

2010

Bridge Over Troubled Waters and Passageway on a Journey to Justice: National Lessons Learned About Justice from Louisiana's Response to Hurricane Katrina

Angela A. Allen-Bell
Southern University Law Center

Follow this and additional works at: <https://scholarlycommons.law.cwsl.edu/cwlr>

Recommended Citation

Allen-Bell, Angela A. (2010) "Bridge Over Troubled Waters and Passageway on a Journey to Justice: National Lessons Learned About Justice from Louisiana's Response to Hurricane Katrina," *California Western Law Review*. Vol. 46 : No. 2 , Article 2.

Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol46/iss2/2>

This Article is brought to you for free and open access by CWSL Scholarly Commons. It has been accepted for inclusion in California Western Law Review by an authorized editor of CWSL Scholarly Commons. For more information, please contact alm@cwsl.edu.

CALIFORNIA WESTERN LAW REVIEW

VOLUME 46

SPRING 2010

NUMBER 2

BRIDGE OVER TROUBLED WATERS AND PASSAGEWAY ON A JOURNEY TO JUSTICE: NATIONAL LESSONS LEARNED ABOUT JUSTICE FROM LOUISIANA'S RESPONSE TO HURRICANE KATRINA*

ANGELA A. ALLEN-BELL†

I. INTRODUCTION

When Hurricane Katrina's floodwaters receded, the world got a glimpse into how something genteel and inoffensive can also act as a malignancy. Something as natural and unassuming as water had the capability of bringing an entire region to a state of pause. Justice bears a kinship. It can be a lifeline or an assassin to a populace. What controls its designation as either is how present it is in a society and

* With much gratitude, the author acknowledges and thanks Southern University Law Center for funding this project through the award of a summer 2009 writing grant. For permission to reprint the article, please contact Angela A. Allen-Bell at: ABell@sulc.edu.

† Assistant Professor of Legal Writing and Analysis, Southern University Law Center, J.D., Southern University Law Center. I would like to recognize and express immense appreciation to Joi Boone and Regina Dupree whose research efforts played a prominent role in the completion of this work. Further expressions of gratitude are echoed on behalf of the following persons for their general support of and assistance with the development of this work: Attorney Alfreda Diamond; Attorney Ok Oko; Attorney Kacy Collins; Attorney Susan Kalmbach; Attorney Katie Schwartzmann; Attorney Karen Merrifield; Attorney Sherika Johnson-Nelson; Attorney Sherry Waters; Attorney Joseph C. Larre; Attorney Ferdinand Kleppner; Attorney Debbie Braun; Calvin Johnson (Retired Judge, Orleans Parish Criminal District Court); Shannon Simms (Deputy Judicial Administrator, Orleans Parish Criminal District Court); Edvige Wilkerson (Librarian, Xavier University Library); David Bell; Lisa George; and, William Journee' (former Jefferson Parish Property Manager).

how evenhandedly it is applied.

When justice is present, tranquility transcends a land much like the calm, flowing waters of the Niagara. When justice is absent, there is outright unrest; equilibrium in society is disturbed, and progress is paralyzed. Absent justice can be felt as impactfully as the waters gushing from the hoses of police spraying civil rights marchers. It stings. While these raging waters did not kill the civil rights workers, it forcefully halted their functions for the time. Absent justice has the same effect on society. Justice that is selectively present or disparately applied is no less deleterious. Disparate justice leaves a sect of society disconnected and breeds a spirit of divisiveness. Much like a person standing knee-deep in the murky, debris-filled swamp waters of Louisiana, those on the receiving end of disparate justice see what is across from them and know it is within close reach, but experience great frustration knowing they can only get to it if they fight great resistance.

This work catechizes whether the constitutional promise of justice was intended to be insusceptible to change at the onset of uninvited occurrences, such as natural or national disasters, or whether justice was intended to be vacillating and susceptible to change when normalcy has been disturbed by such a force. This paper will explore these concerns by using a very specific region and a very specific disaster as a point of reference: Orleans and Jefferson Parishes in southern Louisiana in the days and years following Hurricane Katrina.¹

Following this introduction, Part II of this work explores the constitutional promise of justice and examines the meaning of the term justice. In Part III, an account of Hurricane Katrina's impact on Orleans and Jefferson Parishes is provided. Part IV presents a historical overview of Orleans and Jefferson Parishes before they were

1. The term "parishes" is unique to Louisiana.

Most states use counties to denote political governing units. However, Louisiana utilizes 64 parishes in lieu of counties, as a means of designating political governing units. . . . Out of the 64 parishes in Louisiana, eight were affected by Hurricane Katrina including: Orleans, Jefferson, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, and St. Tammany.

KRISTIN A. BATES & RICHELLE S. SWAN, THROUGH THE EYE OF KATRINA: SOCIAL JUSTICE IN THE UNITED STATES 18 (2007).

struck by Hurricane Katrina. Part V examines the media's overstatement of criminal activity in the days following Hurricane Katrina and evaluates how this shaped disaster plans. Part VI discusses specific Hurricane-Katrina-related crimes and offenses in Orleans and Jefferson Parishes, paying particular attention to grand jury inconsistencies, selective indictments and prosecutions, disparities in sentencing, and the severity of sentences in the criminal province of the state court system. Part VII analyzes whether justice was suspended or even abandoned in the period following Hurricane Katrina, as well as whether justice was applied consistently, evenhandedly, or disparately in Orleans and Jefferson Parishes in the post-Hurricane Katrina period. The Crescent City Connection Bridge is used as a line of demarcation between Orleans and Jefferson Parishes, with consideration being given to whether this bridge served as a means of connecting these two locales or as a source of division. This bridge serves literal, as well as symbolic, purposes. It is a local structure representing a national issue. Part VII also attempts to interpret the outcomes in Orleans and Jefferson Parishes with the hope of extracting meaningful lessons that can be used by other jurisdictions visited by disasters of any sort.

II. JUSTICE

If it is true that the places a man frequents offer a window into his being, then one might find it revealing that the promise of justice appears in the preamble to the United States Constitution, the most potent compact there is between Americans and their government. The preamble, which “expresses the purpose of the United States Constitution,”² reads:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.³

2. DONALD A. RITCHIE & JUSTICELEARNING.ORG, OUR CONSTITUTION 69 (2006).

3. U.S. CONST. pmbl.

Recognizing that the preamble is not a “source of any substantive power,” but merely a statement of the “general purposes for which the people ordained and established the Constitution,” does not compromise the virtue conveyed by the promise of justice in the Constitution.⁴ The mere fact that justice is a part of the United States Constitution exalts it to a place of prominence in the discussion about what Americans can expect from their government.

The founders intended that “[j]ustice [be] the end of government and . . . the end of civil society [and that] it be pursued, until it be obtained, or until liberty be lost in the pursuit.”⁵ In obedience of this mandate, the United States government has articulated the view that:

The proposition that all men are created equal is not mere rhetoric. It implies a rule of law—an indispensable condition to a civilized society—under which all men stand equal and alike in the rights and opportunities secured to them by their government. Under the Constitution every agency of government, national and local, legislative, executive, and judicial, must treat each of our people as an *American*, and not as a member of a particular group classified on the basis of race or some other constitutional irrelevancy. The color of a man’s skin—like his religious beliefs, or his political attachments, or the country from which he or his ancestors came to the United States—does not diminish or alter his legal status or constitutional rights. “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.”⁶

In a general sense, “[j]ustice is the constant and unremitting will to render to everyone his own right.”⁷ “Justice, in the criminal sphere, is the law-breaker receiving what is due him or her, both in process and punishment. And it is the process, not the punishment, which

4. *Jacobson v. Massachusetts*, 197 U.S. 11, 13 (1905).

5. THE FEDERALIST NO. 78, at 271 (Alexander Hamilton) (George Carey & James McClellan eds., Liberty Fund, Inc. 2001).

6. Brief for the United States as Amici Curiae, *Brown v. Board of Education*, 1952 WL 82045, at *3-4 (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)).

7. WILLIAM A. GALSTON, JUSTICE AND THE HUMAN GOOD 102 (1980) (explicating that this explanation of justice is derived from meanings articulated by Aristotle and Ulpian).

distinguishes just governments.”⁸ Some would argue that the founders never envisioned all people in their blueprint for this nation.⁹ For this reason, some would suggest that for African Americans and other minority groups, reliance on the Constitution where matters of equity are at issue is a useless act. While this matter of historical intent certainly is meritorious, the fact remains that today, intentional or not, all citizens are assured the protections of the United States Constitution.

Given the inclusion of justice in the Constitution, it logically follows that the concept would present itself at the United States Supreme Court, the ultimate arbiter of justice, where “Equal Justice Under Law” is etched above the entrance to the building and the image of Lady Justice is affixed to the building in multiple locations.¹⁰ Conferring further import upon the concept of justice is the fact that the drafters of the Louisiana Constitution saw fit to list as a governmental function, the provision of justice as well. Louisiana’s Constitution reads:

All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.¹¹

8. NICHOLAS L. CHIARKIS, ET AL., AM. UNIV. BJA NAT’L TRAINING AND TECHNICAL ASSISTANCE INITIATIVE PROJECT, AN ASSESSMENT OF THE IMMEDIATE AND LONGER-TERM NEEDS OF THE NEW ORLEANS PUBLIC DEFENDER SYSTEM 3 (2006), available at <http://www.lajusticecoalition.org/doc/DOJ-Orleans-Parish-Study.pdf>.

