradbury** also spoke at our New Orleans community meeting on January 19<sup>th</sup>, 2006. Bradbury works with the Association of Community Organizations for Reform Now (ACORN), which like CGRC helped to fill the needs of residents in the absence of public and private assistance in mostly African-American communities. Like CGRC, ACORN has undertaken the task of organizing volunteers to gut mold-infested houses gutting, seeking to refurbish a thousand houses by March 31<sup>st</sup>, 2006 as a first step toward allowing people to come back.

According to Mr. Bradbury, ACORN's focus since Hurricane Katrina has been to address three areas in which the rights of hurricane survivors have been or are still being violated:

1. Right of access to information: Federal, state and local governments have not stepped in to assist survivors to keep abreast of what is going on in their home. To meet this need, ACORN has set up the ACORN Katrina Survivors' Association, with centers in many of the cities where survivors were evacuated to.
2. Right of return: Government has a responsibility to try and ensure that those displaced by a natural disaster are located as close to their homes as possible. Yet not only were Katrina survivors evacuated to 44 states, some as far away as Washington State, but there has been a lack of interest in getting people back home, and survivors are being enticed to remain where they have been evacuated with everything from housing vouchers, clothing vouchers, Wal-Mart cards and so on. People relocated within Louisiana had a hard time even locating the Red Cross, unless they were in a shelter.
3. Right to participate in decision-making: ACORN is working on a daily basis to try to ensure people can come home and have a voice in decision-making. Government has an obligation to ensure that people have a role in the decision-making around the re-building of their homes "and that has not occurred in any way, shape or form." Neither the Governor's Commission, nor the Mayor's Committee had input from residents from low and moderate income families or from people who were not in New Orleans. The School Board has recently flaunted this by going ahead and saying that we will just be an all-charter school system, without input from the majority of people who will be impacted by their decision.

**Mama D (Dyan French Cole)** testified to the Select Committee about how she stayed at her residence throughout the disaster. Throughout the ordeal, she took in large numbers of evacuees and setting up a makeshift clinic with a local nurse on call to address illnesses. For this she was recognized by *CNN* as one of "Katrina's Heroes."

Many Americans may imagine that the functions performed by African-American churches and community self-help groups were actually provided by FEMA or the Red Cross. Where African-American survivors did get real outside help was after relocation, as Mr. Bradbury pointed out above. But the rumors and stereotypes that had been played up in the media followed them, and some were met with racism as renters refused to rent to "New Orleanians." Attacks against survivors have been reported in several cities.<sup>32</sup>

Many African-Americans and others are skeptical about the way in which families were split up and put on planes without being told where they were going, sending the African-American community from New Orleans into Diaspora. We must ask *qui bono?* Who benefits? In its eagerness to bulldoze the Lower Ninth Ward even as bodies are still being discovered in the debris, the Government of the City of New Orleans has been in a running legal battle with lawyers representing the displaced. It appears as if the City can scarcely wait to wipe the slate clean, deprive long-standing residents of their property rights, declare eminent domain and hand the survivors' property over to developers. It also seems clear that African-American communities are primarily the ones being targeted.

Consider the sentiments of three white and male residents of Jefferson Parish talking with two journalists about the black community in New Orleans:

**Resident 1:** I wonder how many will come back.

**Resident 2:** Well, that's why when they shipped them to Texas, man...

**Resident 1:** They'll be in New York next year.

**Resident 2:** But I tell you what, you guys keep track of this, the governor of Texas right now is getting all of this great publicity.

**Resident 3:** He getting federal money, that's why

**Resident 2:** Six months from now, they're going to vote him out of office. The disaster that he's brought to Texas is incredible.

**Resident 3:** Yeah, they're walking out with these little white jars, glass jars, so their crack cocaine won't get wet.

**Resident 2:** It's unbelievable. Every single person is the same—sociology kind of person—Well, I tell you what, that's the only good thing. And the best thing before all of this started, my wife and I always used to say this: Declare Martial law here and the federal government needs to invade this place. And they really do. So they finally did. We have schools that don't exist. The feds are now going to come in and rebuild this whole place. It's going to be much better after than it is now. But you all have no idea what—you know, what kind of city this is. I mean, it's a fun place. Don't get me wrong. As long as you have enough money to live [*gesturing upward with his hand level*] up here. See ya.<sup>33</sup>

The last statement by Resident 2 is a clear example of equating being “black” with being “poor.” But even more noteworthy is his mention of a pre-Katrina conversation with his wife about the need for the Federal government to “invade” New Orleans, declare martial law, apparently to drive out the black population so that wealthy whites could develop their property. This raises the question of the extent to which such conversations were also taking place within governmental circles or among private developers prior to Katrina.

### **Testimonials from Evacuating New Orleans Residents**

“There was a lot of racism down there in that City and a lot of people died because of it. And it's time for people to start telling the truth about it.”

~ Linda Bowie, Hurricane Katrina survivor

The following testimonials make clear some of the problems with how the evacuation was handled by law enforcement.

**Leah Hodges** presented her story before the Committee, a story that one Member openly stated he could not believe. Having found five seniors abandoned at a nursing home, she and other members of her family transported them out and approached police more than once, but in each case the police refused to assist, one time responding with racial slurs and obscenities. “They cursed [my brother] and threatened to blow his brains out, and the other one said you should have, and my brother walked away.” Later they met U.S. Coast Guard search and rescue team members who had been ordered to patrol the survivors with guns but who were furious, not at the survivors, but at their orders, since they wanted to be out rescuing people from the contaminated water. They directed the family to military trucks, to be moved to an evacuation point. Despite being promised immediate evacuation, they were detained under armed guard for several days at the I-10 Causeway junction bridge under conditions she described as inhumane. There were numerous deaths of elderly persons and others who did not receive medical treatment and the environmental conditions were entirely unsanitary. She claimed that whites were consistently bused out first, with blacks being left for days in what she describes as a “concentration camp.” Ms. Hodges is collecting stories, and is pursuing the matter as a human rights violations issue. We here present photos showing the unsanitary conditions at the site that match her description of the conditions.





**Patricia Thompson** testified before the Select Committee that she was invited to evacuate before the storm but would not leave her daughters. During the flood, she gathered her children and grandchildren, fearing to lose them because some could not swim.

We were told to go to the Superdome, the Convention Center, the interstate bridge for safety. We did this more than once. In fact, we tried them all for every day over a week. We saw buses, helicopters and FEMA trucks, but no one stopped to help us. We never felt so cut off in all our lives... We slept next to dead bodies, we slept on streets at least four times next to human feces and urine. There was garbage everywhere in the city. Panic and fear had taken over. The way we were treated by police was demoralizing and inhuman. We were cursed when we asked for help for our elderly, we had guns aimed at us by the police who are supposed to be there to protect and serve. They made everybody sit on the ground with their hands in the air, even babies... My 5-year-old granddaughter cried and asked her mama if she was doing right. I know the police were scared, but they had no right to treat everyone like hardened criminals.

**Mama D** asked the Committee why the responders showed up pulling guns on the survivors. “We had to hide. I didn’t leave. We had to hide to save people,” she said. “Police brutality? We are used to it.”

**Carla Nelson** was a resident of Algiers, a mostly black community in Jefferson Parish. When lights and power were lost at her residence she and her family sought refuge. They learned on the radio that buses were being sent to evacuate people. Following these instructions, they went to the transport site only to be told that the buses there were there to transport residents of St. Bernard’s Parish, which is 90% white. They were told to return at 6 p.m. Traveling in the dark, they sought out police who were flashing lights, but were told to return home, and threatened with jail if they did not have identification. They returned to the bus station as previously

instructed but were stopped by a police car and surrounded by police with guns drawn and spotlights shining on their faces. One of the children was a 14 year old with attention deficit hyperactivity disorder (ADHD) and he was “freaking out,” as he had never experienced this kind of intimidation. They were sent home, and each day, for several days, they made attempts to reach the bus station only to be turned back by Gretna police with lights and guns drawn. This incident was repeated at least four times. One time they ventured out in the morning hours and were accosted by a robber, and had to run and hide.

Finally, they reached an evacuation point where there were thousands of mostly African-American survivors in long lines. They got in line, realizing that the Gretna Police would not turn back thousands. One police officer apologized, and stated that the Police had been wrong to turn them away before. As they stood in line for two hours in the rain, the Police accosted a young African-American man and put him on the ground, guns to the head. People cried out, pleading with the officer not to shoot him. One of the officers drew his gun and fired his gun in the air. This made it seem like someone in the line fired a gun; but no one in the line was armed. “Had it not been for a news helicopter overhead taking pictures, we would never have been able to get on the bus, as they were telling us that we could not board the bus because someone had shot the gun.”

The buses transported them to the I-10 Causeway. The description of conditions at the Causeway as told by Ms. Nelson, who has never met Ms. Hodges, basically corroborate Ms. Hodges’ story. There were thousands of people there, sick and elderly people. “It was like a camp, like some kind of camp, trash and debris up to your knees, feces, pampers, trash...” Ms. Nelson and family were detained there for nine hours. Others had been there for as long as 72 hours. The elderly were not given priority. When they died in their wheelchairs, all the authorities did was push them aside. Dead bodies were lined up on the opposite side of the street in a straight row covered up in yellow sheets. “Had it not been for the people of Calfax, TX and their 10 buses, we wouldn’t have been here in Texas to this day. That’s how much people were fighting to get on the bus. No consideration, no order, if you didn’t make the bus, you’d be there for a few more days. I was determined to get on the bus and I did.” Upon reaching Calfax, Texas they were given water and food. After several transfers, they reached Plano, Texas where they were issued housing with vouchers. As of January 2006, she and her family had not been back home to assess the damage.

**Kevin Bush** was removed from his home in the Lower Ninth Ward after the levee system collapsed and flood waters rose to the rooftops. He is a paraplegic who lives in a wheelchair. He was taken to the Superdome by military helicopter. Once there he was placed in a wheelchair by authorities and left to languish without food, water or medical care for five days. He survived, but due to this neglect, Mr. Bush has had to undergo multiple major surgeries to correct complications arising from the incident. Additional surgeries may become necessary.

**Linda Bowie** was a resident of the Upper Ninth Ward in New Orleans. In previous hurricanes her three daughters would usually remain behind to care for her mother. Thus before Hurricane Katrina she went with her three grandchildren to her 82 year old mother’s house on Canal Street in the Sixth Ward. Her mother was seriously ill. They did not believe that they would need to evacuate. But when the flooding came on August 29<sup>th</sup>, they decided to try to evacuate, and went

to the I-10 Bridge on Orleans Avenue at Durbanie.<sup>34</sup> There were thousands of people at this bridge, and at other bridges, dehydrating in the hot sun as helicopters flew overhead. When it got dark, they found a ride on a boat to a school that they had been told was an evacuation point. With helicopters everywhere, they expected to be evacuated, but they were not. They had paid the boat driver because they wanted to be sure he came back, which he did, taking them back to her mother's house. For the next several days, they repeated a similar pattern of travels. They disassembled her mother's hospital bed and traveled by boat to the bridge with the bed, her mother and a total of ten family members. But each time they reached the bridge, friends there would say that no one had come to evacuate them. Then she decided to try to reach the Superdome on her own, and found transport with the Fish and Wildlife Service staff.

At the Superdome there were military personnel everywhere, but they were mostly idle. "I am about to have a heart attack because my mother is dying on the bridge." She approached several of them and explained the situation. They gave her water because she was dehydrating. They explained that things would be okay because they had helicopters. So she returned to her mother's house and conveyed this message. The next day, she got into a confrontation with Homeland Security personnel who were blocking off the bridge at the North Claiborne overpass at I-10. Despite the presence of many responders, it did not seem as if anyone was getting any help. Her mother may have had a stroke that day. She tried calling a radio station for help. "After a hundred calls they assured us somebody was coming, helicopters will come. No helicopters came." The next day, they took the bed again the bridge, and once again she confronted the DHS personnel at the top of the bridge. After explaining the urgency of her mother's medical needs, one of them said "Well, let 'em die, that's one less nigger we gotta' worry about." "I got angry and they got angry and this nearly started a riot. We were told 'You niggers gotta' get outta' here or we're gonna' kill all y'all.'" She returned to her group lower down on the bridge and they pushed on to the Superdome.

We were trying to gather people like Moses to get them to the Dome... On the way we saw all types of boats, trucks and official vehicles going everywhere, but no one stopped to check out our situation with the hospital bed. People were getting angry, starting to pitch things at the trucks. Seemed like everyone in the Guard had video cameras. It got ugly, with people screaming at the Guard.

At a stopping point, a helicopter landed nearby. She approached them and they called up a Humvee, loaded the mattress from the bed, and put her mother inside. One of Linda's sisters had to plead to be able to ride along. The Humvee drove off and she has not seen her mother since. Another of Linda's sisters is diabetic and had not had her medicine, so she was facing a diabetic coma without help. So once again she left her family behind and went to the Superdome. She had to fight her way up to the front to get inside. The first group they encountered very politely offered a police escort to go back and find her sister. Her sister was brought back to the infirmary, but since there was no medicine and there were no doctors:

All we could do is pray for her. They did give her water, seven bottles, which was generous since there was no water inside or outside the Dome. There was no food. They said we had to go find a place inside. So we did. There was no

military presence inside of the Dome itself. There was military presence outside for the searches. Down on the ground there could have been police. It was horrible. We were way at the top.

While inside, her sister fell ill, and had to be taken back to the infirmary, where she had a seizure. Meanwhile Linda was able to find electrical power at a cellular phone station to power the device she needed to treat her son's asthma. The next day the buses came. "This was a worst nightmare, because that was where the military had barricades everywhere with thousands trying to get on the buses with no order." Managing to get on one of the buses, they were taken to the Astrodome in Houston. After her experience at the Superdome, Linda refused to go inside. She bought a ticket to Lawrenceville to visit her niece.

In mid-January, Linda and her sister met Governor Blanco. *CNN* covered the meeting where the Governor made a phone call to inquire about their mother's plight. Two days later they were contacted by David Lappin, a FEMA medic who had seen the story on *CNN*, and who said he didn't think she would live, and that all the doctors they visited said she was going to die. She was either taken to LSU Hospital in Baton Rouge, Terrbone General in Homa or, he said, they took her to Louis Armstrong Airport, where there was a place set up for critically ill patients whom the doctors deemed untreatable to let them die peacefully. But the medic doesn't know if she died or not, because when he left her she was still alive. Later both *CNN* and Governor Blanco's office called to tell her that they were doing DNA testing at the morgue. The results will be known soon, but Linda is seeking a forensic scientist for independent verification.

***CBS's 60 Minutes*** interviewed eight people survivors who attempted to cross the Crescent-City Connection Bridge into Gretna and were turned back the Gretna Police. Many of them had been told that there were buses awaiting them for evacuation on the Gretna side of the bridge.

With that assurance, they joined hundreds of other people who were walking toward the bridge to Gretna. Images taken that day by a *CBS News* crew driving across the bridge show groups of evacuees approaching a line of policemen holding shotguns. The police car was marked Gretna Police. Cathey Golden told *60 Minutes* that when her group reached the police line, they were told there were no buses, and stopped with a shotgun blast.