9. See DERRICK A. BELL, JR., RACE, RACISM AND AMERICAN LAW 9 (Little, Brown & Co. 1973) (advancing the position that members of the “negro race . . . were not regarded as a portion of the people or citizens of the Government”); see also A. LEON HIGGINBOTHAM, JR., SHADES OF FREEDOM 64-67 (Oxford University Press 1996) (relying on the opinion in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), as support for the proposition that African Americans were viewed as inferior beings and were not intended as beneficiaries of certain constitutional protections).

10. SupremeCourt.gov, The Court Building, <http://www.supremecourtus.gov/about/courtbuilding.pdf> (last visited Apr. 4, 2010).

11. LA. CONST. art. 1, § 1.

Punctuating these observations about justice is the fact that the term was etched on a building and included in documents that were created with intentions of being fixed and permanent.¹² These documents were intended to be timeless and applicable on an ongoing basis, suggesting that their promises would be the same. Disaster or not, the various constitutions and the Supreme Court would not be moved by the winds of change or the waters of crisis. Justice is well woven and grounded into this nation's fabric, and citizens have good cause to expect it to be more than just ornamental and less than transposing.

III. HURRICANE KATRINA¹³

On Monday, August 29, 2005, Hurricane Katrina made landfall on the Gulf Coast.¹⁴ "With intense gale-force winds and massive storm surge, the effect of Hurricane Katrina . . . was indeed catastrophic."¹⁵ The storm "wreaked staggering physical destruction along its path, flooded the historic city of New Orleans, ultimately killed over 1,300 people, and became the most destructive natural disaster in American history."¹⁶ Hurricane Katrina "produced the first mandatory evacuation in New Orleans history, and the largest displacement of people in U.S. history—1.3 million."¹⁷ One observer described the

12. See SupremeCourt.gov, *supra* note 10.

13. Though this article focuses only on the impact to some parts of Louisiana, the writer recognizes that Hurricane Katrina first made landfall "in Florida and then along the Gulf Coast in Mississippi, Louisiana and Alabama." FRANCIS FRAGOS TOWNSEND, DEP'T OF HOMELAND SECURITY AND COUNTERTERRORISM, THE FEDERAL RESPONSE TO HURRICANE KATRINA: LESSONS LEARNED 1 (2006), available at <http://georgewbush-whitehouse.archives.gov/reports/katrina-lessons-learned.pdf> [hereinafter LESSONS LEARNED]. In no way is this limited commentary intended to diminish the impact of this hurricane on the states that are not discussed herein.

14. *Id.*

15. SELECT BIPARTISAN COMM. TO INVESTIGATE THE PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA, A FAILURE OF INITIATIVE, H.R. REP. NO. 109-377, at 73 (2006), available at <http://www.gpoaccess.gov/katrinareport/mainreport.pdf> [hereinafter A FAILURE OF INITIATIVE].

16. LESSONS LEARNED, *supra* note 13, at 1.

17. *The Role of Intercity Passenger Rail During National Emergencies: Hearing Before the Subcomm. on Railroads, Pipelines, and Hazardous Materials of the H. Comm. on Transp. and Infrastructure*, 110th Cong. 77 (2008) (statement of

hurricane's impact:

The two waterways funnelled [sic] Katrina's surge into a wedge that burst the Industrial Canal's levee with a sound like cannon fire early on the morning of August 29th. The violence was tremendous. A huge wave scraped half a square mile of houses off their foundations and ground them to rubble. A red iron barge the size of an airplane hangar rode through the breach and landed on top of a school bus. Not a house in the Lower Nine was spared; most of those which didn't collapse or slide off their foundations flooded to their rooflines. Their residents—among the least able to evacuate, for want of cars and money—drowned in the oily brown floodwaters or hacked holes through attic ceilings and sat on scalding tar-paper roofs for days, waiting to be rescued. The most famous, Fats Domino, was carried from the roof of his house—an incongruously grand white mansion in a particularly bleak part of the Lower Nine—by Coast Guard helicopter in the middle of the night.¹⁸

In Jefferson Parish, partial flooding and extensive property damage occurred, utilities were disrupted, and most commerce was halted for several weeks.¹⁹ Damage to New Orleans was far more extensive.²⁰ New Orleans was the largest affected city.²¹ “[S]everal

C. Ray Nagin, Mayor of New Orleans), *available at* http://frwebgate.access.gpo.gov/cgi-in/getdoc.cgi?dbname=110_house_hearings&docid=f:40886.pdf.

18. Dan Baum, *Letter from New Orleans: The Lost Year*, THE NEW YORKER, Aug. 21, 2006, http://www.newyorker.com/archive/2006/08/21/060821fa_fact2; *see also* Ceci Connolly, *9th Ward: History, Yes, but a Future?*, WASH. POST, October 3, 2005, at A1, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2005/10/02/AR2005100201320_pf.html. Connolly describes the Lower Ninth Ward as:

Originally a cypress swamp, the community of 20,000 is overwhelmingly black; more than one-third of residents live below the poverty line

The people of the Lower Ninth are the maids, bellhops and busboys who care for New Orleans tourists. They are also the clerks and cops now helping to get the city back on its feet. The ward is home to carpenters, sculptors, musicians and retirees About half the houses are rentals.

Id.

19. *See* Louisiana Speaks, Jefferson Parish—What Happened, http://www.louisianaspeaksparishplans.org/IndParishHomepage_BaselineWhatHappened.cfm?EntID=8 (last visited Apr. 5, 2010).

20. LESSONS LEARNED, *supra* note 13, at 1-2.

sections of the levee system in New Orleans breached, and 80 percent of the city was under water at peak flooding, which in some places was 20 feet deep.”²² The hurricane “wiped out 205,000 homes in less than a month,” causing residential loss never before seen anywhere in the United States.²³ Phone, radio, and television services were lost for weeks.²⁴ Hurricane Katrina severely impacted eighty-one thousand, or roughly forty-one percent, of Louisiana businesses.²⁵ “The New Orleans Public Service utility system lost every single customer for a sustained period of time, and their [sic] entire system was destroyed. That has never happened to a utility before.”²⁶ One estimate suggested that Hurricane Katrina caused the loss of forty thousand trees in New Orleans alone.²⁷ The United States Postal Service was unable to deliver mail for approximately two months after the storm.²⁸ “The debris from Katrina, if stacked onto the space of a football field,

21. *See id.* at 1.

22. A FAILURE OF INITIATIVE, *supra* note 15, at 73.

23. *Hurricane Katrina: Preparedness and Response by the State of Louisiana: Hearing Before the H. Select Bipartisan Comm. to Investigate the Preparation for and Response to Hurricane Katrina*, 109th Cong. 3 (2005) (statement of Kathleen Blanco, Governor of Louisiana), available at http://katrina.house.gov/hearings/12_14_05/witness_list_121405.htm [hereinafter *Preparedness and Response by the State of Louisiana*].

24. LESSONS LEARNED, *supra* note 13, at 8.

25. *Historic Preservation vs. Hurricane Katrina: What Role Should Federal, State and Local Governments Play in Preserving Historic Properties Affected by this Catastrophic Storm?: Hearing Before the Subcomm. on Federalism and the Census of the H. Comm. on Government Reform*, 109th Cong. 23 (2005) (statement of Mitchell J. Landrieu, Lieutenant Governor of Louisiana), available at <http://www.gpo.gov/fdsys/pkg/CHRG-109hrg10925541/pdf/CHRG-109hrg10925541.pdf>.

26. *Preparedness and Response by the State of Louisiana*, *supra* note 23, at 4. The author wishes to call attention to the belief that isolation causes panic and to offer the observation that this might have very well contributed to the instances of lawlessness discussed later in this work.

27. Baum, *supra* note 18.

28. Brian Huddleston, *After the Storm: New Orleans Law Libraries' Long and Continuing Recovery from Hurricane Katrina*, AALL SPECTRUM, Feb. 2007, at 12, 14, available at <http://www.loyno.edu/~bhuddle/articles/AfterTheStorm.pdf>. Once again, the author wishes to interject the concern that isolation might have served as an impetus for many of the behaviors reported in the days following the hurricane.

would reach over ten and a half miles high.”²⁹ This massive and unprecedented hurricane soon became “the most expensive . . . [and] deadliest” natural disaster in United States history.³⁰ Accentuating the enormity of the situation is the fact that a full three years after the storm, dead bodies remained unclaimed and unburied.³¹ While many were impacted, “[b]lack people and poor people bore the brunt of the devastation because—for the most part—they lived most often in lower-lying, more flood-prone sections of the city.”³²

Against this backdrop, attention now turns to a look at what Orleans and Jefferson Parishes were like before Hurricane Katrina struck.

IV. PRE-KATRINA ORLEANS PARISH AND PRE-KATRINA JEFFERSON PARISH

Much like the earlier comparison between water and justice, there is a metaphoric dimension to this study of Orleans and Jefferson Parishes, two closely connected, but very different jurisdictions.