They sought an explanation. Larry Bradshaw, a white member of the mostly African-American group, says:

The only two explanations we ever received was, one, 'We're not going to have any Superdomes over here,' and 'This is not New Orleans,' Bradshaw says. 'To me, that was code language or code words for, 'We're not having black people coming into our neighborhood.'<sup>35</sup>

There were about 200 people in the group, which was slow-moving because within the group were individuals in wheelchairs, on crutches or using strollers. After being turned back, the group camped out in the middle of the bridge. But at dusk that night the Gretna Police came back and confiscated their food and water. Survivor Lorrie Beth Slonsky said that a policeman:

Jumped out of his car with the gun aimed at us, screaming and cursing and yelling at us to get the blank-blank away. And just, just so rabidly angry. And we tried to reason, we tried to talk. And he was putting his gun in the face of young children and families. It said Gretna on the police car.<sup>36</sup>

These testimonials, and those relayed to the Select Committee by Attorney Ishmael Muhammed, reveal a consistent pattern of stranded African-American residents seeking evacuation points that they had been told about, only to be confronted with armed authorities who in many cases threatened them with weapons and used racial slurs. In two cases, we are told that white survivors were given priority status for getting onto transport vehicles being used for evacuation. There is a general pattern of military or police responders being idle and unresponsive to emergency requests, with the notable exceptions of several helpful and caring individuals.

We should also note that these survivors were not totally lacking means. Ms. Nelson had the money to hire a boat. Ms. Bowie had the money to buy a plane ticket.

In two of these cases, the Gretna Police are involved. Gretna Police Sheriff Harry Lee had set a policy back in the 1980s for his officers to observe special scrutiny for any blacks crossing the Crescent-City Connection bridge. The *New Orleans Gambit* quoted him as saying “It’s obvious that two young blacks driving a rinky-dinky car in a predominantly white neighborhood, they’ll be stopped.” When blacks complained in April 2005 that Jefferson Parish police officers had a caricature of a young black man that they used for target practice, Sheriff Lee responded to questions by saying: “I’ve looked at it, I don’t find it offensive, and I have no interest in correcting it.”

Such blatant displays of racism are surely unworthy of officers in uniform. One means available to government to curb racial abuse is to establish procedures, because it is when procedures and regulations break down that individual authorities are left to act at their discretion, in which case the discriminatory judgment of those who harbor racial prejudices will come to the fore.

## **2. FEMA and DHS**

### **FEMA Before 9/11**

When the Federal Emergency Management Agency (FEMA) was established in 1979 by President Jimmy Carter's Executive Order 12148, it brought together a range of organizations involved in disaster relief and preparedness, such as the National Weather Service Community Preparedness Program or the National Fire Prevention and Control Administration, and placed them under one umbrella. FEMA took over responsibility for relief and recovery during and after natural disasters from the Department of Housing and Urban Development (HUD). FEMA also took over civil defense operations from the Pentagon. Under President Bill Clinton, the FEMA Director became cabinet-level post tasked specifically with providing relief and recovery oversight, with Clinton naming James Lee Witt as FEMA Director in 1993.

As an independent agency, FEMA had handled such emergencies as the toxic dumping into Love Canal (Niagara Falls, NY) in the 1970s, the partial core breach at the Three Mile Island nuclear reactor in 1978, the Bay Area Earthquake of 1991 and Hurricane Andrew in 1992. In the aftermath of Hurricane Andrew, an interim report by the US Congress called FEMA a "political dumping ground, a turkey farm, if you will, where large numbers of positions exits that can be conveniently and quietly filled by political appointment."<sup>37</sup>

When James Lee Witt took charge of FEMA under Clinton in 1993, he ended political patronage in the organization, and removed unnecessary layers of bureaucracy, and "instilled in the agency a spirit of preparedness, of service to the customer, of willingness to listen to ideas of local and state officials to make the system work better."<sup>38</sup>

The success achieved by 1996 prompted the *Atlanta Journal-Constitution* to remark that "FEMA has developed a sterling reputation for delivering disaster-relief services, a far cry from its abysmal standing before ... 1993."<sup>39</sup> During Witt's term of office (April 1993-January 2001), FEMA handled "approximately 348 Presidential declared disaster areas in more than 6,500 counties and in all 50 states and territories. Witt supervised the response to the most costly flood disaster in the nation's history...the most costly earthquake, and a dozen serious hurricanes."<sup>40</sup>

**Recommendation: Congress should pass legislation to ban political patronage within Federal agencies; specifically within FEMA and DHS.**

Upon entering office in January 2001, President Bush chose Joe Allbaugh as the new man to head FEMA. Allbaugh had run Bush's 2000 election campaign. The first person hired by Allbaugh was his long-time friend Michael DeWayne Brown, whom he appointed as General Counsel. Political patronage at FEMA was back. Unlike Witt, Allbaugh had no disaster management experience. While the same is widely said of Brown, in his testimony before the Select Committee he protested that he *did* have disaster management experience. As an undergraduate, Brown had served as assistant to the city manager of Edmond, Oklahoma, a 68,000 strong suburb of Oklahoma City where he worked with the emergency operations center to draft the emergency operation plan. Then from 1989 to 2001 Brown served as Judges and

Stewards Commissioner of the International Arabian Horse Association (IAHA). He resigned in the face of multiple lawsuits against the IAHA.<sup>41</sup>

### **Incorporation into DHS**

In June of 2002, FEMA Director Joe Allbaugh resigned immediately upon being told that FEMA was about to be incorporated as one of 22 agencies within the new super-agency, the Department of Homeland Security (DHS), which was being created in response to the terrorist attacks of September 11, 2001. Brown was promoted to—or “slipped through”<sup>42</sup> to become—Undersecretary for Emergency Preparedness in charge of FEMA in January 2003. Although the Homeland Security Act of 2002 tasked FEMA with developing a National Response Plan, FEMA was to be stripped of its control preparedness grants totaling billions of dollars. Brown resisted, and in the ensuing years became a kind of antihero taking up the concerns and “huge angst” of the experienced members of his staff who worried that the new focus on terrorism inside DHS would leave their expertise underutilized. His resistance was not appreciated either within DHS or at the White House. The plan for FEMA under DHS Secretary Tom Ridge was to absorb what remained of FEMA into DHS’s new Emergency and Response Directorate, eliminating the name FEMA entirely.<sup>43</sup> Brown managed to preserve FEMA’s name at least. But over his objections that FEMA already had one, DHS built its own emergency operations command center. “Everybody wants a toy,” Brown grumbled, “fancy screens and all that stuff.”<sup>44</sup>

Morale at FEMA was plummeting, and experienced veterans began to depart from FEMA in droves. FEMA, with a staff of 2,500, was now tasked with preparing for disaster relief in the wake of terrorist attacks and/or the use of weapons of mass destruction, on top of natural disasters. As a series of tornadoes ripped through the Midwest in May of 2003, FEMA personnel who would otherwise have responded were instead preoccupied while being engaged in anti-terror, anti-WMD training exercises.<sup>45</sup>

Ridge had earlier seized control of the Justice Department’s 150-man operation known as the Office of Domestic Preparedness (ODP). Despite plans to merge ODP into FEMA, Ridge decided instead to move it into his office. Then he gave ODP control over the preparedness grants that had formerly been controlled by FEMA.

Ridge and his aides now believed that FEMA should be a response and recovery agency, not a preparedness agency. In an age of terrorism, they argued, preparedness needed a law enforcement component, to prevent and protect as well as get ready to respond.<sup>46</sup>

On September 15, 2003, Brown fired off an angry memo to Ridge, protesting that subsuming FEMA into DHS was ruining morale. He voiced the key concern of his staff, which was that Ridge’s plan would separate preparedness from response, disrupting key relationships with first responders and leading to “an ineffective and uncoordinated response” to another major disaster.<sup>47</sup> In retrospect, these words make Brown look seem like a prophet that a hapless horse judge.

Brown's memo only did more damage. Ridge now reassigned the writing of the National Response Plan (NRP) to Admiral James M. Loy of the Coast Guard, who was also in charge of the Transportation Security Administration. Once completed, the NRP sparked an uproar within FEMA, and "among local, state and rival federal agencies." To FEMA officials it was awful; simplistic and top-down. According to FEMA's union chief: "The gist was: We'll give orders and everybody will jump and say, Sir, yes, sir!"<sup>48</sup> FEMA, which previously reported directly to the President, would now report to a "principal federal officer" under DHS. "It was just another dad-gummed layer of bureaucracy," Brown said.<sup>49</sup>

Indeed, the NRP actually involves *five* layers of bureaucracy. The following diagram, titled "EOCs [Emergency Operations Centers] / Coordination Centers,"<sup>50</sup> shows the levels of multi-agency centers for information sharing under the NPR. What is of concern is the number of offices information would theoretically have to travel through to get DHS in touch with a Local Center.



Hurricane Katrina was the first catastrophic event to be declared an "Incident of National Significance" under the *National Response Plan* (NRP). The NRP was designed using Incident Command System (ICS) management concepts.<sup>51</sup> ICS is a highly effective approach for localized emergencies that can spread rapidly, such as forest fires or epidemics, because it allows for rapid expansion or contraction of command structures. However, an incident with the capacity to wipe out infrastructure, including communications networks and local operations centers, as Hurricane Katrina did, can create a situation where over-reliance on local ops centers that may be compromised or may no longer exist can slow the process of gaining situational awareness at the highest levels of command. When ICS management concepts are clearly understood at all levels, ICS should be able to cope, but when they are not understood, the system becomes ineffective.

This appears to have played a role in the delayed response to Katrina, as the Secretary of DHS did not appear to grasp his role as the primary Incident Commander of the first ever Incident of National Significance, since he delegated that role to the head of the overstretched and under-resourced FEMA, rather than immediately deploying the far greater assets under his own control.

Similarly, because the NRP operates on principles based more in theory than upon past precedent, the challenge of integrating State and Federal forces is made unnecessarily problematic. This was evidenced in Governor Blanco's rejection of a White House proposal to place State and Federal forces under a single "dual status commander." This incident will be treated in detail below. Here, we point to that episode as an example of what happens when one side (the White House) is seeking to apply, incorrectly, abstract ICS concepts whilst the other side (the Governor) is falling back upon long-established precedents that are not sufficiently addressed within the abstract model of the NRP. The White House was applying ICS concepts

incorrectly because it sought to create a two “mutually exclusive chains of command,” which is precisely what ICS practices are meant to prevent.

Recommendation: The National Response Plan should either be overhauled or scrapped. A new plan should be developed that includes: 1) unambiguous command structures for military responders; 2) crystal clear clarification regarding the integration of the work of state and federal armed forces during an emergency to maximize the ability to deploy military assets in a proactive manner; 3) pre-set standard operating procedures for non-military agencies operating in a crisis detailing what operations they can and should initiate without waiting for marching orders from a higher authority; 4) an integrated communications plan that puts all responders on the same page from the get-go, using Interoperable Communications technology.

Recommendation: The National Response Plan is color blind, and any future such national emergency response plans must include sensitivity training for both military and non-military responders so that responders are aware in advance of the specific needs and leadership patterns in communities of color.

Recommendation: Emergency response agencies like FEMA should offer diversity training to their employees, and establish direct working relationships with leadership figures in minority communities living in disaster prone areas such as flood planes so that those relationships are forged and ready to call upon prior to the emergency.

Brown’s warnings that FEMA was falling apart were echoed in March of 2004 by James Lee Witt, who testified before Congress that “the ability of our nation to prepare and respond to disasters had been sharply eroded ... I hear from emergency managers, local and state leaders and first-responders nearly every day that the FEMA they knew and worked well with has now disappeared.” Aside from the issue of cronyism, and the lack of cabinet-level status for FEMA and disaster relief, two additional problems affected FEMA’s ability to be an effective responder. The first of these was money. FEMA’s budget was cut by nearly \$80 million under the Bush Administration, and moreover “in 2005, nearly three of every four grant dollars from DHS to first responders went to programs exclusively focused on terrorism.”<sup>52</sup> One expert calculates the ratio of DHS projects within focused on terrorism and WMD to those focused on hurricanes and natural disasters at over 28:1, commenting: “Surely as government bureaucrats write more documents and as commissions get underway in Washington, someone must recognize the corrosive effect of focusing on terrorism and WMD to the exclusion of more plausible, frequent, and frankly, more realistic scenarios.”<sup>53</sup>

Upon the succession of Michael Chertoff, a man who is credited with authoring the Patriot Act, to replace Ridge as DHS Secretary on February 15, 2005, Brown bombarded Chertoff with memos seeking to undo what damage (in his view) Ridge had done to FEMA. ““I don’t box in very easily,”” was Chertoff’s cool response.<sup>54</sup> Chertoff proceeded with plans to strip FEMA of its preparedness mission. Chertoff:

agreed with Brown’s bureaucratic rivals that FEMA was too busy responding to daily disasters to focus on the long-term planning needed to prepare for a major catastrophe ... Brown sent one last-ditch memo to Chertoff’s deputy, warning that

under the new plan, ‘FEMA is doomed to failure and loss of mission.’ But his appeal was rejected ... On Sunday, Aug. 28, Brown was supposed to be finalizing his resignation letter. Instead he was on his way to Louisiana for Katrina and chuckling into his BlackBerry.<sup>55</sup>

At least Brown was taking the initiative, one day early.

Recommendation: Congress should re-establish FEMA as an independent Federal agency, removing it from DHS; but give housing oversight back to HUD.

### **Domestic Unpreparedness**

“So far, all we’ve done is shovel money out the door to meet the humanitarian needs. But henceforth we’ve got to be very careful how we spend the money, and that means we’re going to need a plan and somebody in charge.”<sup>56</sup>  
 ~ Sen. Charles E. Grassley, Chairman of the Senate Finance Committee

“With all due respect to the President, things are not going to bubble up from the bottom. There has to be some leadership here.”<sup>57</sup>  
 ~ Jack Kemp, former HUD Secretary under Bush Sr.

“The director...of the National Hurricane Center said this was the big one, but when this happened...Bush is in Texas, Card is in Maine, the vice president is fly-fishing. I mean, who’s in charge here?”<sup>58</sup>  
 —Rep. Tom Davis, Chairman of the Select Committee

Indeed, Mr. Chairman, so nonchalant were top officials in the aftermath of Katrina that they did not even break from their vacations to attend to the disaster. While Bush, Brown and Chertoff had all been briefed on August 28<sup>th</sup> of the possibility of a levee failure,<sup>59</sup> Secretary Chertoff made a trip to Atlanta to visit the CDC to discuss avian flu on the 29<sup>th</sup>, the day of landfall, and did not become fully aware of the levee failures until mid-day on August 30<sup>th</sup>, some 30 hours after the initial breach. Chertoff did not declare Katrina an Incident of National Significance until August 30<sup>th</sup>, 36 hours after landfall, when he also designated Brown “principal federal officer.” It must be asked why this was not called before the storm struck and whether it contributed to the delay in the response.<sup>60</sup>

Secretary of Defense Rumsfeld was busy taking in a baseball game in San Diego on the night of the 29<sup>th</sup>, in anticipation of Bush’s visit to deliver a speech on the war in Iraq the next day. The President returned to Crawford Texas that night (August 30<sup>th</sup>). The same President who had flown from Crawford to Washington to intervene in Terri Shiavo’s medical case did not visit the devastated areas until his fly-over on September 2<sup>nd</sup>, the fifth day after landfall, delivering the message “I am satisfied with the response. I am not satisfied with all the results” at a press

conference. The next day, apparently forgetting what he had been told at the August 28<sup>th</sup> briefing, Bush stated: "I don't think anybody anticipated the breach of the levees."<sup>61</sup>

For her part, Secretary of State Rice was still taking in the sites on her New York City vacation two days after the storm when she took in a Broadway show, with some audience members booing her when the lights went up. She was reportedly accosted by angry citizens again the next day who found her buying thousands of dollars' worth of shoes. "A fellow shopper shouted, 'How dare you shop for shoes while thousands are dying and homeless!'"<sup>62</sup>

It certainly seems as if the folks over there at the White House have trouble reading:

1. "No one could have imagined them taking a plane, slamming it into the Pentagon... into the World Trade Center, using planes as a missile."  
 –Condoleezza Rice, testifying before the 9/11 Commission, April 8, 2004.

There were multiple and consistent warnings that Osama bin Laden was planning a major terrorist attack against the United States on or around September 11<sup>th</sup>, 2001 and that New York and Washington were likely targets. There had been warnings of threats to use planes as weapons since 1976. Rice actually joined President Bush in Genoa for the G-8 Summit in July of 2001 when Islamic terror groups had threatened to crash an airliner into the summit, prompting the closure of airspace over Genoa during the event.<sup>63</sup>

2. "Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction."  
 –Vice President Dick Cheney, August 26, 2002

Former UN weapons inspectors accurately foretold that they had destroyed 95% and more of Iraq's WMD. US forces occupying Iraq for nearly three years now have not uncovered any conclusive evidence that Iraq continued to possess WMD in 2002.

3. "I don't think anybody anticipated the breach of the levees."  
 –President Bush, September 2, 2005<sup>64</sup>

There had been consistent warnings about the danger of a category 4 or 5 hurricane hitting New Orleans and flooding New Orleans since 1998,<sup>65</sup> and as noted above Bush, Brown and Chertoff were specifically briefed about this on August 28 2005.

The response to Hurricane Katrina by both DHS and the White House has been described as "staggeringly ineffectual" by one commentator writing days later, who pointed out that DHS Director Michael Chertoff seemed proud that only 2,800 National Guardsmen had reached New Orleans 72 hours after landfall, promising that the Army was "building capacity." DHS demonstrated that "it could organize an impressive press conference in Washington ... But on the ground in Louisiana, where it counts ... DHS is turning out to be the sum of its inefficient

parts. The department looks like what its biggest critics predicted: a new level of bureaucracy grafted onto a collection of largely ineffectual under-agencies.”<sup>66</sup>

DHS and FEMA unpreparedness and ineptness in the face of the hurricane-flood disaster was also apparent in the face of offers of international assistance. More than 90 countries and international organizations offered assistance in the first week following the disaster. But nearly all of these offers were “mired ... in bureaucratic entanglements.” Although the State Department announced that no offers of aid were being turned away, a Swedish transport at the ready with water purification systems and a cellular network sat waiting for take-off orders for four days. A Canadian search-and-rescue team sat waiting for directions.<sup>67</sup> Actually, not all offers of aid were accepted. When Cuba volunteered a medical brigade with disaster relief experience in post-tsunami Sri Lanka, White House spokesman Scott McClellan answered with the message that Fidel Castro “needs to offer the people of Cuba their freedom.” But the team members themselves continued to stand at the ready, and team member Dr. Delvis Marta Fernandez, a veteran hurricane responder at age 32, told reporters: “Let’s get going. This is not political. This is a humanitarian emergency. People are dying and they need our help.”<sup>68</sup>

Recommendation: Congress should take international politics out of disaster relief efforts by establishing a policy that no legitimate offers of foreign assistance will be refused.

### **Warnings of Levee Failure Since at Least 1998**

The dramatic testimony of Mama D (Dyan French Cole) before the Select Committee concerning the failure of the levees attracted nationwide attention. She testified that the Seventeenth Street Canal was within a mile of her home and when the levee broke she heard two huge explosions. Reacting to this, major networks ran some rather patronizing stories on how a people who have suffered generations of oppression can develop a certain psychology of paranoia. But Mama D was not the only one who heard the explosions, many residents did.

One such individual is Mr. Joe Edwards, Jr. who was interviewed by *ABC News* anchor and correspondent David Muir. He tells Mr. Muir, ‘I heard something go boom! ...I know it happened. They blew it.’ In addition to local New Orleans residents, like Mr. Edwards, Eugene Robinson of *The Washington Post* said on the September 18th edition of *Meet The Press*, ‘I was stunned in New Orleans at how many black New Orleanians would tell me with real conviction that somehow the levee breaks had been engineered in order to save the French Quarter and the Garden District at the expense of the Lower Ninth Ward, which is almost all black...But these are not wild-eyed people. These are reasonable, sober people who really believe that.’

Commenting, author Cedric Muhammad’s call for openness of mind on this issue:

I think any reasonable and rational person with an open mind – not bound by ideology – would have to conclude that there is justification and various forms of evidence for considering the possibility that the levees were breached and the

Ninth Ward flooded for reasons other than that provided by the mainstream media and local, state and federal government including the Army Corps of Engineers.<sup>69</sup>

Moreover, as Mama D told MSNBC's Tucker Carlson, there were intentional levee breaches in 1927 and in the aftermath of Hurricane Betsy in 1965. In other words, New Orleans residents have historical precedents of intentional levee breaching to point to.

During the Great Mississippi Flood of 1927, which began on April 16<sup>th</sup> of that year, communities on both sides of the Mississippi River knew that their community would be spared if the other side broke. Levee patrols with shoot-to-kill orders were actually set up by both sides to catch any intruders who might be trying to dynamite their side of the levee. This was serious business. In Greenville, Washington County, Mississippi, the flood overtook the town, flooding an area 60 by 90 miles wide. Boaters rescued thousands of mostly poor African-American persons from rooftops and trees. They were deposited at the crown of the river levee. By April 25<sup>th</sup>:

The situation in Greenville is dire. Thirteen thousand African Americans are stranded on the levee with nothing but blankets and makeshift tents for shelter. There is no food for them. The city's water supply is contaminated. The railway has been washed away, and sanitation is non-existent. An outbreak of cholera or typhoid is imminent.<sup>70</sup>

Local cotton magnate LeRoy Percy appointed his son Will to head the relief effort. But when Will arranged for the evacuation of the stranded survivors, the local whites feared that if the blacks were rescued, they wouldn't work the crops come harvest time. The steamboats that came to rescue the survivors removed only 33 whites. Will later tried to save face with the blacks who were stranded by employing them with the Red Cross in its relief effort.

Red Cross relief provisions arrive in Greenville, but the best provisions go to the whites in town. Only African Americans wearing tags around their necks marked 'laborer' receive rations. National Guard is called in to patrol the refugee camps in Greenville. Word filters out of the camps that guardsmen are robbing, assaulting, raping and even murdering African Americans held on the levee.<sup>71</sup>

Later that summer African Americans began leaving, and over half left within the year. LeRoy Percy's cotton empire fell into ruin.

During the flood, as the waters moved south along the Mississippi, the decision was made to save the downtown businesses of New Orleans by blowing a 1,500-foot break in the Poydras levee, flooding St. Bernard and Plaquemines Parishes. According to one expert, race did not play a factor in the decision to blow the Poydras levee, and in fact the decision was made following advice given five years earlier by the Army Corps of Engineers that if the city was ever seriously threatened, the levee should be blown.<sup>72</sup>

Historical memory has a tendency to turn events into legend. Since the flood of 1927 was a turning point for many black families in the south, the bitterness of those experiences are no doubt still associated with the flood, and the flood as we know is associated with the blowing of

the levees. For the mostly white residents of St. Bernard and Plaquemines Parishes who were intentionally flooded, the flood of 1927 was all about the blowing of the levees.

Hurricane Betsy in 1965 overtopped levees and led to the breaching of the Florida Avenue Levee, leading in turn to the flooding of the Lower Ninth Ward and neighboring Chalmette. While the Florida Avenue Levee was initially breached by the storm, it is our understanding that the Corps later intentionally breached some levee points in attempting to manage the drainage process.

Hurricane Katrina surely conjured up the haunting memories of these two events. As in the aftermath of Katrina, residents of the Lower Ninth died in their attics as waters rose above the eaves.

Mama D told the Select Committee said a former military official happened to be in the house at the same time and that he told her that what he had heard were two bombs. Our office has received numerous reports of others who claim to have heard explosions that sounded like bombs. We also were told that two young men reported being asked to step down from the levees so that they could be dynamited, but we were unable to get in contact with them. While one engineer we spoke with stated he could not explain how the levees failed, others we spoke to said that the intensity of the storm surge could certainly overtop the levees and possibly breach them. When asked if they could explain how all the four or more breaches occurred almost at the same time, we were told that uniformity of water pressure across the levee system could have reached critical levels at around the same time for all the levees that breached.

**Dr. Iver Van Heerden**<sup>73</sup> at the LSU Hurricane Center told us he was out at the levee breaches within 24 hours of landfall, taking samples and measurements. He found no evidence of any explosives. According to Van Heerden, researchers from the four separate investigations into the levee breaches that are mentioned in the Select Committee Report have met and have privately concluded that the reason the levees were breached was not due to poor maintenance but poor construction.<sup>74</sup> Specifically, the loose topsoil was not taken into consideration. Thus water was able at several of the sites to push out the loose topsoil under the levees, causing pressure bursts and breaching them starting from underneath. At one site the flood walls slid 45 feet. At each of the sites where there were levee breaches, the noise of the breach would have sounded like a huge explosion.

It is Minister Louis Farrakhan who may have initiated the controversy about intentional breaches. He noted that craters were seen at the breach sites where the walls had been.<sup>75</sup> The cratering he witnessed could have been caused by the water pushing out the earth underneath the levee wall before breaching the entire wall.



Probably the most suspicious fact about the Katrina levee breaches is that their water flow was aimed directly at African American communities (Orleans Parish at the 17<sup>th</sup> Street Canal; the Lower Ninth Ward at the Industrial Canal). As the Congressional Delegation Tour bus stopped on the bridge over the 17<sup>th</sup> Street Canal just up from the breach, we could see that the Jefferson Parish side of the canal, the side that didn't breach, had a built up earthen foundation with only a few feet of wall exposed. But on the Orleans Parish side (see photo, right), there was no earthen foundation surrounding the wall, which stood over 12 feet high from the ground. The thickness of the wall was only 11 inches. Each levee is maintained by the local parish government. The relative wealth of Jefferson Parish, a mostly white community, would have enabled it to invest in a much safer structure than what the Orleans Parish could afford. This would explain why the Orleans Parish side failed first.

One thing is certain about the levee breaches: there was ample discussion of the possibility of a levee failure prior to Katrina. Since 1998, the *Times Picayune* has run articles expressing concern about the possibility of a levee failure:

- October 4, 1998:<sup>76</sup> “[National Hurricane Center Director Jerry Jarrell] has two recurring nightmares of the worst-case hurricane that could hit the United States, and New Orleans is central to both. The first is a category 4 or 5 storm with winds as high as 150 mph that follows a path very similar to [Hurricane] Georges. After slamming into island after island in the Caribbean, creating havoc and killing hundreds of people, it moves northwest and cuts across the Miami metropolitan area, leaving damage similar to that caused by Hurricane Andrew in 1992. After clobbering Tampa Bay on a trek across Florida, it enters the Gulf, where it reintensifies before assailing New Orleans with a storm surge that overwhelms the city’s levee system.”
- June 1, 1999:<sup>77</sup> “New Orleans Office of Emergency Preparedness Director Frank Hijuelos said city residents should try to evacuate in advance of the first official evacuation requests, if they have the ability to leave and a place to go. He said that recommendation is based in part on computer modeling by Louisiana State University engineering professor Joe Suhayda and federal agencies that indicates a slow-moving Category 3, and Category 4 and 5 hurricanes cutting northwest over the metropolitan area will push a wall of water before it that will overtop the area’s hurricane protection levees.”
- June 2, 1999:<sup>78</sup> “The state’s official hurricane emergency plan calls for the Superdome to be a staging area for National Guard and other emergency personnel in the hours after evacuation routes have been shut down and before a hurricane hits. Residents with special needs, such as medical patients with no transportation, are to be moved to the Dome and, if possible, evacuated by air or other means from the city. Once a hurricane is about to hit, the Superdome would be transformed into a ‘refuge of last resort,’ a bare-bones area where people caught on the street downtown could survive until the storm’s fury subsided and they could be evacuated, Purpera said... New Orleans Office of Emergency Preparedness Director Frank Hijuelos said such an assumption by the public could be dangerous. If a major hurricane does hit, Hijuelos said, the accompanying storm

surge could easily top hurricane protection levees, flooding streets with 17 feet of water or more. It could take weeks to remove the water, he said.”

- June 23-27, 2002.<sup>79</sup> In a five part-series, the *Times-Picayune* offered its readers a comprehensive look at the dangers faced by the city. “It’s only a matter of time before South Louisiana takes a direct hit from a major hurricane. Billions have been spent to protect us, but we grow more vulnerable every day.”
- July 20, 2004: “Walt Zileski, warning coordination meteorologist for the National Weather Service’s Southern Region headquarters in Forth Worth, Texas, said Hurricane Pam was fashioned after Hurricane Georges, which in 1998 turned east only hours before it would have followed for Pam... The water would be high enough in parts of New Orleans to top 17-foot levees, including some along Lake Pontchartrain and the Mississippi River-Gulf Outlet, Zileski said. Some of the water pushed into Lake Pontchartrain would flow through a gap in the hurricane levee in St. Charles Parish, flow across land to the Mississippi River levee and be funneled south into Jefferson and Orleans Parishes.”

Additionally, in early 2001, FEMA had published its own report, ranking the possibility of a major hurricane hitting New Orleans as one of the three most likely catastrophes facing the country, alongside a terrorist attack in New York City and a major earthquake in San Francisco.<sup>80</sup> If President Bush did was not aware of the levee issue in New Orleans before he was briefed on the subject on August 28, 2005, somebody at the White House was not doing their job.

### **Not all Hurricanes are Treated Equal**

We have seen above how FEMA’s funding was cut, its staff demoralized and its mission called into question. Yet even in the midst of its being absorbed into DHS, FEMA did continue to have the ability to respond quickly and efficiently to a hurricane. Little more than a year prior to Katrina, Hurricane Charley crossed Florida from West to East on August 12, 2004. By Noon of August 16<sup>th</sup>, less than 4 days since landfall and 24 hours after the Hurricane dissipated off of Cape Cod, the White House website reported that the following resources had been mobilized:

- One hundred trucks of water, 280 trucks of ice, and 900,000 Meals-Ready-to-Eat for Jacksonville.
- 7,000 cases of food for Winter Haven.
- Urban Search and Rescue Teams and Disaster Medical Assistance Teams (DMATs) on the ground and setting up comfort stations, coordinating with FEMA community relations personnel.
- 4,100 National Guard troops in Florida, as well as thousands in nearby states.

- Tarps provided by the Army Corps of Engineers for “tens of thousands of owners of homes and buildings that have seen damage to their roofs.”
- 300 medical personnel to be on standby.
- 1,000 additional community relations personnel deployed to Atlanta “for training and further assignment in Florida.”

Additionally, survivors were notified that:

- “FEMA is coordinating with the Department of Energy and the state to ensure that necessary fuel supplies can be distributed throughout the state, with a special focus on hospitals and other emergency facilities that are running on generators.
- “FEMA is coordinating public information messages with Georgia, Tennessee, Alabama, and North Carolina so that evacuees from Florida can be informed when it is safe to return.”