A. Pre-Katrina Orleans Parish

Prior to Hurricane Katrina, New Orleans was known as “one of the most unique cities in America.”³³ It was “well loved for its charming architecture, known for its music—especially jazz—and its riotous Mardi Gras celebration . . . [and] for its food.”³⁴ Another trait

29. LESSONS LEARNED, *supra* note 13, at 8 (quoting a figure the authors calculated based on the dimensions of a football field as represented by the National Football League).

30. A FAILURE OF INITIATIVE, *supra* note 15, at 7.

31. See John Moreno Gonzales, *Katrina's Unclaimed Dead Entombed, Gustav Looms*, USA TODAY, Aug. 29, 2008, http://www.usatoday.com/news/nation/2008-08-29-3478210990_x.htm.

32. METRO. POLICY PROGRAM, THE BROOKINGS INSTIT., NEW ORLEANS AFTER THE STORM: LESSONS FROM THE PAST, A PLAN FOR THE FUTURE 13 (2005), http://www.brookings.edu/metro/pubs/20051012_NewOrleans.pdf.

33. PHILIP S. HART, AFRICAN AMERICANS AND THE FUTURE OF NEW ORLEANS: REBIRTH, RENEWAL & REBUILDING AN AMERICAN DILEMMA 7 (2007).

34. JOHN DEMERS, ET AL., THE FOOD OF NEW ORLEANS 5 (1998); In further explanation of the cuisine, it is stated that:

[w]ith dreams of prosperity and fortune, they came from Africa, Ireland,

that distinguished New Orleans was that portions of the city were built “from 5-10 feet below sea level,”³⁵ and in some places, as much as “17 feet below sea level.”³⁶ New Orleans was also a valuable industrial spot. Its port provided a gateway for numerous imports, and as part of its petroleum infrastructure, New Orleans provided oil and other petroleum products to the nation.³⁷

New Orleans has a very notable ethnic history. It is a city in which “Africans, both slave and free, and American Indians shared their cultures and intermingled with European settlers. Encouraged by the French government, this strategy for producing a durable culture in a difficult place marked New Orleans as different and special from its inception and continues to distinguish New Orleans today.”³⁸

In terms of its race and class relations, New Orleans is distinct in that “races merge more painlessly and gracefully.”³⁹ On this issue, it has been said:

In New Orleans there is no railroad track down the middle of the city dividing rich and poor. Pockets of affluence and poverty are interspersed throughout the city. . . .

. . . .

. . . Blacks and whites always lived in close[] proximity in New Orleans and shared the city’s culture, a fact that seems to have fostered relatively amicable race relations. Many people believe it to be no coincidence that as 1960s race riots inflamed the country

France, Spain, Italy, Sicily, Croatia, Germany, and every place in between. When immigrants arrived in New Orleans throughout the eighteenth and nineteenth centuries, they brought their cooking styles, their seasonings, and their tastes with them. And over time these influences have merged to become contemporary New Orleans cuisine.

Id. at 12.

35. HART, *supra* note 33, at 13.

36. Joel K. Bourne, Jr., *New Orleans: A Perilous Future*, 212 NAT’L GEOGRAPHIC 32, 32 (Aug. 2007), available at <http://ngm.nationalgeographic.com/2007/08/new-orleans/new-orleans-text>.

37. ERIC J. BROCK, *IMAGES OF AMERICA: NEW ORLEANS* 69 (1999); see also STEVE BRYANT, *NEW ORLEANS: THE GROWTH OF THE CITY* 17 (2007).

38. Arnold R. Hirsch & Joseph Logsdon, *The People and Culture of New Orleans*, NEWORLEANSONLINE.COM, <http://www.neworleansonline.com/new-orleans/history/people.html> (last visited May 12, 2010).

39. ROBERT FLORENCE, *NEW ORLEANS CEMETERIES: LIFE IN THE CITIES OF THE DEAD* 20 (1997).

from Watts to Newark, New Orleans remained completely inactive.⁴⁰

Housing patterns reflected this racial integration.⁴¹

Notwithstanding its diversity and seemingly harmonious race relations, racial segregation did exist in New Orleans. In fact, integration in New Orleans took place during the lifetime of many of the people who lived there when Hurricane Katrina struck.⁴² In 1960, New Orleans public schools and the New Orleans Housing Projects, subsidized housing units, were desegregated.⁴³ Following this desegregation, the overall population of New Orleans began to decline and the black population began to increase in size.⁴⁴

“Somewhere in the late 1970s and early 1980s, black residents of New Orleans came to outnumber white residents.”⁴⁵ Thereafter, power shifted from whites to African Americans. The “complexion of the seven-member City Council” changed “from predominately white to predominately black” during this period.⁴⁶ In 1978, New Orleans elected its first African American mayor, Dutch Morial.⁴⁷ From this time until February 2010, each mayor has been black or Creole.⁴⁸ “By

40. *Id.* at 19.

41. METRO. POLICY PROGRAM, *supra* note 32, at 5.

[D]uring the nineteenth century and the first half of the twentieth century, the city of New Orleans had integrated neighborhoods. Blacks lived in close proximity to whites throughout most parts of the city. This pattern started to change by 1950, when some all-white neighborhoods and all-black neighborhoods began to form. But it wasn't until the 1960s and 1970s that New Orleans and other Southern cities started to see the hyper-segregation of Northern cities such as Chicago and Detroit.

Id.

42. *See id.*

43. *See* MEL LEAVITT, A SHORT HISTORY OF NEW ORLEANS 148 (1982); Richard Campanella, *An Ethnic Geography of New Orleans*, 94 J. OF AM. HIST. (SPECIAL ISSUE) 704, 710 (2007), available at <http://www.journalofamericanhistory.org/projects/katrina/Campanella.html>.

44. *See* *Major v. Treen*, 574 F. Supp. 325, 329 (E.D. La. 1983).

45. KENT B. GERMANY, NEW ORLEANS AFTER THE PROMISES: POVERTY, CITIZENSHIP, AND THE SEARCH FOR THE GREAT SOCIETY 304 (2007).

46. RACE, PLACE AND ENVIRONMENTAL JUSTICE AFTER HURRICANE KATRINA 89 (Robert D. Bullard & Beverly Wright eds., 2009).

47. *See id.* at 303.

48. *See* A FAILURE OF INITIATIVE, *supra* note 15, app. 8, at 444 (Supp. Report

2000, the city of New Orleans had become highly segregated by race and had developed high concentrations of poverty,⁴⁹ and nothing about life in New Orleans would prove to be as simple as black and white.

When Hurricane Katrina struck, the quality of life for African Americans in New Orleans left much to be desired. “[E]ven before the great storm, New Orleans was a city of concentrated poverty: nearly a quarter of the population, about double the national average. And the poverty rate among New Orleans blacks (nearly 70 percent of the city’s population) was a sky-high 35 percent.”⁵⁰ Many of the poorest African Americans in New Orleans were concentrated in just a dozen housing developments.⁵¹ At the time Hurricane Katrina struck, “[n]o less than 84 percent of the city’s poor population was black. . . . [A]lmost all of the extreme-poverty neighborhoods in the city [were also black].”⁵² Further, although “the entire city suffered from a low median household income, low educational attainment rates, and low

of Rep. Cynthia A. McKinney), *available at* <http://www.gpoaccess.gov/katrinareport/appendix8.pdf>. Representative McKinney noted:

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.

Id.; see also SYBIL KEIN, GUMBO PEOPLE 5-6 (Margaret Media Inc. 1999) (wherein it is stated that there is much debate about what a Creole person is and noted that there is agreement that it is a person born in New Orleans, with ancestors from France or Spain. According to the author, some believe Creoles are African Americans, while others do not. The author further explains some would describe a Creole as an African American having a light complexion, while others posit that Creoles may be of a darker skin tone). On February 6, 2010, a historic change took place: Mitch Landrieu was elected mayor of New Orleans. See Michelle Krupta & Frank Donze, *Landrieu Landslide*, TIMES-PICAYUNE (New Orleans), Feb. 7, 2010, at A1, *available at* <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-14/1265524923274270.xml&coll=1> (noting that “Landrieu will become the city’s first white chief executive since his father, Moon Landrieu, left the job in 1978.”).

49. METRO. POLICY PROGRAM, *supra* note 32, at 5.

50. See Juan Williams, Op-Ed., *Getting Past Katrina*, N.Y. TIMES, Sept. 1, 2006, <http://www.nytimes.com/2006/09/01/opinion/01williams.html?ex=1314763200&en=23eaf2719f996010&ei=5090&partner=rssuserland&emc=rss>.

51. Campanella, *supra* note 43, at 710.

52. METRO. POLICY PROGRAM, *supra* note 32, at 6.

labor force participation, the black population suffered even more.”⁵³

If it is true that education and crime are bedfellows, pre-Katrina New Orleans was an embracing host. The city “had one of the worst public school systems in the nation.”⁵⁴ Questionable safety and the amount of crime in Orleans Parish are no doubt signature traits of the locale: “Prior to Hurricane Katrina, the City of New Orleans (limited to Orleans Parish) grappled with one of the highest per-capita homicide rates in the United States.”⁵⁵ One author has described the climate in the city accordingly:

In the two decades before Hurricane Katrina, the urban crisis showed few signs of coming to an end. Worsening the situation was New Orleans’s troubling tradition of violence that has for centuries resulted in bloody man-to-man combat. The local economic depression of the 1980s and 1990s and the mercilessly high rates of black male unemployment have reaffirmed the city’s reputation as one of the most dangerous places in America. During the 1990s, approximately three thousand residents were murdered, most of them young and black. On the evening news, reports of young black men killing young black men were so commonplace that they became almost like macabre sports reporting, unless a toddler or a white person were caught in the crossfire. In an era where many young people looked increasingly to the informal economy for jobs and financial support, the ties of some of them to civil society became stretched as thinly as at any point in local history. The local response to this problem generally followed the trends of the 1960s. The prominent governmental reaction was to institute more law and order, often becoming the bureaucratic and judicial equivalent of

53. *Id.* at 7.