By August 15th, the White House web site boasted the following:

- “Registering approximately 136,000 assistance applicants;
- “Approving over 13,500 applications for more than \$59 million in housing assistance;
- “Establishing 12 disaster recovery centers, which have assisted nearly 19,000 disaster victims;
- “Deploying medical teams that have seen nearly 3,000 patients;
- “Disbursing 1.2 million liters of water, 8.1 million pounds of ice, and 2 million meals and snacks;
- “Delivering over 20,000 rolls of plastic sheeting and nearly 170 generators; and
- “Treating more than 2,900 individuals through FEMA Disaster Medical Assistance Teams, supporting damaged hospitals”

FEMA appears to have responded in a timely and effective manner three months before an election in Florida, a state governed by Jeb Bush, the President’s brother. **“Disaster relief checks were in the mail within a week.”**<sup>81</sup> Additionally, after Hurricane Frances, FEMA was “very generous... especially in Miami-Dade [County] giving people money for...broken televisions, washers, driers, whole new wardrobes and rooms full of clothing... [and rooms] full of furniture.”<sup>82</sup>

Let us contrast this with FEMA’s dismal performance in the aftermath of Hurricane Katrina. Two days after landfall:

- White House pressure on FEMA to set up an interagency crisis management group in the days leading up to the storm were chided by FEMA staff. One staffer wrote to Brown: “Let them play their reindeer games as long as they are not turning around and tasking us with their stupid questions. None of them have a clue about emergency management.”<sup>83</sup>
- FEMA regional director Marty Bahamonde wrote in an office e-mail: “The leadership from top down in our agency is unprepared and out of touch... I am horrified at some of the cluelessness and self concern that persists...”<sup>84</sup>

Three days after landfall:

- Secretary Chertoff told *NPR* that he had “not heard a report of thousands of people in the Convention Center who don’t have food and water, even though every television viewer in the country had been hearing of those 25,000 stranded refugees for at least a day.”<sup>85</sup>

Five days after landfall:

- FEMA Director Michael Brown notified an aide by e-mail that “no action from us” to use planes made available by airlines to evacuate victims had been made. But 30 minutes later he was informed that in fact FEMA had been “flying planes all afternoon and evening.” Brown also mused that he wished Jeb Bush were Governor of Louisiana.<sup>86</sup>
- 9 stockpiles of fire-and-rescue equipment that had been “strategically placed around the country to be used in the event of a catastrophe” had still not been pressed into service.<sup>87</sup>

Additionally, FEMA’s contracting was in disarray:

- FEMA had no plan for cleaning up the bodies, which after the storm were left decomposing in homes and on the streets. One week after the storm, FEMA asked Texas firm Kenyon International Emergency Services, Inc. to deliver mobile morgues (the morgue in New Orleans was flooded). But after several days of waiting, Kenyon decided to forget FEMA and signed a contract directly with the state of Louisiana.<sup>88</sup>
- FEMA ordered 1.6 million cases of meals-ready-to-eat (MREs) from the Pentagon, but demand rose to 2 million, but the Pentagon cut them off at 1.6: “We’re happy that we’re able to help the folks, [but]...we have to feed our troops too,” said a Pentagon spokesperson.<sup>89</sup>

With FEMA officials themselves admitting that FEMA was nowhere near ready for Hurricane Katrina, and given Brown’s unsuccessful attempts to protect FEMA’s integrity as the authority on natural disaster response within DHS, FEMA was set up to fail when the big one hit. Nevertheless, we cannot ignore the disparities between the lavish treatment by FEMA of survivors of hurricanes Charley and Frances. FEMA, after all, speaks to a higher power, and that higher power was not only slow on the uptake, but slow on the delivery as well. If the nightmare

were over for Katrina survivors, this would be a matter for policy debate. But the nightmare for the survivors continues.

### **“Duped” by FEMA: The Housing Fiasco**

Many survivors who were aware of what was being offered and what assistance other survivors were receiving from FEMA, found themselves caught up in a second nightmare: the bureaucratic red tape that in many cases made it extremely difficult or even impossible to get assistance.

**Jan Campbell**<sup>90</sup> is a former FEMA employee who worked out of FEMA’s operations center in Hyattsville, Maryland. She worked the phones on FEMA’s regional intake and helpline. With hundreds of experienced employees having left FEMA over previous years, after Katrina hit FEMA was desperate to hire workers who could handle the phones for hundreds of thousands of survivors’ calls. They were offered \$15 per hour. “If you were alive they hired you,” says Campbell. People were hired who later flunked criminal background checks. Well over a hundred in the Hyattsville office alone had already been on the job when they were fired over background checks. During their employment, these individuals had access to social security numbers. Training, which was supposed to take 10 days, was trimmed to 8 hours. Every day employees were threatened with firing. Most of the employees were African-American and many were single mothers.

For survivors who weren’t in a hotel or in a shelter but not in their own home, the policy stated that they were entitled to an initial \$2,000. But thousands of survivors could not access this entitlement because of *duplicate registrations*. Many of the survivors were low income minority persons from extended families, but those families had been split up in the mass evacuation into diaspora. The first thing entered into the computer was the person’s telephone number. But what happened when a family of 2 or 3 or more adults were separated? The first to call in would typically receive the \$2,000 of assistance, but the second or third to call in would give the same telephone number. They found themselves in “dupe status.” Now they were stranded. The Red Cross might offer \$300 and other services, but this would not last for long. Next, this survivor goes to apply for rental assistance. FEMA can’t help them, because they’re in dupe status.

There were other ways for survivors to find themselves in dupe status. The application process was available on the internet. But as often happens with online forms, many survivors were uncertain whether or not their form had been accepted after pressing the send button. So they reloaded the page and hit send a second time. Now they had unwittingly submitted a second application, and this landed them into dupe status.

Over 70,000 applicants landed in dupe status, and over half of these were New Orleans residents. FEMA management discouraged those on the phone from telling survivors why they were not eligible for checks. Five months after landfall, FEMA was still cleaning these applications up. But since the \$2,000 assistance program was terminated in mid Fall of 2005, virtually anyone in dupe status did not receive the check unless their case was solved before the deadline.

Survivors were asked to provide proof of the residence they were living in at the time the hurricane hit. This required a lot of paperwork, especially for people who were far away from their residences. Sixty per cent of residents in the Lower Ninth Ward were illiterate, but no steps were taken to meet their special needs. FEMA employees had no social service background. Campbell's boss was a former warehouse worker. FEMA used satellite imaging to identify homes, but with so many homes destroyed they had to turn to other methods of verification such as checking phone books. If residences could not be verified, then the computer would display the words: "unable to verify," holding the application up. Survivors were not informed if there was a problem, and if they called in, staff could tell them about it, but there was no outreach so if they did not call in they did not know there was a problem. In November, a batch of faxes was lost in the mail system. But management instructed operators not to explain to survivors why their application had not yet been received or processed, but only to say: "Your case is still pending," and to ask them to send it back in.

A climate of suspicion pervaded the office. If someone called in and reported that they were unemployed, the computer showed: "refused to give income," which basically meant that FEMA thinks you are a crook. Office colleagues would hang up the phone proudly declaring "busted another crook." Applicants in the "refused to give income" category were sent to the Small Business Administration (SBA) for an SBA Loan, which requires filling out a 6 page form. Many elderly and disabled persons who did not have an employer found themselves in this situation, and were basically getting cheated out of any assistance. There were "so many ways to put people up a creek."

One man from East New Orleans had helped rescue 800 survivors, but then found himself forced to get on a plane to Tucson. He had no money. He could not get home. Since he could not prove that he lived in New Orleans, he then got hung up in asking for assistance when he was asked to provide proof of residency.

Phone operators were instructed not to spend more than 15 minutes on each call with the "customer." Staff were basically being told: "be quick, answer just what you're asked," and do not go over peoples' applications to be sure they get what they're entitled to. Because 15 minutes was often not enough to help someone solve a problem, unless you took time to go over the application with them, or to ask a Special Matters Expert (SME) for specific assistance, they were unlikely to receive everything to which they were legally entitled.

When rental assistance was obtained, survivors were told that it was good for 18 months. What they often weren't told was that they had to re-apply every 3 months. After the first three months, if they missed a rent payment, many landlords would turn them out in six weeks or less. Many checks were sent to the wrong address. Survivors had to apply for FEMA to reissue the check. ***But FEMA can take up to nine months to reissue a check.***

Finally, people from New Orleans were the last to get trailers. 40,000 or more were needed, but only several thousands were made available. Every day, FEMA phone operators were instructed not to tell anybody about trailers. There was a systemic bias. There were 41,000 trailers along the Mississippi Coast and calls came in all the time from Mississippi residents asking for instructions on how to hook up their trailers. But Louisiana only got 1,700 trailers. [By the end

of January, according to the *Washington Post*, Mississippi had 33,378 trailers, meeting 89% of the demand, where as Louisiana had only 37% of its trailer needs met.]<sup>91</sup> And there were memos all the time giving phone numbers that survivors of Hurricane Rita in Texas, a hurricane that came a month after Katrina, could call to get a trailer, or get service for their trailer. The staff were grumbling among themselves: “How ‘come these people in Texas are getting Cadillac treatment?”

“Most of the survivors were suffering from post-traumatic stress disorder (PTSD). I tried to help them when I could. We got yelled at routinely for ‘having too much compassion... You’re not here to do casework,’ we were told.” In November, Campbell raised a fuss at a meeting when survivors were about to be evicted from hotels. Staff phones had a button to transfer callers facing eviction to another program. But three quarters of the transfers did not go through, and staff were not provided a number to give directly to the callers who called back in. A day later, the number was provided to staff, but during that 24 hours most transferred calls got cut off.

One day, 20 employees passed out cold on two separate floors of the Hyattsville office. This event got coverage by *CNN*. The official explanation was that a gas can with a paper rag on it on the roof had caused the incident. Campbell didn’t buy it. Campbell’s co-workers told her she had gotten herself into trouble when she called the Hyattsville Fire Department to report that cartloads of paper were blocking exit doors in the building, which was against the fire code. She was terminated in early December because she “talked too long on the phone.” She had shown too much compassion.

Ms. Campbell’s story gives us a peek at the chaos inside of unhappy FEMA. This was not an organization that stood ready to deal with a hurricane of the magnitude of Katrina. This meant that as new policy was needed to cope, it had to be made on the run. That opened the door to all kinds of problems and irregularities, such as out of control spending with credit cards to purchase sleeping bags (\$60,000 for 3,000); flip-flops (\$223,000 worth in one purchase); and golf cart rentals at \$1500 per month.<sup>92</sup> As well, FEMA trailers are said to be priced at up to \$120,000 each in New Orleans, which is more than it would take to renovate an average house. One FEMA employee has been charged with looting from a client survivor.<sup>93</sup> Two others were indicted in scheme where they were taking kickbacks from food services contractors.<sup>94</sup>

But the clearest sign of chaos within FEMA has been its rolling deadline for evictions for tens of thousands of survivors who have been living in FEMA-subsidized hotels: from December 15<sup>th</sup>, to January 7<sup>th</sup>, to February 7<sup>th</sup>, and now to March 1<sup>st</sup>. The expensive hotel scheme itself was a stop-gap measure. But here again, we need to ask why the President or the Secretary of DHS did not step in to take charge. There have been options on the table, such as opening tens of thousands of existing dry housing units in New Orleans to survivors. After five months, FEMA finally announced at the end of January that it was in fact setting up a pilot program to relocate 20,000 survivors into government sponsored, rent-free apartments in New Orleans for 18 months (starting from August 29<sup>th</sup>, the day of landfall).<sup>95</sup> This was welcome news, but will FEMA’s promise hold good? A FEMA official is said to have told the Subcommittee on Housing that the hotel deadline would be lifted altogether, but this did not turn out to be true. William Lokey, a field director for FEMA, told the Select Committee on December 14<sup>th</sup> that all survivors would be

given return tickets to get back to their Gulf Coast homes, but FEMA has published no explicit policy and survivors we've talked to say they cannot access this program.

The other major option open to the government is to provide section 8 housing vouchers for survivors so that they can get established, find work, and start to rebuild their lives. Local and state government along the Gulf Coast needs to re-establish a tax base, but this will be very hard to do if residents don't return.

Tens of thousands of mostly African-American survivors face eviction on March 1<sup>st</sup> with no further promises of assistance.

### **3. KATRINA AND THE CRIMINAL JUSTICE SYSTEM**

#### **Law Enforcement**

Governor Blanco's "shoot to kill" order was an extreme measure. Many survivors have expressed their bewilderment or dismay at being subject to curfews under armed patrols in the wake of the hurricane. Had there not been a failure of planning and coordination prior to the storm, would this extreme step have been taken? As suggested above, had disaster planning *anticipated* looting, it may have been possible for responding law enforcement officials, including National Guard, to be on the ground to ensure law and order sooner. But the problem in New Orleans goes deeper than that. Attorney Ishmael Muhammed made the following comment about Governor Blanco's decision during his testimony before the Committee:

We know that there was a shoot-to-kill order given in an environment that already was problematic in terms of black people being killed by authorities. So, just using your common sense—the sense we all got a little bit of, at least—you give someone raring to go, before Katrina, in a disaster situation, a shoot-to-kill order and create an environment where everybody is a potential looter, you are going to have people getting shot down by police, by law enforcement authorities. And then you have account after account after account of people being killed. Then you have statements being made by law enforcement officials and government officials that the only—that all deaths are going to be identified as happening August 29th as the date and no identification is going to be made of what actually killed anyone, what actually made people—what actually was the reason that people died. Why is that? And then you have reports that 10,000 people may be dead, and all of a sudden we have a body count of a little over 1,000.

There were in fact numerous reports of actual and alleged police shootings and police brutality following Hurricane Katrina, including the following:

- “On the street right in front of the Convention Center, I see a circle of chairs around a black tarp. A body lies underneath it. It’s been there since the night before. I pull the tarp back and see a black man lying in a pool of blood... Witnesses tell me what happened. Dwight Williams... says the night before, a New Orleans Police Department vehicle pulled up. ‘For whatever reason, the gentleman made a move to the car,’ he says. ‘It took five seconds, the entire incident. The cop opened the door, shot him, and that was it.’”
- “Near the former St. Thomas housing development, a squadron of police, some in tactical gear, were clustered in an intersection... [A] man who appeared to be dead from a gunshot wound lay on the ground. It was unclear what had occurred. Police said there had been a shootout as they forced a reporter and a photographer out of a passing car at gunpoint... They took away a reporter’s notebook and tossed the photographer’s camera on the ground before returning and telling the pair to leave” (*Times-Picayune*, September 1, 2005).

- “New Orleans police shot and killed four men and wounded one on Sunday after looters fired on officers, a policeman said. The incident on Sunday morning, as the city began to clean up from the devastation of hurricane Katrina, resulted in four fatalities and one person in critical condition, said one policeman who asked not to be named. No police were wounded. ‘Five men who were looting exchanged gunfire with police. The officers engaged the looters when they were fired upon,’ said superintendent of New Orleans police, Steven Nichols. Asked for more details, he said only, ‘The incident is under police investigation’” (Reuters, September 4, 2005).
- “Two New Orleans police officers repeatedly punched a 64-year-old man accused of public intoxication, and another city officer assaulted an Associated Press Television News producer as a cameraman taped the confrontations. After being questioned, officers Stuart Smith, Lance Schilling and Robert Evangelist were arrested late Sunday and charged with battery. They were also suspended without pay, released and ordered to appear in court at a later date, Capt. Marlon Defillo said.” (Associated Press, October 10, 2005).
- “Police shot and killed a 38-year-old man who had been waving a knife Monday in New Orleans, witnesses said. The killing occurred about 4 p.m. on St. Charles Avenue in the south Garden District near downtown, after the man -- who has not been publicly identified -- left a Walgreens pharmacy carrying a knife, witnesses said. Some witnesses said they heard five or six shots, but 10 red cones were placed on the street. The cones are typically used to indicate where shell casings are found. The city's police force has been under increased scrutiny and strain in the wake of last summer's Hurricane Katrina, when some officers left their jobs and others continued to work long hours despite losing nearly everything in the storm. Since then, police have come under investigation for allegations of looting, stealing cars from a Cadillac dealership and the videotaped beating of a man that resulted in two officers being fired last week.” (CNN, December 27, 2005)

The most controversial report involves conflicting stories of what happened on the Danziger Bridge on September 4, 2005. Here are some early accounts:

- “Police shot eight people carrying guns on a New Orleans bridge Sunday, killing five or six of them, a deputy chief said. A spokesman for the Army Corps of Engineers said the victims were contractors on their way to repair a canal.” (Associated Press, September 4, 2005)
- “At least five people shot dead by police as they walked across a New Orleans bridge yesterday were contractors working for the US Defense department, according to a report by the Associated Press. A spokesman for the Army Corps of Engineer said the victims were contractors on their way to repair a canal, the news agency said, quoting a Defense Department spokesman. The contractors [were] crossing the bridge to launch barges into Lake Pontchartrain, in an operation to fix the 17<sup>th</sup> Street Canal, according to the spokesman” (The Australian, September 5, 2005).

New Orleans Police claim they caught eight snipers on a bridge who were shooting at relief contractors. There was a gun battle and five or six of the snipers were killed. Three months later, however, two families came forward with stories radically different from that of the police:

- “A teenager critically wounded that day, speaking about the incident for the first time, said in an interview that police shot him for no reason, delivering a final bullet at point-blank range with what he thought was an assault rifle. Members of another family said one of those killed was mentally disabled, a childlike innocent who made a rare foray from home in a desperate effort to find relief from the flood. The two families — one from New Orleans East and solidly middle class, the other poorer and rooted in the Lower 9th Ward — have offered only preliminary information about what they say happened that day. Large gaps remain in the police and civilian accounts of the incident.” (*Los Angeles Times*, 11/24/05)

We anticipate additional stories and allegations about shootings to come forward. We have heard from many survivors with missing family members who fear that their loved ones were shot by police, National Guard, other military, or private contractors during the flood. Frank Minyard, Orleans Parish Coroner says: “If you murdered somebody in those days, you are probably going to get away with it.”<sup>96</sup> In addition, there are countless reports of persons being arrested arbitrarily, or of children as young as twelve being taken off to prison for allegedly being in violation of curfew. This placed enormous strain on families seeking to reunite before evacuation when there was a child unaccounted for who later turned out to be in prison. One of the most egregious arrests was that of a 73-year old church deaconess with diabetes who had never in her long life been charged with a crime. She was charged with attempting to loot \$63.50 worth of groceries at a deli. Eyewitnesses claim that she had paid for her groceries with a credit card and that the OPP officers were tied and frustrated because they were unable to apprehend young looters at a nearby store. “Not even the deli owner wants her charged,” read the story. She was transferred from the parish jail to a state prison and a judge set her bail at \$50,000, “100 times the maximum \$500 fine under state law for minor thefts.” She was released on September 16, 2005 after two weeks in jail, facing a court date in October.<sup>97</sup>

The New Orleans Police Department (NOPD) has a history marred by incidents of racist police brutality:

- In 1980, following the killing of a white police officer, police went on a rampage Algiers, a mostly African-American community, killing four citizens and injuring many more. “Some of the victims were tortured, including two who were dragged to swamps where the officers carried out mock executions.”<sup>98</sup>
- In 1991, a Justice Department ranked citizen complaints of police brutality in New Orleans as the highest in the country.
- Between 1993 and 1998 over 50 NOPD officers were arrested for felonies including homicide, rape, and robberies.

- In 1995, an NOPD officer was convicted of robbery and an execution-style murdering three people at the restaurant: two employees and “an off-duty officer from her precinct working at the restaurant.”
- In 1996 an NOPD officer was convicted of hiring a hit man to assassinate a woman who had filed a complaint of police brutality against him. He is currently serving a life sentence on death row. New Orleans is the only police department in the country with an officer on death row. In fact, two NOPD officers are currently on death row.
- In 1998 two NOPD officers were indicted “for allegedly beating two handcuffed men in custody.”
- In the mid-1990s the pattern of violations by NOPD officers was so apparent that the Justice Department threatened a civil action. A reform process ensued, resulting in the arrest of 110 officers for a variety of criminal charges, the suspension of 600 officers for misconduct, the firing of 117 officers and 18 resignations—all this from a force with just 1,700 active duty officers.
- In 2004, despite attempts at reform, 8 officers were arrested on charges including aggravated assault, extortion and conspiracy to commit a robbery.

Experts report that the majority of those killed since Hurricane Katrina were killed by police. Given this pattern, Governor Blanco’s “shoot-to-kill” directive during Hurricane Katrina must be called into question. It created conditions under which complaints against police brutality could be dismissed more arbitrarily than before.

To date, parts of the city are still patrolled by private mercenaries working for Blackwater. About 150 heavily armed mercenaries working for Blackwater made their appearance in New Orleans alongside other military responders after the hurricane. They are still there, and residents complain that their presence is a nuisance and intimidates residents. During her testimony before the Select Committee Governor Blanco denied having authorized the hire of mercenaries to join the relief effort. One Blackhawk employee stated that his company had been contracted by the Department of Homeland Security. He also claimed his comrade had been deputized by Governor Blanco’s office. The report says: “The man then held up the gold Louisiana law enforcement badge he wore around his neck. Blackwater spokesperson Anne Duke also said the company has a letter from Louisiana officials authorizing its forces to carry loaded weapons.”<sup>99</sup> Blackwater employees have demonstrated explicit examples of racial prejudices.

Blackwater is not alone. As business leaders and government officials talk openly of changing the demographics of what was one of the most culturally vibrant of America's cities, mercenaries from companies like DynCorp, Intercon, American Security Group, Blackhawk, Wackenhut and an Israeli company called Instinctive Shooting International (ISI) are fanning out to guard private businesses and homes, as well as government projects and institutions.<sup>100</sup>

All of this office's requests for more information about who hired Blackwater, and for what reason, have gone unanswered. However, one official of the City of New Orleans told Congresswoman McKinney that DHS sent them to the city.

It is nearly impossible to imagine "shoot-to-kill" orders and the hiring of private mercenaries to patrol the streets of wealthy or mostly white cities and neighborhoods. As we saw in some of the testimonials above, unarmed and non-violent African-American residents of New Orleans faced explicit acts of racial discrimination by the very forces sent to oversee their rescue.

### **Left to Die: The Plight of Prisoners**

The now widely-publicized story of prisoners at the Orleans Parish Prison (OPP) who were abandoned in locked cells during the hurricane, with those on the lower floor facing floodwaters up to their necks, is actually just one more chapter to a long and sad story of prisoner abuse. Interviews with prisoners tell of open and pervasive drug use and beatings of prisoners by officers, or indifference by officers to prisoners beating other prisoners. The federal court has been monitoring Orleans Parish Prison ever since the 1969 filing of the lawsuit *Hamilton v. Morial*. Yet the conditions of the prison remain abysmal:

- In 1999, a pregnant female prisoner "reported being left in shackles during labor and another claimed she was denied an examination by a gynecologist despite bleeding immediately after childbirth."<sup>101</sup>
- In 2001, Shawn Duncan, being held on traffic charges, died of dehydration after he was held in restraints for 42 hours.<sup>102</sup>
- In 2003, two OPP guards were indicted after beating to death a prisoner who had been arrested on charges of public drunkenness.<sup>103</sup>
- "In 2004 OPP was one of the top five prisons with substantiated reports of sexual violence in the nation."<sup>104</sup>
- In each of the three months prior to Hurricane Katrina a prisoner died, two while under medical observation, one who committed suicide whilst under suicide watch.<sup>105</sup>

The Orleans Parish Prison is exceptional in a number of ways. Averaging around 7,000 prisoners on any given day (pre-Katrina), the OPP is the 8<sup>th</sup> largest local jail in the country. Only county jails in cities like New York, with populations many times that of New Orleans, house more prisoners. The OPP holds more prisoners than the largest state prison in Louisiana.<sup>106</sup> The cost of housing this many prisoners exceeds \$100,000 *per day*, a bill that is currently being picked up by FEMA, according to experts. The irony of this is that while FEMA is preparing to evict needy survivors on March 1<sup>st</sup>, it is meanwhile paying top dollar to keep in jail many prisoners whose release dates have passed as well as many more who are only in on petty offenses.

Arrests in New Orleans are up from 48,000 per year in 1995 to 114,000 per year in 2004.<sup>107</sup> These numbers do not reflect an increase in violent crime in the city. In fact arrests for violent crimes are below half the rate for cities in the United States. The vast increase in arrests reflects a new policy of stopping at nothing to arrest citizens for petty crimes such as “public drunkenness, drug possession, disturbing the peace,” obstructing a sidewalk, traffic violations or missed child support payments. Already the target of police harassment, most of these petty arrests target young African-American men, who often complain of being arrested on false charges. Under police sentencing rules, the arrested must spend at least 45 days in jail before sentencing. If prisoners are too poor to post bail, they languish in prison, saddled with court costs that can total \$2,400 per year. Although the prison offers little by way of rehabilitation programs, prisoners are put to work for minimum wage at an aquaculture facility built by the prison.<sup>108</sup>

When Hurricane Katrina hit, the OPP had just completed a round of street sweeps, picking up people for petty crimes such as loitering. It had also taken in an influx of prisoners evacuated from other jails. When the city flooded, the prison was inundated with water and prisoners were trapped in cells with water up to their necks. Human Rights Watch researcher Corinne Carey commented that “Of all the nightmares during Hurricane Katrina, this must be one of the worst. Prisoners were abandoned in their cells without food or water for days as floodwaters rose toward the ceiling.” Power went out early in the storm, and the toilets backed up, creating an unbearable stench. To let in air, inmates broke jail windows. Some set fire to blankets and shirts to hang outside as a cry for help. Inmates on the first floor had to get up onto the second bunk of their beds, but then the water rose to the ceiling and the female prisoners were then taken to the males’ side of the dorm, but there the smoke from the fires that had been started meant that they remained in smoke-filled rooms for nearly two days.<sup>109</sup> Gas lines also broke and the women became nauseous.<sup>110</sup>

Some managed to escape, but many who did approached law enforcement officials at sites where people were congregating on bridges and turned themselves in. Some prisoners reported that dead bodies were seen floating in the floodwaters inside the prison. The prison was finally evacuated on September 2<sup>nd</sup>, five days after the storm. 450 of the inmates were taken to Jena Correctional Facility, and there have been many “extremely credible” complaints that once there they were tortured and abused, and were refused access to telephones.<sup>111</sup>

Corinne Carey researched the prison and at the end of September had reported that 517 prisoners remained unaccounted for.<sup>112</sup> It is hoped that further investigations by civil and human rights groups will clarify what became of the missing prisoners, though for some that may never be known.

It is shocking to learn that prisoners were evacuated from other jails prior to the storm into a jail that sat below the flood plain. The failure to evacuate the Orleans Parish Prison put prisoners and guards in serious jeopardy. At our community meeting in New Orleans, we heard from a man who had his jaw broken while being attacked by other prisoners during his ordeal of being caught in the flooded prison. He could barely endure the pain long enough to speak to us.<sup>113</sup> He had been arrested on a petty marijuana possession charge. Experts have reported that the OPP jail population has now swelled to 9,000, with 85 per cent of prisoners being held for petty

offences. Many of these are being held *past their release date*, on the excuse that their paperwork was lost during the storm, or because their case has been backlogged. Anyone who endured the horrors of being trapped inside a flooded prison during a hurricane has already served a penalty far in excess of what any petty offense merits. More than that, their abandonment is an insult to their dignity as human beings.

It is beyond the pale that these prisoners are still incarcerated.<sup>114</sup> Six weeks after the storm, Human Rights Watch reported that many of those rounded up in the sweeps before the storm had not yet been brought before a judge.<sup>115</sup> OPP funding is based upon prison population, and if they were dismissed, the \$100,000 daily allowance, currently supplied through FEMA, would immediately shrivel, resulting in lay-offs. It has been reported that the Louisiana State Legislature passed a law that sanctioned the detention of prisoners past their release date. Federal officials overseeing disaster relief need to take cognizance of this deplorable situation in which a city now desperate for funds and jobs has allowed its prison to even more pro-actively than before seek to incarcerate massive numbers of young African-American males as a means to the end of contributing to the local job market, and take action to remedy this travesty of justice.<sup>116</sup>

Let us end this gruesome tale on a positive note of recognition of the heroism of one of the guards. One of the women who suffered through this ordeal writes that “one woman ... stayed with the inmates to the bitter end. Her name is: Colonel Joseph. She was a god sent Angel. So many deputies abandoned us.”<sup>117</sup>

Recommendation: Future hurricane response plans should include evacuations for prisons susceptible to flooding.

#### **4. KATRINA, FEMA AND MARTIAL LAW**

##### **The Governor Rebuffs the President's Proposal**

The term *posse comitatus* translates as “the formation of a posse.” The experience of the founding fathers with the British model that combined the functions was enough to cause them to set that division sharply in administrative powers and civilian command of the military. This principle began to be eroded in the period following the end of the Civil War, and the effective occupation of areas of the south by federal troops who were holding military tribunals, carrying out executions of citizens and usurping local police and judicial control. Their excesses came to the attention of the post-war Congress and they passed the Posse Comitatus Act under the 45<sup>th</sup> Congress in 1878. The Act makes unlawful:

...to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress...<sup>118</sup>

Louisiana State Governor Kathleen Babineaux Blanco declared a State of Emergency for New Orleans on August 26, 2005, three days before Hurricane Katrina made landfall, extending until September 25. State Attorney General Charles Foti's office issued a clarification about Martial Law claims in the media, stating that no such term exists in state law. However the declaration of a state of emergency “gives authorities wide latitude to suspend civil liberties as they try to restore order and bring victims to safety”<sup>119</sup> Louisiana law does not have a martial law provision.

The declaration of a State of Emergency in Louisiana was equivalent to the suspension of *posse comitatus* and the establishment of martial law while the Guard was under state control. It allows the National Guard to perform police functions if there is a threat to life or property, or breakdown of law and order. Thus the early State of Emergency declared by Governor Blanco overcame *posse comitatus* considerations. The standard operating procedure has been that only when local Guard forces and police are unable to control the situation or when it is beyond their capabilities will federal armed forces be called in under 32 CFR 50i and 10 USC 331 seq.

There were numerous reports of National Guard troops being used in place of police and enforcing orders with the use of weapons. This was potentially legal under Louisiana law, which suspends the distinction between local police and state-commanded National Guard in restoring order and saving life and property once a formal emergency is declared.

On September 2, 2005, Governor Blanco was presented with a contract proposal from the White House that would have established “Mutually Exclusive Chains of Command.” Governor Blanco refused to sign the Memorandum. Had the contract been signed, a “dual status commander” would have been designated to serve as commander of the Louisiana National Guard, subject to the orders of Governor Blanco, and *simultaneously* to provide “command and control over supporting Federal forces,” including federalized National Guard units. “Such

Federal forces are required to act in accordance with the Posse Comitatus Act,” the document declares.<sup>120</sup>

It is easy to see why this was a non-starter for the Governor. On paper, this was effectively a proposal for dual or shared command between the Governor and the Commander-in-Chief. Such a Y-shaped chain of command would work fine so long as the “dual status commander” handled directives for State Guard and Federal forces separately. But what would happen in the event that a problem arose that concerned both forces over which the Governor and the President disagreed? Surely Blanco knew that she would be holding the weaker stem of the wishbone. Moreover, and as noted past precedent, as well as the *National Response Plan* make it clear that the role of Federal forces is to play a supporting role. According to the NRP:

Federal departments and agencies are expected to provide their full and prompt cooperation, available resources, and support, as appropriate and consistent with their own responsibilities for protecting national security.<sup>121</sup>

Within that framework, it is the Secretary of Homeland Security who is “responsible for coordinating Federal operations within the United States.” In her response, dated September 3, 2005, Blanco said she agreed that a single military commander for Joint Task Force Katrina should be named. But she deflected the dual status commander proposal, suggesting instead that the President “direct the assigned Federal Coordinating Officer of Homeland Security (FEMA) to co-locate with my Homeland Security and Emergency and Preparedness Office at the Federal Joint Task Force headquarters.”<sup>122</sup> This is effectively what the National Response Plan calls for.