54. *A Fresh Start for New Orleans’ Children: Improving Education after Katrina: Hearing Before the Subcomm. on Education and Early Childhood Development of the S. Comm. on Health, Education, Labor, and Pensions*, 109th Cong. 58 (2006) (statement of Scott Cowen, President, Tulane University), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_senate_hearings&docid=f:28864.pdf (“Of 117 public schools, 102 were academic ‘failures’ . . .”).

55. *Rising Violent Crime in the Aftermath of Hurricane Katrina: Hearing Before the S. Comm. on the Judiciary*, 110th Cong. 55 (2007) (statement of Jim Letten, United States Attorney, Eastern District of Louisiana), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_senate_hearings&docid=f:40461.pdf; see also Baum, *supra* note 18 (“For years, the city has been one of the most violent in America.”).

shoot-to-kill: more police, more interdiction, more jails, more jail time, and less rehabilitation.⁵⁶

Ironically, Ruby Bridges, the individual who integrated New Orleans schools, lost her son and brother to violence in New Orleans.⁵⁷ It makes sense that a city with such a high crime rate would have an equally high incarceration rate.

Before Katrina, [Orleans Parish Prison (OPP)] housed nearly 6500 individuals on an average day. Although New Orleans is only the thirty-fifth most populous city in the United States, this made OPP the ninth largest local jail. OPP housed even more people than the notorious Louisiana State Penitentiary at Angola (“Angola”), which at 18,000 acres is the largest prison in the United States. With a pre-Katrina incarceration rate of 1480 prisoners per 100,000 residents, New Orleans had the highest incarceration rate of any large city in the United States—the incarceration rate was double that of the United States as a whole, a country with the highest national incarceration rate in the world What makes OPP’s massive expansion so surprising is the fact that it happened during a period of time when the population of Orleans Parish decreased by over 100,000 people. During Sheriff Foti’s tenure, the capacity of OPP increased nearly 1000% (from 850 to 8500), while the population of Orleans Parish decreased over 18% (from over 593,000 in 1970 to under 485,000 in 2000).⁵⁸

While it is true that New Orleans is a unique and captivating destination, it is also true that for many pre-Katrina residents it was a place of great suffering and marginalization. Hurricane Katrina did not create this atmosphere, nor did it wash this away. It merely immersed these truths in its waters.

B. Pre-Katrina Jefferson Parish

In 1825, Jefferson Parish was created from parts of Orleans

56. GERMANY, *supra* note 45, at 309.

57. Baum, *supra* note 18.

58. NAT’L PRISON PROJECT, ACLU, ABANDONED AND ABUSED: ORLEANS PARISH PRISONERS IN THE WAKE OF HURRICANE KATRINA 13 (2006), *available at* <http://www.aclu.org/pdfs/prison/oppreport20060809.pdf>.

Parish.⁵⁹ Over the years, Jefferson Parish evolved “from a rural farming community to [a] sprawling suburban ‘metropolis.’”⁶⁰ About the same time the black population in New Orleans began to increase, the white population in Jefferson Parish began to grow.⁶¹ Stated in more direct terms, Jefferson Parish became a “primary destination for white flight.”⁶² “[I]n Jefferson Parish, African Americans made up 12 percent of the population in 1970, but their share nearly doubled to 23 percent in 2000.”⁶³ Contrary to New Orleans, life in Jefferson Parish before Hurricane Katrina was more promising and family-friendly. Prior to Hurricane Katrina, Jefferson Parish was host to two not-for-profit hospitals and had a reputation for high quality healthcare.⁶⁴ In addition, its school system was “ranked in Louisiana’s top three by every measure of organization, progress and supervision.”⁶⁵

Like New Orleans, there once was racial segregation in Jefferson Parish. Schools in Jefferson Parish remained segregated until 1971.⁶⁶ Unlike New Orleans, however, Jefferson Parish never had a history of amicable race relations. Instead, Jefferson Parish has a very colorful and troublesome racial history. In 1987, David Duke, a former Imperial Wizard of the Ku Klux Klan and then-head of the National

59. PAUL F. STAHL, JR., *JEFFERSON PARISH: RICH HERITAGE, PROMISING FUTURE* 104 (2009).

The topography of Jefferson Parish creates four distinct geographic areas: East Bank Jefferson, West Bank Jefferson, the Barataria region, and the Gulf region. Ninety-five (95) percent of the residents of Jefferson Parish live in the urbanized northern portion of the parish (Avondale, Bridge City, Elmwood, Estelle, Gretna, Harahan, Harvey, Jefferson, Kenner, Marrero, Metairie, River Ridge, Terrytown, Timberlane, Waggaman, Westwego, Woodmere).

GCR & ASSOCIATES, INC., *JEFFERSON PARISH 2000 CENSUS REVIEW, VOLUME I: POPULATION & HOUSING 4* (2003), available at <http://www.jeffersontransit.org/CensusPDFs/Census2000Review-I.pdf>.

60. STAHL, *supra* note 59, at 112.

61. *Major v. Treen*, 574 F. Supp. 325, 329 (E.D. La. 1983).

62. DONALD PHARES, *METROPOLITAN GOVERNANCE WITHOUT METROPOLITAN GOVERNMENT?* 135 (2004).

63. *METRO. POLICY PROGRAM*, *supra* note 32, at 10.

64. *See* STAHL, *supra* note 59, at 122.

65. *Id.* at 52.

66. *See Dandridge v. Jefferson Parish Sch. Bd.*, 332 F. Supp. 590 (E.D. La. 1971).

Association for the Advancement of White People, ran for state representative.⁶⁷ The Jefferson Parish voters supported his campaign aggressively.⁶⁸ He won.⁶⁹ In that same year, the elected Jefferson Parish Council voted to erect a cement barrier, which would divide Orleans and Jefferson Parish.⁷⁰ The official reason given for voting to erect this barrier was to quell crime in Jefferson Parish, which the parish council felt was being committed by New Orleanians.⁷¹ In the mid-1990s, a Jefferson Parish public defender reported a disparity in the plea bargains offered to African American defendants and white defendants.⁷² That same attorney reported “sitting judges used the ‘n-word’ in conversation in the courtroom.”⁷³ In 2003, a white Jefferson Parish prosecutor came under national scrutiny for wearing a tie with a picture of a noose on it during a murder trial where an African American defendant was accused of murdering white victims.⁷⁴ Though the district attorney verbally denounced the practice, the prosecutor suffered no formal disciplinary action.⁷⁵ In May 2005, just a few months shy of Hurricane Katrina, a study was conducted, “designed to determine the extent and scope of race based jury selection by the Jefferson Parish District Attorney’s office.”⁷⁶ This

67. MICHAEL ZATARAIN, DAVID DUKE: EVOLUTION OF A KLANSMAN 50-52 (1990).

68. See Austin Wilson, *Strong Showing by Ex-Klansman Stirs Concern*, DAILY NEWS (L.A.), Jan. 29, 1989, available at 1989 WLNR 745916.

69. ZATARAIN, *supra* note 67, at 50-52.

70. See *Barriers Removed at New Orleans: Blacks Object to “Berlin Wall,”* DALLAS MORNING NEWS, Feb. 22, 1987, available at 1987 WLNR 1944612.

71. See *New Orleans Bulldozes Racial Road Barrier*, PHILA. DAILY NEWS, Feb. 23, 1987, available at 1987 WLNR 437497 (“The barriers were erected at the behest of . . . residents who said they believe New Orleans people were driving into their neighborhood after dark, burglarizing homes and assaulting people.”).

72. *Ties That Bind*, GAMBIT WEEKLY, Jan. 14, 2003, 2003 WLNR 13193206 (as testified by Denise LeBoeuf, director of the Capital Post-Conviction Project of Louisiana in her testimony before the Louisiana Supreme Court’s Task Force on Racial and Ethnic Fairness).

73. *Id.*

74. See Jeffrey Gettleman, *Prosecutors’ Morbid Neckties Stir Criticism*, N.Y. TIMES, Jan. 5, 2003, at A14, available at 2003 WLNR 5181650.