According to reports this led to a behind-the-scenes power struggle:

The administration sought unified control over all local police and state National Guard units reporting to the governor. Louisiana officials rejected the request after talks throughout the night, concerned that such a move would be comparable to a federal declaration of martial law. Some officials in the state suspected a political motive behind the request. “Quite frankly, if they’d been able to pull off taking it away from the locals, they then could have blamed everything on the locals,” said the source, who does not have the authority to speak publicly.<sup>123</sup>

In the days that followed, there was plenty of posturing: “The president will not let any form of bureaucracy get in the way of protecting the citizens of Louisiana,” said White House spokesman Dan Bartlett. Seeking to shore up her independence, and in the face of DHS/FEMA laxity, Blanco hired former FEMA director James Lee Witt to advise her in the relief effort.<sup>124</sup> Bush placed the blame for failures in the response on local government in his weekly radio address, stating that the magnitude of the crisis “has created tremendous problems that have strained state and local capabilities.” Chertoff followed suit, claiming that the reason why federal assets were not moved in more quickly was “because our constitutional system really places the primary authority in each state with the governor.”<sup>125</sup>

## **Bush Already Enjoyed Ample Authority**

President Bush had ample authority under provisions of existing laws on disaster response to mobilize and command any and all federal assets, including military forces. As already noted, State-directed National Guard units have always worked in conjunction with federal troops and are authorized under federal and state laws to use force to protect lives, property and public safety during a declared emergency. Police functions have been wisely left to local police and state National Guard forces, except when the situation was so dire they could not function. On September 5, 2005, Admiral Timothy J. Keating, speaking on *CNN*, discussed *posse comitatus*. Keating affirmed that the *Posse Comitatus Act* does not limit the use of active duty military for involvement in law enforcement activities during disaster relief efforts. Keating also mentioned that from his perspective, military command had no issue with State Governors exercising their duties to command their guards.

Yet Bush did not need any unified command structure to move troops and federal assets into New Orleans and the Gulf States in the wake of Hurricane Katrina, and he does not need them for other public health emergencies. Existing law is sufficient. Under the *National Response Plan*, a Governor may call upon the President to declare a “major disaster or emergency” (which Blanco did), should the “findings of a joint Federal-State-local Preliminary Damage Assessment (PDA)” warrant this. In extreme cases (which Katrina certainly was), the PDA can be waived. Once the President declares the incident a federal emergency, he “may unilaterally direct the provision of assistance under the act and will, if practicable, consult with the Governor of the State.”<sup>126</sup>

Other legislation confirms that the Commander-in-Chief has such powers. The President can order in active troops or call on volunteering Reserve units in civil disturbance (10 USC 672). Federal troops are expected to stay under their own command, and not be placed under National Guard or state officials (32 CFR 501.3). The Robert T. Stafford Disaster Relief Act of 1984 (42USC5121 et seq [amended 1988]) gives the President power in declared states of emergency to mobilize federal troops to respond under the direction of FEMA. There is no need for additional Martial Law authority to authorize civilian law enforcement or to federalize state troops.

There may have been other issues at play. There is certainly a regional precedent that would give any state governor pause before allowing the federalizing of State National Guard troops. In 2004, the deployment of Mississippi and Louisiana Guard units to Iraq reportedly weakened local disaster response efforts. Moreover, in a kind of de-federalization of Louisiana Guard units were recalled from Iraq to assist in the relief efforts after Katrina. It may have looked to Blanco that the President seeking to exert his control over the Guard to be able to command greater resources for his war effort, or Bush may have been dismayed that those assets were not put at his disposal.

## **Martial Law is Declared**

A declaration of martial law generally comes from the President, but in an extreme situation, a local commander can impose martial law (32 CFR 501.2 and .4). The Army decides when it is no longer needed, though it should end as soon as necessity ceases (501.6).

Pre-empting both the Governor and the President, City of New Orleans Mayor Ray Nagin declared Martial Law to crack down on looters and told 1,500 police to do “whatever it takes” to regain control of the city. Nagin said that Martial Law means that officers don’t have to worry about civil rights and Miranda rights in stopping the looters... “We will restore law and order,” Blanco said, apparently confirming Nagin’s decision.<sup>127</sup>

- “Martial law has been declared in New Orleans as conditions continued to deteriorate.” (*CBS News*, August 30, 2005).
- “Martial law has been declared in Mississippi and Louisiana” (White House Spokesman Scott McClelland, August 31, 2005).

Despite these reports, the *Times-Picayune* noted that there is no such term as martial law in Louisiana State Law, adding however that when a state of emergency has been declared it provides powers similar to martial law.

Martial law replaces civilian control with military control. A Supreme Court case in 1946 lifted martial law declared in Hawaii during the attack on Pearl Harbor in 1941, forcing civil criminal cases into military courts. The decision ruled that the only legal basis for martial law rests on the complete breakdown of the functions of civil control. Additionally, an 1866 Supreme Court ruling on martial law held that it couldn’t be instituted within the US when its civilian courts are in operation.<sup>128</sup>

On the surface of things, it would appear that *both* the President and the DHS were unclear about their roles and responsibilities, and the length and breadth of federal or executive powers. But this incident requires further study.

Recommendation: Congress should direct the Government Accountability office to investigate:

- 1) the degree to which confusion over roles, responsibilities and powers contributed to the tragic and unnecessary delay in dispatching Federal forces to the incident site; and
- 2) the Bush administration’s claims that the Commander-in-Chief needs more power than the Constitution envisions or allows.

We now turn to the first of these issues.

### **Why the Delay?**

Since governing legislation is clear, the question remains as to the source of the delay. The *Washington Post* ran the following story on September 3, 2005:

NEW ORLEANS, Sept. 3 -- Tens of thousands of people spent a fifth day awaiting evacuation from this ruined city, as Bush administration officials blamed state and local authorities for what leaders at all levels have called a failure of the country's emergency management. Louisiana did not reach out to a multi-state mutual aid compact for assistance until Wednesday, three state and federal officials said. As of Saturday, Blanco still had not declared a state of emergency, the senior Bush official said.

But this claim by the White House official was false. Governor Blanco had declared a State of Emergency ten days earlier on August 26<sup>th</sup>. On September 3<sup>rd</sup>—five days after landfall—the President finally authorized federal assets to move:

President Bush authorized the dispatch of 7,200 active-duty ground troops to the area—the first major commitment of regular ground forces in the crisis—and the Pentagon announced that an additional 10,000 National Guard troops will be sent to Louisiana and Mississippi, raising the total Guard contingent to about 40,000. At a Pentagon news conference Saturday, Lt. Gen. Joseph Inge, the deputy commander of the Northern Command, said the active-duty ground forces would be used mainly to protect sites and perform other functions not considered law enforcement.<sup>129</sup>

From some of the statements made, however, it would appear that some intended to go *beyond* law enforcement:

‘This place is going to look like a Little Somalia’ stated Brigadier General Gary Jones, Commander of the Louisiana National Guard’s Joint Task Force. ‘We’re going to go out and take this city back. This will be a combat operation to get this city under control.’ (*Army Times*, Friday, September 2, 2005)

The mobilization was the largest military mobilization on US soil since the Civil War, with nearly 65,000 military personnel deployed to the region. In the absence of early federal support to stabilize the situation, State assets did not or could not restore law and order. The *Army Times* reported September 2<sup>nd</sup> that the National Guard began a massive operation to “fight insurgents in the city.”

All indications suggest that it was only after receiving Blanco’s letter on September 3<sup>rd</sup> that the President decided to act, and that the confusion over the unnecessary and unsigned Memorandum of Agreement lay at the heart of the situation.

### **Martial Law and FEMA**

Aaron Broussard, President of Jefferson Parish, accused FEMA of deliberately sabotaging relief efforts. “New Orleans City Council President Oliver Thomas acknowledged that the city was

surprised by the number of refugees left behind, but he said FEMA should have been prepared to assist. "Everybody shares the blame here," said Thomas. "But when you talk about the mightiest government in the world, that's a ludicrous and lame excuse. You're FEMA, and you're the big dog. And you weren't prepared either."<sup>130</sup>

The Memorandum of Understanding which the White House presented to Blanco did not seek to Federalize the Guard *directly*, but by placing Louisiana State Guard and Federal forces under one commander loyal to two sovereigns, it would have achieved virtually the same result, since ultimate authority rests with the Commander-in-Chief. The insistence on achieving a result tantamount to federalizing the Louisiana National Guard and other resources might be explained by examining martial law and readiness exercise planning involving FEMA.

The types of martial law planning that FEMA had been involved in from the 1980s forward will be found shocking to some. FEMA in those years was headed by Louis Guiffrida. Guiffrida had earlier helped to develop a plan at the National War College that included provisions for the "detention of at least 21 million American Negroes" in "assembly centers or relocation camps."<sup>131</sup>

In 1981, President Reagan had put Guiffrida in charge of the California Specialized Training Institute for Counterterrorism with funding from Federal Law Enforcement Assistance Administration (LEAA) of \$425,000. Guiffrida designed plans for martial law with names like "Cable Splicer" and "Garden Plot," martial law plans that would have legitimized the arrest and detention of dissidents such as activists opposed to the war in Vietnam. In 1981, Guiffrida took charge of FEMA and created the Civil Security Division and a center for training civil defense personnel in military police methods. President Reagan also set up an Emergency Mobilization Planning Board (EMPB) to put National Security Council in charge of civil defense policy. This plan combined FEMA, the Pentagon and 10 federal agencies. Lt. Col. Oliver North served on the EMPB from 1982-1984 under Robert McFarlane, Assistant to the President for National Security Affairs.

When Attorney General William French Smith got wind of the plans to round up dissenters after being asked to review Executive Order 11490 (a sweeping order giving near dictatorial powers to the President during an emergency), he admonished McFarlane, writing: "I believe that the role assigned to [FEMA] on the revised Executive Order exceeds its proper function as a coordinating agency for emergency preparedness."<sup>132</sup>

North assisted FEMA in making martial law plans to counter civil unrest, according to his testimony during the 1987 Iran-Contra scandal.<sup>133</sup> Guiffrida's tenure FEMA did not last long. He resigned in 1985 under charges of mismanagement and embezzlement. The EMPB was dissolved soon thereafter. Yet one planning concept that was initiated in that period and which survives is Continuity of Government (COG). Continuity of Government essentially replaces Congress with appointed officials. During an emergency, COG replaces federal government with pre-selected executive agency teams that run affairs from secure locations, as Vice President Dick Cheney was reported to be doing well after 9/11. Command was said to rest with the National Security Council (NSC), FEMA and the Department of Defense.<sup>134</sup> We know of no clear indication that Continuity of Government has been lifted since September 11, 2001.

The obvious concern about the various plans just mentioned is that most of these plans appear to move in the direction of suspending the Posse Comitatus Act *indefinitely*. Moreover, both President Bush and Senator Mark Warner (VA) have recently renewed calls to undermine or reverse the *Posse Comitatus Act* of 1878.

Whatever his reasons, President Bush should be the one held responsible for the delay in deploying federal forces to the stricken region of the Gulf Coast. The President has no leg to stand on if he wishes to place blame for the delay on Governor Blanco, as we have seen above, for he did not need her consent in order to move forces. “Existing law is sufficient, and the Congress needs to investigate the New Orleans response by FEMA and government troops, as well as examine and reject the Bush administration’s claims that they need more power than the Constitution envisions or allows.”<sup>135</sup>

Recommendation: The Constitutional principle and practice of separating military and police functions has become a cornerstone of our democracy. Congress should re-affirm the Posse Comitatus Act in light of proposals to amend or overturn it being made by our President.

## **5. ENVIRONMENTAL CONCERNS**

### **“Toxic Gumbo”**

Hurricane Katrina left behind an environmental nightmare. In addition to scooping up and depositing toxic sediment sludge from the bottom of lakes, rivers and the Gulf of Mexico (as discussed below), Katrina struck 466 facilities handling large quantities of dangerous chemicals, and 31 hazardous waste sites along the Gulf Coast. Among the known contaminants and toxins that mixed with the floodwaters in New Orleans, are: oil, gasoline, hexavalent chromium, mercury, arsenic, chloroacetic acid, fecal bacteria from flooded sewage facilities (including E. coli),<sup>136</sup> household hazardous wastes,<sup>137</sup> pesticides and unattended corpses of the dead.

The United States Coast Guard reported more than 7 million gallons of oil and between 1 and 2 million gallons of gasoline from plants and depots in southeast Louisiana were spilled as a result of the hurricane. Spills of oil and other toxic chemicals pose a particularly serious public health threat when they dry and become airborne as invisible, breathable particulates. One of the first spill reports to come in was that of an oil tanker that had run aground and was leaking fuel.<sup>138</sup> Among the multiple oil spills from above-ground tanks was a tank breach at the Meraux Murphy Oil Refinery where over a million gallons of oil leaked into the floodwaters. Residents whose homes were flooded are being told not to return.<sup>139</sup>

Under the Resource Conservation and Recovery Act (RCRA) facilities that manage hazardous materials are required to have emergency plans to prevent waste or toxins from being released into the environment. The multiple spills suggest that adequate containment mechanisms were not constructed by the owners and companies of the leaking facilities.

The decision to pump the contaminated floodwaters out into Lake Pontchartrain will seriously compromise the fish and other organisms of the lake, and “will also undo the hard-won success of cleaning up Lake Pontchartrain to the point that portions were recently deemed safe for swimming.”<sup>140</sup>

### **Superfund Sites Hit**

Hurricane Katrina struck 16 superfund toxic waste sites, 3 of which were flooded, being in the environs of the City of New Orleans, one of them totally submerged. The flooded Superfund sites in Louisiana and Mississippi contained contaminants that include heavy metals associated with developmental problems and increased risk of cancer, and polycyclic aromatic hydrocarbons, which are known carcinogens. These dangerous materials joined the rest of the dangerous contents of the “toxic gumbo” that mixed in the floodwaters and were then pumped into the Gulf of Mexico and Lake Pontchartrain. Here we have an example of a disaster compounding a disaster, as the toxic spills that created superfund sites (and there is nothing ‘super’ about them) should never have been allowed to happen in the first place and should have been cleaned up years ago.

In 1995, Congress allowed the taxation of crude oil and chemical feedstocks that provided revenue for the Superfund program to expire. Now comes an environmental catastrophe on the scale of Katrina and while the Superfund in its earlier incarnation would have been the perfect vehicle for cleaning up the toxic mess in the Gulf, the work of cleaning up thousands of Superfund sites across the United States of America has come to a virtual standstill. The residents of the Gulf region thus face an uphill battle in getting federal assistance for clean-up, for if there is no money to restore local government, to get people housing so they can return and get jobs and rebuild the tax base, there is unlikely to be any money left for environmental cleanup. This is tragic, since the scale of the problem is simply too vast for local self-help groups or even for state and local government.

### **Testimonials from Independent Researchers**

Independent researchers have reported environmental contaminants such as arsenic, benzo(a)pyrene and petroleum hydrocarbons exceeding Environmental Protection Agency and Louisiana Department of Environmental Quality Standards present in a one eighth inch layer of visibly distinct sediment covering most ground surfaces after the removal of floodwaters from New Orleans and environs.