75. *Id.*

76. LA. CRISIS ASSISTANCE CTR., BLACK STRIKES: A STUDY OF THE RACIALLY DISPARATE USE OF PEREMPTORY CHALLENGES BY THE JEFFERSON PARISH DISTRICT

study concluded “the Jefferson Parish District Attorney’s office [chose] to strike black prospective jurors at more than three times the rate at which [it struck] white prospective jurors.”⁷⁷ Even before the study, this practice was well documented in the legal community.⁷⁸

In contrast to New Orleans, the power base in Jefferson Parish before Hurricane Katrina consisted of mostly white officials.⁷⁹ Sheriff Harry Lee, the first Chinese American sheriff in the United States, was one of the few exceptions. He held office from 1980 until his death in 2007.⁸⁰ On December 3, 1986, Sheriff Lee revealed his psyche when he publicly stated that “[m]ost of the armed robberies being committed are by black offenders against white victims.”⁸¹ As a result of this view, he fashioned a policy and shared it with the public: “If two young blacks are seen driving a rinky-dink car in a predominately white neighborhood, they’ll be stopped.”⁸² When African Americans complained about harsh treatment by officers,

ATTORNEY’S OFFICE 3 (2005), *available at* http://www.blackstrikes.com/resources/report/black_strikes_report_september_2003.pdf.

77. *Id.* at 8.

78. *See* State v. Jacobs, 99-1659 (La. 06/29/01); 789 So. 2d 1280 (reversing a Jefferson Parish conviction). In the opinion, the court, having reversed on other grounds, did not reach the question of whether there was racial discrimination in the jury selection process. *See id.* Though it did not reach this issue, the court felt the need to express that the defendant’s allegation of jury discrimination “appears to raise serious questions regarding the propriety of the jury selection process in this case.” *Id.* at p.2 n.2; 789 So. 2d at 1283 n.2. The court further expressed: “[W]e take this opportunity to remind the trial court of its unique and integral role in the dynamics of voir dire and to caution it to be especially sensitive to the alleged racially discriminatory use of peremptory challenges.” *Id.* at p.2 n.2; 789 So. 2d at 1283 n.2.

79. *See* E. Jefferson Coalition for Leadership and Dev. v. Jefferson Parish, 691 F. Supp. 991, 1002-04 (E.D. La. 1988); *see generally* Chisom v. Roemer, No.86-4057, 1989 E.D. Dist. La., 1989 U.S. Dist. Lexis 10816 (Sept. 13, 1989); William C. Credo III, *The Changing Face of the Jefferson Parish Judiciary*, 56 LA. BAR. J. 443 (April/May 2009), *available at* <http://www.lsba.org/documentindex/publications/Journal-Feature16-April2009.pdf>.

80. *See* STAHL, *supra* note 59, at 113.

81. Frances Frank Marcus, *Order on Halting Blacks is Rescinded in Louisiana*, N.Y. TIMES, Dec. 4, 1986, at A1, *available at* 1986 WLNR 778127.

82. Evan Moore, *He’s Blunt, and Some Say He’s a Bigot: He’s Harry Lee, a Popular Louisiana Sheriff*, HOUSTON CHRON., May 22, 1994, *available at* 1994 WLNR 4976764.

Harry Lee remarked, “To hell with them. . . . I don’t need that. I haven’t heard one word of support from one black person.”⁸³ When deputies shot a fourteen-year-old black carjacking suspect, Harry Lee responded, “I would have shot the little bastard myself.”⁸⁴ Despite these transgressions, his approval rating remained high over the many years he was in office,⁸⁵ perhaps providing a window into the climate of Jefferson Parish and the premium it placed on diversity.

Lacking the entertainment landscape and the attractions of New Orleans, pre-Katrina Jefferson Parish presented a more controlled atmosphere, controlled in the sense of what indulgences were allowed and what influences were embraced. It was a very steady and measured place, one resistant to much social growth. Before Hurricane Katrina, Jefferson Parish was opposite New Orleans in most, if not all, major indicators: its school and health care systems were functional and stable; its crime was not out of control; its population of impoverished citizens was not prominent; and it had a majority white population and power base, whereas New Orleans had a majority African American power base and population.⁸⁶ The same hurricane struck these two very different jurisdictions. A look at how justice was administered follows.

C. Crescent City Connection Bridge

Between Orleans and Jefferson Parishes lies the Crescent City Connection Bridge, which stands over the Mississippi River.⁸⁷ “The Crescent City Connection ranks as the fifth most traveled toll bridge in the United States, with the annual traffic volume exceeding sixty-three million.”⁸⁸ The 3500 foot bridge is owned by Louisiana,⁸⁹ but

83. Lisa Frazier, *Lee’s Words are Poison*, TIMES-PICAYUNE (New Orleans), Mar. 16, 1994, at B1, available at 1994 WLNR 959610.

84. Moore, *supra* note 82.

85. *See id.* In 1994, one “poll showed him with an 84 percent approval rating throughout the Parish, 90 percent among whites and 34 percent among blacks.” *Id.*

86. *See supra* text accompanying notes 61-79.

87. Louisiana Department of Transportation and Development Website, Crescent City Connection Division Bridges, <http://www.dotd.la.gov/operations/cccd/bridgesferries.aspx> (last visited Apr. 6, 2010).

88. *Id.*

89. Bruce Hamilton, *Evacuees Recount Gunfire at Bridge Blockade*, TIMES-

also receives federal funding.⁹⁰ It connects the East Bank of the Mississippi river (New Orleans) to the West Bank of the river.⁹¹ During Hurricane Katrina, the Crescent City Connection Bridge was one of the few possible ways out of New Orleans.⁹²

Reflecting, it is hard not to wonder whether this bridge actually connected Orleans and Jefferson Parishes during and after Hurricane Katrina, or if the bridge divided these two very different parishes. In the abstract, this may seem like an observation not worth noting. However, a juxtaposition between the bridge and Lady Justice reveals the value in such an inquiry. Lady Justice symbolizes the fact that justice requires balance and equality.⁹³ Much like this, a bridge is constructed to be leveled and balanced. An imbalance is the sign of a defect. Similarly, imbalance in the judicial realm represents a defect: lack of justice. Because justice has at its core the ideal of unifying individuals into a cohesive unit, any force that repels or divides, as opposed to attracting and unifying individuals in society, undermines justice. Any threat to justice is a threat to society and the ideals of

PICAYUNE (New Orleans), Feb. 26, 2006, at A-1, *available at* 2006 WLNR 3320102.

90. See Allen Powell II & Paul Purpura, *Jeff DA Says Bridge Case Closed*, TIMES-PICAYUNE (New Orleans), Nov. 3, 2007, Metro Section, *available at* 2007 WLNR 21738608.

91. Louisiana Department of Transportation and Development Website, *supra* note 87.

92. See *New Orleans: Marching Across the Crescent City Connection*, REVOLUTION ONLINE Nov. 20, 2005, <http://revcom.us/a/023/march-across-crescent-city.htm>.

93. See OFFICE OF THE CURATOR, U.S. SUPREME COURT, FIGURES OF JUSTICE 1 (2003), <http://www.supremecourt.gov/about/figuresofjustice.pdf>. Describing the history of Lady Justice, the Office of the Curator writes:

Portraying *Justice* as a female figure dates back to depictions of *Themis* and *Justicia* in ancient mythology. *Themis*, known for her clear-sightedness, was the Greek Goddess of Justice and Law. In Roman mythology, *Justicia* (*Justice*) was one of the four Virtues along with *Prudence*, *Fortitude* and *Temperance*. Over time, *Justice* became associated with scales to represent impartiality and a sword to symbolize power. During the 16th century, *Justice* was often portrayed with a blindfold. The origin of the blindfold is unclear, but it seems to have been added to indicate the tolerance of, or ignorance to, abuse of the law by the judicial system. Today, the blindfold is generally accepted as a symbol of impartiality

Id.

government. Thus, a symbolic look at this local structure glaringly reflects a national lesson.

V. OVERVIEW OF “KATRINA CRIMES” AND CRIMINALIZATION MINDSET

In the days following Hurricane Katrina, the media reported violence and criminal activity on the scale of a warring territory. This was less than responsible:

While the media played a positive role in many aspects — such as providing situational awareness to government authorities — it also played a negative role in the often unsubstantiated reporting of crime and lawlessness, undermining the accuracy and value of that awareness. Media reports of violence often gave credence to rumors that were either false or highly exaggerated. Public officials did not have a strategy to get ahead of the “information curve” to use the media to the public’s advantage and help quell rumors. In fact, Mayor Ray Nagin and the Chief of Police repeated rumors of rampant criminality to the national media, contributing to the exaggerated image of utter lawlessness. Many of these reports, particularly of unchecked violence in the Superdome, appear to have been unsubstantiated.⁹⁴

Contrary to what was reported by the local and national media, “[g]eneral unrest and lawlessness arose primarily in crowded areas where people were uncertain about their survival, or rescue, or prospects for evacuation.”⁹⁵ An official account of the crime problems reveals that crime was limited and contained as explained:

National Guard officials said there were numerous reports and rumors of rape or assault, but guardsmen and police could not find any witness, victim, or anyone willing to report the crime firsthand. Only two arrests were made by the police. Of the six deaths in the Superdome, none were crime-related. Guard officials said there were only 50 weapons found among the 25,000 to 30,000 people searched as they entered the Superdome. According to the Guard and police, the people in the Superdome were very unhappy and anxious, but they were never out of control. . . . Like the Superdome, there were media reports of violence and lawlessness

94. A FAILURE OF INITIATIVE, *supra* note 15, at 242.

95. *Id.* at 244.