**Wilma Subra**, President of Subra Company, an environmental research firm which she founded in 1981, is perhaps the foremost independent expert on this issue. A resident of Iberia, Louisiana, Subra has earned enormous respect in Louisiana and the Gulf Coast, even before Hurricane Katrina. Within 48 hours of Katrina's landfall, she was in the field, assessing the damage, taking test samples and assessing them, figuring out what community members would need to deal with resulting environmental hazards, working with other organizations to get necessary supplies to affected residents.

She has shared her data with the Environmental Protection Agency (EPA), and the EPA has shared its sampling data with her. Both sets of data matched perfectly. Where there is a disagreement is in the *interpretation* of the data. The EPA finds there is no long-term health risk, and has excused itself from the enormous task of removing the sediment sludge.

Wilma also spoke at the New Orleans community event.<sup>141</sup> The section that follows is drawn from Subra's presentation.

The key term to understand about why Hurricane Katrina has created an environmental emergency for the Gulf Coast is "sediment sludge." What is this? All of the historical discharges into the Gulf of Mexico and other water bodies throughout the 1900s wound up in the sediment layer at the bottom of these water bodies. These discharges included issue from untreated wastewater from treatment plants. The last time there was a storm surge even comparable to that of Hurricane Katrina was when Hurricane Betsy hit New Orleans in 1965.

Since that time, the degree of concentration of new chemical effluents in the sediment sludge is far greater than what it was at the time of Betsy.

The storm surge from Hurricane Katrina “scooped up” all this contaminated sediment in these water bodies, carrying it over land and spreading it all over everything. It was not deposited only in New Orleans. The line of contamination extends from Mobile Bay to the Louisiana-Texas line. On top of this, Hurricane Rita’s storm surge deposited more contaminated sediment on areas already hit by Katrina and other areas. Wherever a storm surge came ashore *and* where there were breaches in the levees, the sediment sludge was spread all over. In some areas it is very sandy, like at the London Avenue Canal, and in other areas it is more silty, as at the Seventeenth Street and Industrial Canals.

What makes this sediment sludge dangerous is that it contains high levels of dangerous chemical such as:

- arsenic: a heavy metal and a suspected cancer-causing agent;
- polynuclear aromatic hydrocarbons (PAHs): a big word, but the reader may be more familiar with the danger of waste from creosote facilities—PAHs comprise one of the chemical compounds in creosote that makes it toxic; and
- benzo(a)pyrene: a probable carcinogen, and the most toxic of these three.

Added to these chemicals are such organisms as:

- fecal choliforms: from untreated sewage;
- Staphylococcus aureus (“Staph”): an organism that gives you sore throat and skin infections; and
- salmonella: another bug that gives you food poisoning.

All of these organisms are alive and well in the sediment sludge. The sludge is very available, it is on the surface, and has been spread all over the yards and sidewalks. It is easy to kick up. When the organisms enter the lungs, and the affected person visits the doctor, the physician typically assumes that he is dealing with only one of these types of organisms, not more than one type. Hence the treatment typically fails because multiple types of organisms are causing the problem.

Exposure to these toxins can come through skin contact, resulting in skin rashes that do not respond to normal antibiotics; and inhalation, which can result in persistent respiratory problems and what local doctors are calling “Katrina cough.”<sup>142</sup> While all the health agencies dispute this claim, all the medical doctors who have treated the responders, who have treated the people who return to their houses, say it is real, and it results mostly from recurrent, long-term exposure.

The local government has declared that in most areas it is safe for residents to return to their homes. But in reality, the presence of sediment sludge inside houses and on the yard means that returning residents are at risk of exposure to very toxic substances and contamination where the organisms are concerned.

In the aftermath of the Hurricane, Wilma Subra worked with the Louisiana Environmental Action Network (LEAN), a grassroots organization which at the time had very limited resources. Together with the Southern Mutual Health Association and Oxfam America, they assembled and began distributing kits for returning residents that included tybec suits, respirators, gloves, booties and essential cleaning supplies, advising residents to use the kits to avoid contact with the hazardous materials. They encouraged small children, pregnant women and the elderly not to go in until the hazardous material was cleaned up and addressed.

They approached FEMA and asked FEMA to take over and distribute the kits. FEMA declined. They asked the EPA. The EPA declined. So it was left up to LEAN, a local grassroots organization, to spearhead the enormous effort of providing these safety kits to returning residents. The kits were distributed through local community self-help groups like the Common Ground Relief Collective, and through local Churches, who in turn distributed them to their constituents.

The sediment sludge varies in depth. At the various sites of the levee breaches, the layer of sediment sludge deposited into residential areas could range from four to even as much as twelve feet. In most other affected areas away from these breaches the layer could be as thick as three to six feet, but once it dries it becomes a thin, dry layer of hazardous material that can easily become airborne upon contact. Over time, this material will travel. The delay in addressing this problem, with the refusal of the EPA to do the clean-up in spite of the fact that the EPA is the Incident Command agency responsible for clean-up, will mean that any clean-up effort will become more difficult over time, because the material will have gotten more spread around. Thus there is an urgent need for action at the federal level to get the clean-up effort started.

**Monique Harden** serves as International Policy Counsel for the National Black Environmental Justice Network. Ms. Harden also spoke at our community meeting, and below is a summary of her presentation.

What we are seeing in the Gulf Coast is a repeat of 9/11. In the aftermath of the attack on the World Trade Center the EPA was there saying the air quality was good when in fact it wasn't. And just recently we heard the news about a 9/11 rescue worker who died of black lung at the age of 34. Is this the future for New Orleans?

The Hurricane Relief Bill which was passed by Congress in the name of providing immediate aid to the affected region waived all public health and environmental laws. This was the opposite of what was needed to protect residents from harmful exposure. Since Katrina, the EPA has been going through this process of "assessing." This sounds good but means very little. Wilma Subra discovered the presence of arsenic and diesel fuel substances at levels above safety limits. Both of these materials can cause cancers in the long term. The presence of these toxic hazards on

streets and sidewalks would, under existing regulations, qualify the entire region affected by the sediment sludge to be declared a Superfund site.

One would think that since we can easily demonstrate the presence of toxins at levels that would qualify our neighborhoods to get on the Superfund list, that we should be able to get the EPA interested in doing the clean-up. But so far, this has not been the case.

Recommendation: Congress should revive the Superfund program, which taxes polluters to pay for the environmental cleanup they are responsible for creating in the first place.

Looking at the data for arsenic, the EPA sets the screening level at 0.39 milligrams per kilogram. The screening level means further study is required. The Mississippi Department of Environmental Quality (DEQ) has a screening level of 0.4 milligrams, but the Louisiana DEQ sets the screening level at 12.0 milligrams per kilogram. There are states that will not allow children to play on soil with arsenic levels above 5.0 milligrams per kilogram. But in New Orleans and in places along the Gulf Coast, *average* levels of arsenic widely exceed 12 milligrams per kilogram. Now it is important for Members of Congress to understand how inadequate our system of environmental protection is. It's fine if you don't need it, but once you need it, you're in trouble. This is because the EPA sets no levels above which clean-up would be required. What's the *clean-up* level? No one can say. Even in terms of screening levels there is a problem, because in the case of Hurricane Katrina, the EPA has abandoned its own standards in favor of the more lax standards of States. So in Mississippi, arsenic samples above 0.4 milligrams per kilogram will merit further study. But in Louisiana the EPA only does further study if samples reach 12.0 milligrams per kilogram or higher.

The EPA and the Army Corps of Engineers have also declined so far to undertake the task of cleaning up the sediment sludge. Wilma Subra has been quoted as saying: "I get the impression that they don't want to remove anything, because if they do start removing, they set a precedent."<sup>143</sup>

### **The Failure of the EPA to Act**

As soon as residents began returning to the region, returning residents and responders began reporting widespread cases of respiratory problems, asthmas and skin rashes. Law enforcement and emergency service personnel who waded for hours or days in the toxic floodwaters are now reporting medical problems that doctors are having a hard time diagnosing. These problems are being given names like "Katrina Rash" and "New Orleans Crud." Symptoms include terrible itching on the skin, abdominal cramps, high fevers. Says one responder: "They dumped us in New Orleans without the right equipment and they didn't give us shots or respirators." "I'm tired of my chest hurting," says another.<sup>144</sup>

The Environmental Protection Agency failed to develop any broad strategic plan for dealing with the post-hurricane environmental clean-up and public safety, detailing goals and methods of achieving them. Tens of thousands of disaster responders and returning residents were allowed into damaged areas without receiving sufficient warnings or

information about levels of contamination, health risks or necessary precautions. Given the comparatively enormous resources at their disposal, the refusal by both the EPA and FEMA to assist in local efforts to protect residents and responders from exposure to toxins and contaminants that the EPA's own data shows are present in quantities exceeding safety limits is an outright scandal.

There is still time to act. With sufficient government testing, warning and support, the people of the Gulf Coast region could be protected from similar dangers arising from the above-mentioned post-hurricane environmental hazards.

Recommendation: Congress must pass legislation directing the Environmental Protection Agency to establish a comprehensive assessment and protection plan for the citizens of the Gulf Coast to protect the public from environmental contaminants and infectious materials that pose a threat to public health and safety in the aftermath of Hurricane Katrina.

The wetlands of the Gulf Coast are eroding. It took thousands of years for the sediments of the Mississippi River to build up the healthy marshes and barrier islands of the coastal wetlands. These wetlands serve as a natural shield, buffering the impact of storms. Yet over a million acres or 25% of the total number of acres of wetlands have disappeared since 1930 due to the diversion of the replenishing sediment and fresh water with the building of shipping canals and flood control works, among other causes. Every hour, a piece of land the size of two football fields is lost to the open water.<sup>145</sup> The "Coast 2050" plan envisions redesigning the flood control and shipping system to restore healthy sedimentation and replenish the wetlands. The price tag is usually estimated at between \$14 and \$25 billion for a 50 year project. One expert suggests that for every mile of wetlands passed by a storm surge, flooding would be reduced by a foot.<sup>146</sup> Congress needs to get involved and play a facilitating role in local efforts to restore one of America's greatest natural treasures.

Recommendation: Congress should establish a commission to work with scientists, engineers and state and local governments to explore the feasibility of the "Coast 2050"<sup>147</sup> plan to restore the coastal wetlands.

## **5. Conclusion: Bridges to Nowhere**

A single weather event, Hurricane Katrina, has brought about the greatest population dislocation in the United States since the Great Depression of the 1930s. Katrina was not the strongest hurricane ever to hit the Gulf Coast, but it was perhaps the most destructive ever due to its extraordinary storm surge on the one hand, and due to human failures on the other. These failures are many and profound: the inadequacy of levees, the inadequacy of the evacuation plan, the inadequacy of the governmental response and a social environment characterized by widespread poverty, racial inequities and a history of racial discrimination. Without these failures, Hurricane Katrina, whose effect was compounded in mostly rural areas by Hurricane Rita, might have had an impact much more in keeping with most other hurricanes. Instead, Katrina's impact will be permanent and irreversible for many families and communities. The cleanup and reconstruction effort alone will likely take no less than a decade to accomplish, but the speed of that effort will also be determined by whether the American people step forward and exert sufficient pressure on their government to speed up the relief and reconstruction effort, or whether that effort is also shaped by human failure and a lack of compassion. President Bush has made a lot of easy promises, but has failed to live up to his words.<sup>148</sup>

As our tour bus for the Congressional Delegation made up of Select Committee Members, guest Members and their staff drove through the devastated Lower Ninth Ward of New Orleans, not far from downtown, one could still get a sense of the charm. Aside from the roads having been cleared, little had changed in four and a half months since a twenty foot wall of water was unleashed upon the is community of lower-income, mostly African-American residents. As we passed by heaps of debris, we were reminded that there were likely to be found more dead bodies (as indeed several have been even since our visit), it was possible to imagine the lifestyle of the residents of these cozy square wood houses.

Fourteen per cent of residents in the Lower Ninth were senior citizens. Another fourteen percent were handicapped. A full sixty percent owned their own homes, ranking the home ownership rate in this community among the highest in the country. At the same time, only forty per cent of residents were literate. These astonishing figures tell a tale of a community that was industrious, frugal and ill-served by the educational system. But most of all, you could tell just by looking that in spite of the fact that their homes were small, the people who lived here were proud of their community, and proud to contribute their part to the culture of New Orleans.

Another dramatic fact is that few of these residents left New Orleans very often. But now they are scattered to the four winds and 44 states, and of all the residents of New Orleans they face the longest odds of ever returning to their homes, most of which are beyond repair, let alone ever receiving compensation for the loss of their property. Numbers and dollar figures cannot begin to calculate the loss experienced by, say, a senior in her 80s who had rarely ever set foot outside New Orleans, but who now faces the challenge of starting a new life all over again in a strange community far away, separated from family and friends.

Hurricane Katrina, which struck the coasts of Louisiana, Mississippi and Alabama on August 29, 2005, was the first event to be declared an "Incident of National Significance" by the Secretary of Homeland Security, as empowered to do so under the NRP. The first priority listed in the

event of an Incident of National Significance is “to save lives and protect the health and safety of the public, resources and recovery workers.”

A mandatory evacuation was declared for the City of New Orleans in the aftermath of Hurricane Katrina. Yet more than 100,000 residents of New Orleans simply lacked the means to evacuate upon demand. There are many reasons why. The elderly, the disabled and the infirm required special assistance. Most self-supporting residents were low income earners and did not have their own means of transport to get out. Before the Hurricane Pam exercise in 2004, this issue seriously addressed, but funds for hurricane disaster planning were cut by the DHS.

For the low income, mostly black residents of Orleans Parish who had not heeded or could not heed evacuation calls, the order to evacuate was effectively meaningless. How would our 82 year-old grandmother with no care, living on a fixed income, and whose only family was based in the area about to be hit, get up and relocate out of the city. For starters, how would she pay for the hotel bills? For as many as five days after Hurricane Katrina, many of the bridges of New Orleans became bridges to nowhere, most with floodwaters on both ends. Thousands of survivors spent days stranded on a bridge, hopeful and expectant that one of the many helicopters flying overhead would stop and rescue them from the toxic floodwaters and the searing hot sun. Some black survivors report helicopters teasing them at the prospect of rescue and then leaving them and moving on to white neighborhoods. The conditions at the Convention Center, the Superdome, the I-10 / Causeway Cloverleaf resembled concentration camps—days of internment without adequate food, water or sanitation, and a growing sense of hopelessness. Yet all this wasn’t all just about poor coordination. The Gretna Police *turned back* survivors seeking a way out by crossing the Crescent City Connection bridge, and subsequently confiscated their food and water—bridge to nowhere.

What we are left with is a spectacular failure of government. Prior to the flooding of New Orleans, Grover Norquist, President of Americans for Tax Reform and a close associated of indicted lobbyist Jack Abramoff, has publicly stated the following: “I don’t want to abolish government. I simply want to reduce it to the size where I can drag it into the bathroom and drown it in the bathtub.” It seems he got his wish, at least for the people of New Orleans. Hurricane Katrina should and undoubtedly will force us to reexamine prevalent notions of the market fundamentalists, who are ready and willing to fund any wars the government takes on, but who loathe paying for social programs or public infrastructure. It was under-funding that contributed to the flooding of New Orleans, and to the delinquent response. It may be under-funding that cripples the ability of tens of thousands of residents to return home and rebuild their lives.

Americans are generous when it comes to disaster. The \$3 billion that has been raised by private entities for the relief effort eclipses the \$2.2 raised for victims of 9/11. “But charity is episodic and driven by disaster. What is needed are structures of justice that perpetuate the goodwill intended in charity.”<sup>149</sup>

The Gulf Coast provides America with a significant share of its energy supplies. This should be kept in mind as Congress and the White House decide how much relief and reconstruction monies are to be given, and in what form. Making a strong investment may pay greater

dividends later. We can choose to leave New Orleans to the Donald Trumps and Prince Charles's of the world, who are already busy buying up property and planning their casinos and condominiums for the rich. In doing so we may be depriving tens of thousands of working people of their right of return, of their voting rights, of their property rights and yes, of their civil rights.

We can also choose to go half-way and assist only enough to restore things to the way they were before Katrina. But many working class survivors don't want to go back to how it was before. They see Katrina as an opportunity to fix what was broken. They dream of a New Orleans with its racial diversity restored, free of grinding poverty and crowded prisons, with strong levees<sup>150</sup> and comprehensive evacuation plans for future hurricanes. The Federal government should seek creative ways to assist in such a noble endeavor.

### **Summary of Recommendations:**

- When the National Response Plan and/or other disaster preparedness plans are revised, they need to be updated to anticipate looting as a highly probable and often rational response to scarcity by individuals in an emergency. Rights of property must not supersede the right to food, water and medicine, i.e. the right to survive, especially not during a declared emergency.
- FEMA or any agency that replaces it must be directed to produce impact and implementation policy studies aimed at producing emergency preparedness and response policies that address the particular needs of minority communities.
- Congress should pass legislation to set procedures for protecting the civil liberties of minorities during an emergency situation. Armed forces and police should be on notice that individual acts of blatant discrimination or abuse of minorities will result in serious punishments, and systemic abuse will result in loss of financial support. Private relief organizations with discriminatory relief practices should be subject to review and possible loss of contracts.
- Recommendation: Future emergency preparedness planning must include the provision of transportation for the elderly, the infirm and those without their own means of locomotion, as well as the placing of Disaster Recovery Centers (DRCs) as near as is feasible, to enable these evacuees to return to their homes as quickly and easily as possible.
- Congress should pass legislation to ban political patronage within Federal agencies; specifically within FEMA and DHS.
- Recommendation: The National Response Plan should either be overhauled or scrapped. A new plan should be developed that includes: 1) unambiguous command structures for military responders; 2) crystal clear clarification regarding the integration of the work of state and federal armed forces during an emergency to maximize the ability to deploy military assets in a pro-active manner; 3) pre-set standard operating procedures for non-military agencies operating in a crisis detailing what operations they can and should initiate without waiting for marching orders from a higher authority; 4) an integrated communications plan that puts all responders on the same page from the get-go, using Interoperable Communications technology.
- Recommendation: The National Response Plan is color blind, and any future such national emergency response plans must include sensitivity training for both military and non-military responders so that responders are aware in advance of the specific needs and leadership patterns in communities of color.
- Recommendation: Emergency response agencies like FEMA should offer diversity training to their employees, and establish direct working relationships with leadership

figures in minority communities living in disaster prone areas such as flood planes so that those relationships are forged and ready to call upon prior to the emergency.

- Congress should re-establish FEMA as an independent Federal agency, removing it from DHS; but give housing oversight back to HUD.
- Take international politics out of disaster relief efforts by establishing a policy that no legitimate offers of foreign assistance will be refused.
- Future hurricane response plans should include evacuations for prisons susceptible to flooding.
- Congress should direct the Government Accountability office to investigate:
  - 1) the degree to which confusion over roles, responsibilities and powers contributed to the tragic and unnecessary delay in dispatching Federal forces to the incident site; and
  - 2) the Bush administration's claims that the Commander-in-Chief needs more power than the Constitution envisions or allows.
- Recommendation: The Constitutional principle and practice of separating military and police functions has become a cornerstone of our democracy. Congress should re-affirm the Posse Comitatus Act in light of proposals to amend or overturn it being made by our President.
- Congress should revive the Superfund program, which taxes polluters to pay for the environmental cleanup they are responsible for creating in the first place.
- Congress must pass legislation directing the Environmental Protection Agency to establish a comprehensive assessment and protection plan for the citizens of the Gulf Coast to protect the public from environmental contaminants and infectious materials that pose a threat to public health and safety in the aftermath of Hurricane Katrina.
- The Federal government should establish a commission to work with scientists, engineers and state and local governments to explore the feasibility of the "Coast 2050" plan to restore the coastal wetlands.

## SOURCE NOTES

Cover Art: by Ricardo Levins Morales, distributed by the Northland Poster Collective, who offered the Hurricane Katrina Poster and raise funds for the relief efforts. For More Information: Northland Poster: 1-800-627-3082; [<http://www.northlandposter.com>] (accessed February 6, 2006); Southern Partners Fund: [<http://www.spfund.org>] (accessed February 6, 2006).

<sup>1</sup> On July 22, 2005, on the anniversary of the release of the *9/11 Commission Report*, Rep. Cynthia McKinney hosted a Congressional Briefing entitled “The 9/11 Commission Report One Year Later: Did the Commission Get it Right?” at which over 30 independent experts discussed the omissions, errors and false premises of the Report.

<sup>2</sup> David Walker, Comptroller General of the United States made this observation at a press conference held jointly with Select Committee Chairman Tom Davis on Wednesday, February 1<sup>st</sup>, 2006.

<sup>3</sup> “...for those even slightly familiar with the current intelligence reform proposals, there is a more than vague sense, to use Yogi Berra's immortal phrase, ‘*Deja vu* all over again.’ There has been a failure. Pearl Harbor. The unpredicted Soviet development of the Atomic Bomb, the Chinese Communist victory in 1949. Remember who lost China. The equally unpredicted North Korean invasion in 1950. The Bay of Pigs failure. Vietnam. The overthrow of the Shah in 1978. Samosa and Nicaragua a year later, not only unpredicted, but confidently declared by our intelligence estimates as impossible, or a scandal, and Iran-Contra comes to mind inevitably here, and some others in the 1970s. What happens next? A commission will be appointed, usually by the Executive, but post-Vietnam, often by the Congress. You will recall the Hoover Commission in the 1950s, the Church and Pike Commissions of the 1970s, and the Iran-Contra Joint Congressional Committee in the 1980s. Often forgotten are the Senate hearings of 1992, which tried to learn how we were so unprepared for Iraq's evasion of Kuwait, and led among other things to the late Senator Moynihan's very serious proposal for doing away with the CIA altogether, and Senator Arlen Specter's repeated and now accepted idea that the post of National Director of Intelligence and Director of the CIA be separated. The Committee, talking of this generic committee here, will labor long and hard and recommend inevitably that the agencies concerned coordinate their activities better and share their information” --David MacMichael, former CIA officer, speaking at the Congressional Briefing “The 9/11 Commission Report One Year Later: Did the Commission Get it Right?”, July 22, 2005. While this quote concerns intelligence form, the conclusions of the Select Committee Report do tend to fit the pattern described.

<sup>4</sup> David Walker, Comptroller General of the United States, called for the appointment of one person to be the President's point person on disaster relief at a press conference held jointly with Select Committee Chairman Tom Davis on Wednesday, February 1<sup>st</sup>, 2006. Chairman Tom Davis joined this press conference and expressed overall consensus between the Select Committee and the GAO's report, although not necessarily on this specific point.

<sup>5</sup> Associated Press, “Holiday Depression Follows Katrina,” December 7, 2005.

<sup>6</sup> Associated Press, “Katrina's aftermath tough on mental health,” January 28, 2006.

<sup>7</sup> *Agence-France Presse*, January 12, 2006, “Bush Reaffirms Pledge To Rebuild Hurricane-Ravaged States.”

<sup>8</sup> Cf. Freedberg, Sydney J Jr., “Disaster Inc.,” *National Journal*, December 17, 2005.

<sup>9</sup> Fisher, William, “Report Finds ‘Appalling Level of Fraud and Greed’,” *Inter Press Service News Agency*, June 29, 2005. Halliburton has already been cited for overcharging the government hundreds of millions of dollars in contracts.

<sup>10</sup> Yen, Hope, “FEMA has yet to reopen no-bid Katrina contracts,” Associated Press, November 11, 2005.

<sup>11</sup> *Democracy Now!*, “Workers in New Orleans Denied Pay, Proper Housing and Threatened with Deportation,” December 16, 2006.

<sup>12</sup> Cf. also: Moran, Kate, “Building Owner Sues Jeff Parish over Seizure; Broussard had no right to take property for cleanup, he says,” *Times-Picayune*, November 8, 2005. In the story, building owner George Ackel's property had been claimed by Jefferson Parish for cleanup operations and he was suing. As of the date of the piece, he had gotten no compensation.

<sup>13</sup> Raspberry, William, “Two Storms, Ample Warning,” *Washington Post*, September 6, 2005.

<sup>14</sup> Zweig, Michael, “Talking Points on Class, Race and Gender in the U.S.” (unpublished). Zweig is a professor of economics and Director of the Study of Working Class Life at the State University of New York at Stony Brook.

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- <sup>18</sup> Ibid. 143-144.
- <sup>19</sup> Cf. CNN, “Katrina Victims ‘Living in Barns’: Parish President blasts FEMA over Temporary Homes,” December 13, 2005.
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- <sup>22</sup> Pierre, Robert E. and Paul Farhi, “‘Refugee’: A Word of Trouble”, *Washington Post*, September 7, 2005; C01.
- <sup>23</sup> O’Driscoll, Patrick, “‘The looters, They’re like Cockroaches’”, *USA Today*, September 2, 2005.
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- <sup>27</sup> *USA Today*, “Pat Robertson calls for assassination of Hugo Chavez,” August 22, 2005.
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- <sup>44</sup> Bennett, ibid.
- <sup>45</sup> Center for Progressive Reform, “An Unnatural Disaster: The Aftermath of Hurricane Katrina Executive Summary”, September 2005, p. 6.
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- <sup>47</sup> Bennett, ibid.
- <sup>48</sup> Bennett, ibid.
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- <sup>53</sup> Arkin, William, “Early Warning, William M. Arkin on National and Homeland Security, Michael Brown Was Set Up: It’s All in the Numbers,” *WashingtonPost.com* blog. Online at: [[http://blogs.washingtonpost.com/earlywarning/2005/09/michael\\_brown\\_w.html](http://blogs.washingtonpost.com/earlywarning/2005/09/michael_brown_w.html)] (accessed February 5, 2006). Arkin’s specific numbers are: Hurricanes and Natural Disasters: 45; Terrorism and WMD: 1,287.
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- <sup>109</sup> Kilborn, Julie H., Atty., “Evacuation of Women Inmates From Orleans Parish Prison,” September 18, 2005. The author works in Baton Rouge, LA.

<sup>110</sup> Carey, Corinne, “Excerpts of Letters from Prisoners Abandoned to Katrina,” Human Rights Watch, October 10, 2005.

<sup>111</sup> Human Rights Watch, “Louisiana: After Katrina, Inmates Face Prison Abuse”, October 3, 2005.

<sup>112</sup> “Left to Die in a New Orleans Prison,” Interview with Corinne Carey, *Democracy Now!* September 28, 2005.

<sup>113</sup> Community Forum, “Who is Cleaning up After Katrina?” held in New Orleans on January 19, 2006.

<sup>114</sup> The American Civil Liberties Union (ACLU) is suing the OPP for records to determine why prisoners were abandoned to the storm, see: ACLU “Sheriff Illegally Withholding Records on Orleans Parish Prison, ACLU Lawsuit Charges,” November 10, 2005.

<sup>115</sup> Human Rights Watch, “Louisiana: Justice Obstructed, Not Restored”, October 14, 2005. See also: ACLU, “ACLUE Urges New Orleans City Council to Review Conditions at Prison,” December 8, 2005. Testimony from prisoners who were never sentenced, prisoners who remain in prison past their release dates and prisoners who have been released has been available to our office.

<sup>116</sup> Also used for this section: Sothern, Billy, “Left to Die,” *The Nation*, January 2, 2006; Human Rights Watch, “New Orleans: Prisoners Abandoned to Flood Waters”, September 22, 2005.

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<sup>118</sup> Posse Comitatus Act 18 USC, Sec. 1385 and DoD Directive 5525,5; Limits to: 10USC371 – drug enforcement support  
Insurrection Act; 10USC331 – rebellions; 18USC831 – nuclear materials crimes; 10USC382 – chemical or biological WMD.

<sup>119</sup> Louisiana Homeland Security and Emergency Assistance and Disaster Act of 1993.

<sup>120</sup> Memorandum of Agreement Concerning Authorization, Consent, and Use of Dual Status Commander for JTF-Katrina.

<sup>121</sup> Department of Homeland Security, *National Response Plan*, December 2004, p. 9.

<sup>122</sup> Letter from Cathleen Babineaux Blanco, Governor of Louisiana to President George W. Bush, September 3, 2005.

<sup>123</sup> Roig-Franzia, Manuel and Spencer Hsu “Many Evacuated, but Thousands Still Waiting: White House Shifts Blame to State and Local Officials,” *Washington Post*, September 4, 2005; A01. The report adds: “A senior administration official said that Bush has clear legal authority to federalize National Guard units to quell civil disturbances under the Insurrection Act and will continue to try to unify the chains of command that are split among the president, the Louisiana governor and the New Orleans mayor.”

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<sup>139</sup> “Reinhabiting homes with visible oil contamination is not recommended because of the potential for skin exposure to oil substances. If people choose to reenter the affected area before remediation, they should take precautions to avoid contact with oil substances. Sensitive individuals, including children and people with recently healed or open wounds, should avoid all exposure to oil substances.” —Centers for Disease Control and Prevention, “Health Consultation: Murphy Oil Spill,” November 8, 2005; cf. also: Llanos, Miguel, “Residents at oil spill site told not to move back: Some in Katrina disaster area have, but EPA has ‘serious concerns’,” *MSNBC.com*, November 10, 2005; online at: [<http://www.msnbc.com.msn.com/id/9994305>] (accessed November 10, 2005).

<sup>140</sup> Center for Progressive Reform, “An Unnatural Disaster: The Aftermath of Hurricane Katrina Executive Summary,” September 2005, p. 5.

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<sup>144</sup> Graham, George, “Mysterious Illness Could Have Katrina Ties,” *Ruston Daily Leader*, (Ruston, LA), January 3, 2006.

<sup>145</sup> Environmental Defense Fund, “After Hurricane Katrina, Restoring Wetlands for Protection,” September 8, 2005.

<sup>146</sup> Jackson, Patrick, “Lake faces aftermath of city catastrophe,” *BBC News*, September 8, 2005.

<sup>147</sup> “Coast 2050,” cf. the online report at: [<http://www.coast2050.gov/>] (accessed February 5, 2006).

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<sup>149</sup> Dyson, op. cit.: 203.

<sup>150</sup> Authors Kenneth R. Foster and Robert Giegengack have suggested that New Orleans should not be rebuilt where it sits below sea level, that the risk is too great for a repeat of Katrina or worse. Part of their skepticism, however, is based on their prediction that “the flood control system will be patched up in an ad hoc manner, [and] insufficient funds will be made available to bring the entire system up to the design goal of withstanding a Category 3 hurricane—much less the vastly greater funds needed to provide reliable protection against more intense storms.” They also note that the goal of build levees to protect against a level 5 hurricane is not, “strictly speaking, a well-defined goal because a Category 5 hurricane has no defined upper limit to its wind speed and storm surge.” —Foster and Giegengack, “Planning for a City on the Brink,” Chapter 5 in *On Risk and Disaster: Lessons Learned from Hurricane Katrina*, Ronald J. Daniels, et. al., eds., Philadelphia: University of Pennsylvania Press, pp. 41-58.