in the Convention Center. . . . There were only four dead bodies recovered from the Convention Center. The National Guard officials that secured the site said they encountered no lawlessness or any resistance when they moved in to clear out the Convention Center. As an indication of the generally peaceful intentions of the crowd, they reported there were only 13 weapons found among the 19,000 people searched before they boarded the buses.⁹⁶

In terms of offenses committed, looting appears to have been the most prevalent:

A wide variety of conditions led to lawlessness and violence in areas hit by Hurricane Katrina. Lack of food, water, and electricity. Uncertainty about evacuations. Even the loss of hope. Looting occurred in several locations. In some cases, people looted stores for their survival and to diminish suffering, taking items such as food, water, clothing, flashlights, batteries, and camping supplies. At least some police departments were involved in breaking into stores and commandeering supplies needed for their departments, as well as those needed for feeding people in shelters before state or federal assistance arrived. One New Orleans physician said police helped him break into a pharmacy to get needed medications and supplies. In other cases, people looted for purely criminal purposes, apparently taking items for personal use or resale that would not be needed or were useless without electricity (e.g., televisions).⁹⁷

Other visible offenses included possession of stolen vehicles, resisting arrest, and theft.⁹⁸ There appears to be an absence of proof to support the allegation that major felony-level offenses were commonplace. Of greatest import is the fact that “[f]ew crime victims ever came forward to the police.”⁹⁹ Even more compelling is the fact that, in terms of violent crime, only one citizen-to-citizen murder was reported whereas four deaths at the hands of police were reported.¹⁰⁰

96. *Id.* at 248-49.

97. *Id.* at 241.

98. See Brandon L. Garrett & Tania Tetlow, *Criminal Justice Collapse: The Constitution after Hurricane Katrina*, 56 DUKE L. J. 127, 145 (2006).

99. A FAILURE OF INITIATIVE, *supra* note 15, at 248.

100. HURRICANE KATRINA EXTERNAL REVIEW PANEL, AMERICAN SOCIETY OF CIVIL ENGINEERS, THE NEW ORLEANS HURRICANE PROTECTION SYSTEM: WHAT WENT WRONG AND WHY 34-35 (2007), available at

Media reports of chaos in New Orleans and repeated visual images of people, disproportionately African Americans, looting for pure pleasure shaped, directly or indirectly, the governmental and human response to the disaster.¹⁰¹ The media images of white citizens “finding” items and African Americans “looting” items also played a role in the unfolding drama.¹⁰² Based on fiction and not fact, post-Katrina priorities were set and the overstated emphasis appears to have become the imposition of harsh punishment upon looters even at a time where dead bodies remained in streets, living beings were still trapped on sweltering roof tops, and countless others had just endured a trauma capable of paralyzing their collective human psyches.

Two things resulted from the media reports. One, the world developed a collective fear of certain New Orleans evacuees—the ones who looked like the images they had been shown repetitively. Two, the world acted on its fears. This began on August 31, 2005, two days after the hurricane struck, when “Mayor Ray Nagin ordered 1,500 police to leave their search-and-rescue mission . . . and return to the streets of New Orleans to stop looting.”¹⁰³ The President and the Governor of Louisiana quickly followed suit. On September 1, 2005, then-President George Bush announced a zero-tolerance policy for looting and lawlessness.¹⁰⁴ Kathleen Blanco, then-Governor of Louisiana, revealed that she was “furious”¹⁰⁵ about the reports of

http://www.asce.org/uploadedFiles/Publications/ASCE_News/2009/04_April/ERPreport.pdf.

101. See Michele M. Melendez & Dru Sefton, *A Nation Watches the Looting and Asks: Why?*, SEATTLE TIMES, Sept. 1, 2005, http://seattletimes.nwsources.com/html/nationworld/2002463350_katrinalooot01.html.

102. Cheryl L. Harris & Devon W. Carbado, *Loot or Find: Fact or Frame*, in AFTER THE STORM 87-88 (David Dante Troutt ed., 2006); see also Tania Ralli, *Who is a Looter? In Storm's Aftermath, Pictures Kick up a Different Kind of Tempest*, N.Y. TIMES, Sept. 5, 2005, at C6, available at <http://www.nytimes.com/2005/09/05/business/05caption.html?ex=1283572800&en=340529d0729a0b63&ei=5090&partner=rssuserland&emc=rss>.

103. John Esterbrook, *New Orleans Fights To Stop Looting*, CBSNEWS.COM, Aug. 31, 2005, <http://www.cbsnews.com/stories/2005/08/31/katrina/main808193.shtml>.

104. See *Live Today: Chaos and Catastrophe in New Orleans; FEMA Briefing* (CNN television broadcast Sept. 1, 2005) (transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/0509/01/t.03.html>).

105. “Furious” U.S. Governor Begs People to Leave Flood-Hit New Orleans,

lawlessness, and promised that the “hoodlums” would be greeted by National Guardsmen toting M-16’s that were “locked and loaded.”¹⁰⁶ One journalist quoted the then-Governor as stating that the National Guardsmen knew how to kill and were more than willing to do so.¹⁰⁷

Before long, a contagious reaction spread. In the days after Hurricane Katrina, there was a quadruple murder in St. Tammany Parish. In an interview following those murders, Jack Strain, Sheriff of St. Tammany Parish, was quoted as saying, “I don’t want to get into calling people names, but if you’re going to walk the streets of St. Tammany Parish with dreadlocks and chee wee hairstyles, then you can expect to be getting a visit from a sheriff’s deputy.”¹⁰⁸ According to the American Civil Liberties Union, Sheriff Strain referred to evacuees as “thugs” and “trash” in that same interview.¹⁰⁹ Melvin “Kip” Holden, the African American mayor of neighboring Baton Rouge, was quoted as saying that he wanted to make sure the “thugs and looters that [were] out shooting officers in New Orleans [did not] come [to Baton Rouge] and do the same.”¹¹⁰ Several months later, the East Baton Rouge Parish Sheriff’s Department requested the names of all evacuees living in a Baton Rouge evacuee trailer park for the purposes of conducting criminal background checks on them.¹¹¹ A

AGENCE FRANCE-PRESSE, Sept. 1, 2005, *available at* 9/1/05 AGFRP 00:27:00 (Westlaw).

106. Sylvester Brown, *Scenes of Disaster Indict More Than Just the Looters*, ST. LOUIS POST-DISPATCH, Sept. 4, 2005, *available at* 2005 WLNR 24326982.

107. *Id.*

108. Paul Rioux, *Sheriff’s Remarks Called “Overtly Racist”*, TIMES-PICAYUNE (New Orleans), July 8, 2006, *available at* 2006 WLNR 11799536.

109. *See id.*

110. John Valery White, *The Persistence of Race Politics and the Restraint of Recovery in Katrina’s Wake*, in *AFTER THE STORM* 41 (David Dante Troutt ed., 2006). In allegiance to this sentiment, Baton Rouge, Louisiana police officers have been said to have conducted illegal and racially motivated stops, and have been accused of mistreating and abusing prisoners and members of the public in the immediate aftermath of Hurricane Katrina. Mayor Kip Holden acknowledged that he wanted officers to be aggressive after Hurricane Katrina. *See* Kimberly Vetter, *Post-Katrina Reports Detail Alleged Police Misconduct*, THE ADVOCATE, Mar. 14, 2010, <http://www.2theadvocate.com/news/87599912.html>.

111. *See* Chuck Hustmyre, *New Orleans: More Than Just Hurricanes*, HOMELAND SECURITY TODAY, July 31, 2006, <http://www.hstoday.us/content/view/1115/92/>.

cited reason for this was the sheriff's belief that a criminal element had to exist where a group of New Orleans evacuees was present.¹¹²

The media reporting clearly bore more prominence than truth or actual facts. In terms of lessons to be learned, it is the author's view that serendipitously, the media had a greater role in establishing the post-disaster response than the government and disaster-planning officials. This role reversal should have never occurred. Instead of the government being responsive to the post-disaster priorities set by the media, the government should have been proactive in establishing post-disaster priorities, and the media should have been responsive to the well-reasoned disaster plans of the government. This shift in duties created a response where a solution was actually needed. For example, in less than five days after the hurricane, the city of New Orleans, while deeply in the midst of all the chaos brought about by Hurricane Katrina, quickly implemented its first rebuilding project: a temporary booking and detention center.¹¹³ This was done before a plan for food and water distribution was realized, before a temporary morgue was created, before rescue operations were fully operational, and before an exodus strategy for freeing the many citizens who stayed behind was ever implemented.¹¹⁴ For further illustration, one of the post-Katrina legislative priorities was a right-to-possess-arms resolution. As grounds for this legislative effort, it was declared after Hurricane Katrina struck Louisiana, "citizens and their homes and property were threatened by looting, violence, and other *rampant criminal activity*."¹¹⁵ While such legislation might pacify some, it does nothing more than mask the actual problem. Looting was declared such an invasive threat to society that New Orleans police officers were reassigned and subject to investigation for not stopping looters, despite the indisputable list of urgent needs that awaited their attention.¹¹⁶ Once again, a response was veiled as a solution. Looting,

112. *See id.*

113. Sarah Kaufman, *The Criminalization of New Orleanians in Katrina's Wake*, UNDERSTANDING KATRINA: SOCIAL SCIENCE RESEARCH COUNCIL, June 11, 2006, <http://understandingkatrina.ssrc.org/Kaufman/>.

114. *See id.*

115. H.Con. Res. 39, 2005 Leg., 1st Extraordinary Sess. (La. 2005) (emphasis added).

116. Nicole Gaouette, *A Shattered Gulf Coast*, L.A. TIMES, Sept. 30, 2005, available at 2005 WLNR 23314633.

a by-product of government failure in many instances, had subtly been promoted on the scroll of public consumption to a higher position than the government failures that set the entire crisis in motion. The evidence of this will be brought to plain view in the next section of this paper.

VI. KATRINA CRIMES AND OFFENSES

The criminal cases and offenses pursued after Hurricane Katrina involve two very different groups of defendants and/or accused persons. One category encompasses defendants or accused persons who might best be described as prominent citizens, homeowners, and/or respected members of the community, and in many instances, elected officials or persons in positions of power or respect. For reference purposes, this group is hereinafter referred to as “group A.”¹¹⁷ The second category involves lay persons or ordinary citizens who were not members of any elite group in society, were not acting on behalf of an employer or entity, and were not necessarily on the receiving end of society’s respect. For reference purposes, this group is hereinafter referred to as “group B.” Justice requires that what is due each group should not vary if the offenses are consistent. Justice also requires consideration of both the process and the punishment, and judgment of a government by the process it affords its people. A presentation of the specific cases follows in an effort to determine if justice drowned in Hurricane Katrina or survived it.¹¹⁸

117. Generic and benign labels were utilized in an attempt to facilitate a neutral, unassuming discussion, and in an effort to abstain from elevating one group over another, as such would undermine the entire premise of this work.

118. This discussion is not scientific or statistical in nature. This work does not consider federal cases. It looks exclusively at state criminal court cases, but does not attempt to represent every state criminal court case involving the groups at issue herein. This work seeks only to explore the pursuit of justice in the criminal realm since it is in this sphere that the government can exercise its exclusive authority to address conduct that it deems unacceptable in a civilized society. In most instances, civil litigation seeks to enforce duties owed to particular individuals. Because this work focuses on exploring duties owed to or rights of the public at large, only criminal matters have been analyzed. In an abundance of caution, it is noted that criminal cases were selected with the intent of creating a general overview of how post-Katrina prosecutions unfolded when the actions of ordinary or lay citizens and the actions of more prominent citizens or government actors were at issue.

A. Orleans Parish Offenses

1. Crescent City Connection Bridge

On September 1, 2005, approximately three days after Hurricane Katrina struck, many residents and visitors in the New Orleans area were in a purgatory of sorts.¹¹⁹ Due to the floodwaters and power outages, they could not move about the city or enjoy the comforts of indoor existence, and due to the absence of a plan on the part of city officials, they could not exit the city.¹²⁰ Not knowing when or if help would come, countless numbers of people searched the city for help.¹²¹ Many of these people had already endured days of food, water and sleep deprivation, loss of all earthly possessions, exposure to intense heat and floodwaters at every angle, and had been submitted to sightings of dead bodies and forced coexistence with strangers, both kind and unkind.¹²² City officials suggested that help might be found in neighboring Jefferson Parish.¹²³ The evacuees headed for Jefferson Parish much like a following having just received an instruction from a cult leader.

Large numbers of people waded through waters for miles and miles and hours and hours.¹²⁴ Various groups made this pilgrimage

119. See CNN, CNN REPORTS: KATRINA—STATE OF EMERGENCY 56-77 (2005).

120. See *id.*

121. See *id.*

122. See *id.*

123. See Cynthia McKinney, *The Greatest Civil Rights Tragedy Ushering in the 21st Century: American Racism Exposed on a Louisiana Bridge*, EMERGING MINDS, Nov. 2, 2005, <http://emergingminds.org/Cynthia-McKinney-Makes-Statement-on-Racist-Blocking-of-Bridge-During-Hurricane-Katrina.html> (“Mayor Ray Nagin urged people to cross a bridge leading to the dry lands of the city’s suburban west bank.”); see also *Racism, Resources Blamed for Bridge Incident*, CNN.COM, Sept. 13, 2005, <http://www.cnn.com/2005/US/09/13/katrina.bridge/index.html> (including a statement from evacuee Larry Bradshaw who recalled the New Orleans police giving instructions to cross the Crescent City Connection where buses would be waiting); Nicholas Riccardi, *Katrina’s Aftermath*, L.A. TIMES, Sept. 16, 2005, available at 2005 WLNR 23353042 (“New Orleans officials had told the thousands trapped in that city’s downtown . . . to cross to Gretna.”).

124. See Hamilton, *supra* note 89.

throughout the day at various intervals.¹²⁵ These groups consisted of elderly people, handicapped people, families, infants in strollers, children, state employees, and other tax-paying citizens, volunteers, tourists, and others.¹²⁶ Members of the white community and the African American community were represented in the various groups of travelers.¹²⁷ However, African Americans were said to have had the largest representation in the number denied access to the Crescent City Connection Bridge.¹²⁸ The crowd was described as “non-violent” and unarmed.¹²⁹

Though there were various groups traveling at different intervals, a consistent account of what happened resonates: reminiscent of Jefferson Parish’s earlier noted attempt to erect a cement barrier, the bridge was blocked on the New Orleans side in order to prevent entry into Jefferson Parish.¹³⁰ While foot travel was prohibited, car travel was allowed.¹³¹

The survivors recalled that as they ascended the Crescent City Connection Bridge, they were confronted by armed police officers who instructed them through loudspeakers to return to the City of New Orleans.¹³² Some recalled offering pleas or explanations to

125. *See id.*

126. *See id.*

127. *See* Press Release, Rainbow Push Coalition, Rev. Jackson Calls for a Congressional Investigation and a Halt in Federal Transportation Funding to Louisiana (Nov. 1, 2007) (on file with author).

128. Ann M. Simmons, *Protesters Make a Stand on Bridge that was Blocked*, L.A. TIMES, Nov. 8, 2005, available at 2005 WLNR 23335411; *see also* 60 Minutes: *The Bridge to Gretna* (CBS television broadcast Dec. 18, 2005) (transcript available at <http://www.cbsnews.com/stories/2005/12/15/60minutes/main1129440.shtml>).

129. 60 Minutes: *The Bridge to Gretna*, *supra* note 128 (quoting Oliver Thomas, then President of the New Orleans City Council, who indicates he watched the blockade from his car as it took place).

130. John McQuaid & Mark Schleifstein, *PATH OF DESTRUCTION: THE DEVASTATION OF NEW ORLEANS AND THE COMING AGE OF SUPERSTORMS* 302 (2006).

131. *See* *Alexander v. City of Gretna*, No. 06-5405, 2008 WL 5111152, at *4 (E.D. La. Dec. 3, 2008). The author notes that, considering the massive floodwaters in New Orleans and the destruction of nearly all vehicles, foot travel was the primary method of escape for most people.

132. Gretna, Louisiana (in Jefferson Parish) is the first locale one reaches when leaving New Orleans by way of the Crescent City Connection.

justify their presence.¹³³ In each instance, the response was said to be pointed weapons, vulgarity, and/or threats.¹³⁴ Some reported being greeted with gunfire.¹³⁵ Even residents of the West Bank and Jefferson Parish were denied entry.¹³⁶ When asked why they could not cross the bridge, two explanations were reported: “We’re not going to have any Superdomes over here,” or “This is not New Orleans.”¹³⁷

One news source has described Gretna, a city located within Jefferson Parish, as “a predominately white, blue collar city,”¹³⁸ and another has reported that “most of the police officers were white.”¹³⁹ Officials indicated the impetus for closing the bridge was a fire set by looters at a local mall.¹⁴⁰ Prompted by concerns of further acts of

133. See Hamilton, *supra* note 89.

134. *Id.*

135. See McKinney, *supra* note 123 (“Eyewitnesses report that before they were close enough to speak, officers began firing their weapons over the[ir] heads.”); *NPR Morning Edition: Evacuees Were Turned Away at Gretna, Louisiana* (NPR radio broadcast Sept. 20, 2005), available at 2005 WLNR 25359192. In the NPR broadcast, a Canadian tourist trapped in New Orleans when the hurricane hit reported that officers directed gunfire in her direction as she was attempting to cross the Crescent City Connection Bridge. *NPR Morning Edition: Evacuees Were Turned Away at Gretna, Louisiana, supra*; see also *Racism, Resources Blamed for Bridge Incident, supra* note 123. In an interview days after the storm, Gretna Police Chief Arthur Lawson said that, to his knowledge, no officers fired shots near the crowd. *Racism, Resources Blamed for Bridge Incident, supra* note 123. A few days later, Chief Lawson stated that “he was unaware of any of his officers shooting over the heads of evacuees on the bridge but said that one black officer did fire a shot overhead to quiet an unruly crowd waiting to board a bus.” *Id.*; see also Riccardi, *supra* note 123 (“New Orleans officials had told the thousands trapped in that city’s downtown . . . to cross to Gretna.”); Hamilton, *supra* note 89 (a witness recounting shots fired though the citizens were not confrontational).

136. See *Cantwell v. City of Gretna*, No. 06-9243, 2007 WL 4256983, at *1-2 (E.D. La. Nov. 30, 2007). In this civil suit, testimony that identification bearing proof of residency in Algiers, Louisiana was presented along with an explanation that the individuals at issue were merely attempting to get to their residence where they could retrieve their vehicle to leave the area. *Id.* After this explanation, the testimony explains “[t]he deputy reached for a rifle that was lying across the front seat, pointed it . . . and yelled . . . to turn around and walk back to the East Bank of Orleans Parish.” *Id.*

137. *60 Minutes: The Bridge to Gretna, supra* note 128.

138. Simmons, *supra* note 128.

139. *60 Minutes: The Bridge to Gretna, supra* note 128.

140. See Paul Purpura, *Police Want Bridge Lawsuit Tossed*, TIMES-PICAYUNE

violence and unrest, officials indicated that they conceived the idea of cutting off entry from New Orleans.¹⁴¹ Arthur Lawson, the white¹⁴² chief of police for the city of Gretna, defended the actions of his officers and provided the official explanation for prohibiting foot travel on the bridge: there was a safety hazard caused by having pedestrians on the bridge, and the city of Gretna had no food, water, or supplies.¹⁴³ For a more revealing look into his mindset, Chief Lawson shared: “Our people had left. Our city was locked down and secured, for the sake of the citizens that left their valuables here to be protected by us.”¹⁴⁴ To explain why shots were fired, Chief Lawson reported some evacuees became aggressive and threatened to throw officers off the bridge.¹⁴⁵

Gretna Mayor Ronnie C. Harris, a white male,¹⁴⁶ explained:

The city of Gretna was completely on its own. Our entire services were disrupted. No city services. No electricity. We had no shelter. We had no medical services. We were hit by a category four hurricane. What were people expecting us to do?¹⁴⁷

Mr. Harris also stood by the city’s actions, explaining city officials were “concerned about life and property,” and in psychic

(New Orleans), July 19, 2007, available at 2007 WLNR13767663.

141. See *60 Minutes: The Bridge to Gretna*, supra note 128.

142. See Riccardi, supra note 123 (describing Lawson as white).

143. See *Alexander v. City of Gretna*, No. 06-5405, 2008 WL 5111152, at *5 (E.D. La. Dec. 3, 2008); Chris Kirkham & Paul Purpura, *Bridge Blockade Remains Divisive*, TIMES-PICAYUNE (New Orleans), Sept. 2, 2007, National Section, available at 2007 WLNR 17163063. City officials explained that large numbers of people were unexpectedly arriving at a Gretna mall where there was an insufficient supply of food and water. *Id.* When it became obvious that the supply of food and water would soon be depleted, city officials report that they hotwired buses then started using these buses to evacuate people. *Id.* When this became too demanding of a task, city officials indicated a call was placed to the governor, and from that call, an agreement was reached that buses would be sent into New Orleans. *Id.* Armed with that assurance, Chief Lawson says he felt justified in blocking the bridge. *Id.*

144. *Racism, Resources Blamed for Bridge Incident*, supra note 123.

145. See Powell & Purpura, supra note 90.

146. Riccardi, supra note 123 (describing Harris as white).

147. *60 Minutes: The Bridge to Gretna*, supra note 128 (quoting Mayor Ronnie Harris).

fashion he indicated “[i]t was quite evident that a criminal element was contained in a crowd of probably mainly decent people.”¹⁴⁸ Sheriff Harry Lee, the previously discussed sheriff of Jefferson Parish, had jurisdiction over Gretna because the city is in Jefferson Parish.¹⁴⁹ Sheriff Lee defended the actions of the Gretna Police Department accordingly: “After Katrina, police had to keep people from crossing the Crescent City Connection bridge to protect homes and businesses that had been left empty when Jefferson evacuated.”¹⁵⁰

Legitimate suspicions surrounding these official explanations exist. Some dismiss them as veiled attempts to conceal the true impetus for the blockade: pure racism.¹⁵¹ This allegation is made because Chief Lawson’s earlier defense differed from his subsequent one. Initially, he indicated the bridge was closed due to fears that, had he let “these people” in, the city would look like New Orleans—“burned, looted and pillaged.”¹⁵² One might successfully argue this reasoning is pre-textual given the following explanation taken from an unrelated criminal case:

At trial, Deputy Ryan Singleton of the Jefferson Parish Sheriff’s Office testified that after Hurricane Katrina he worked twelve-hour shifts from 6:00 a.m. to 6:00 p.m., in two-manned cars due to sporadic communication capabilities, as a result of the hurricane. He patrolled to protect the public and remaining businesses from criminal activity. At the time, the businesses in the area did not

148. Simmons, *supra* note 128 (quoting an interview with Gretna Mayor Ronnie Harris).

149. See GCR & ASSOCIATES, INC., JEFFERSON PARISH 2000 CENSUS REVIEW, VOLUME I: POPULATION & HOUSING 4 (2003), available at <http://www.jeffersontransit.org/CensusPDFs/Census2000Review-I.pdf>.

150. Cain Burdeau, *Katrina Still Dominates Louisiana Election*, WASH. POST, Dec. 8, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/08/AR2006120800114.html>.

151. See Rebecca Eaton, *Escape Denied: The Gretna Bridge and the Government’s Armed Blockade in the Wake of Katrina*, 13 TEX. WESLEYAN L. REV. 127, 165 (2006); see also Kirkham & Purpura, *supra* note 143 (revealing that, at the same time the bridge was closed to Orleans Parish evacuees, residents of St. Bernard Parish, a mostly white area outside of New Orleans, were allowed entry into Algiers, Louisiana).

152. Eaton, *supra* note 151, at 165 (quoting Rogers Cadenhead, *Police Trapped Thousands in New Orleans*, WORKBENCH, Sept. 9, 2005, <http://workbench.cadenhead.org/news/2748/police-trapped-thousands-new-orleans>).

have normal security. The alarms did not work because the electricity was out. As officers began to quit after the hurricane, the Sheriff's Department was no longer able to patrol in two-man units. According to Deputy Singleton, this put the officers on patrol in danger and at greater risk of injury or death. Therefore, *the Sheriff's Department utilized the assistance of personnel from outside agencies, as sworn special deputies. During the week of September 3, 2005, Deputy Singleton was assisted by Captain Kevin Hinsley and Canine Deputy Elmore Horn. Both officers were from Douglas County, Georgia.*¹⁵³

It should also be noted "[t]he blockade remained in place into the Labor Day weekend."¹⁵⁴ Thus, the testimony establishes that out-of-state officers were on hand in Jefferson Parish to assist with patrols on the dates the bridge was blocked, diminishing the ex post facto security concerns asserted by Jefferson Parish leaders. Notwithstanding these suspicions, the Gretna City Council unanimously passed a resolution supporting the actions of the Gretna Police Department.¹⁵⁵

From the events on the Crescent City Connection, only one criminal case resulted. It involved Lawrence Vaughn, an African American officer in the Gretna Police Department.¹⁵⁶ He was charged with illegal use of a firearm in conjunction with allegations he fired a shotgun in the air as evacuees fleeing New Orleans attempted to cross

153. *State v. Carter*, 07-0270, p.2-3 (La. App. 5 Cir. 12/27/07); 976 So. 2d 196, 198 (emphasis added).

154. Riccardi, *supra* note 123.

155. See Gretna City Council 2005-084, 2005 Council (Gretna, La. 2005), available at http://www.gretnala.com/egov/docs/1266001248_701446.pdf. This resolution contains the following noteworthy verbiage:

WHEREAS, allowing individuals to enter the City via the Crescent City Connection posed an unacceptable risk to the safety of the citizens of Gretna. NOW, THEREFORE, BE IT RESOLVED, by the City Council, acting as legislative authority for the City of Gretna, that:

The City of Gretna wholeheartedly supports the Chief of Police's decision to deny access to the City of Gretna via the Crescent City Connection immediately following Hurricane Katrina.

Id.

156. See Paul Purpura, *No Charges Filed in Standoff on Bridge*, TIMES-PICAYUNE (New Orleans), Nov. 1, 2007, available at 2007 WLNR 21528691.

the Crescent City Connection Bridge.¹⁵⁷ These charges were brought before an Orleans Parish grand jury in October 2007.¹⁵⁸ The grand jury did not indict Officer Vaughn.¹⁵⁹ Days after the decision of the Orleans Parish grand jury, the Jefferson Parish district attorney's office announced it would not pursue an indictment or criminal penalties.¹⁶⁰

"[T]he right to flee from a hazardous disaster area is not just implicit in the concept of ordered liberty, it is essential to human dignity."¹⁶¹ Even more fundamental of a promise is the right to be free of unwarranted gunshots fired by law enforcement. Making this event even more egregious is the fact that an entire bridge was closed as opposed to select exits (which, in the author's opinion, would still be illegal, just not as blatant a wrong). There is no way to determine how many of Katrina's dead died because their exodus was denied by Jefferson Parish officials. There is also no way to determine how much suffering was prolonged by these officials. What is certain is, in an environment where punishment of certain criminal activity was made priority, there will be no criminal culpability for such actions. In the Crescent City Connection case, it appears these members of "group A" did not get their due for the harm and injury they caused.

2. *Memorial Medical Center*

Members of the medical staff at Memorial Medical Center saw it as a safe place to seek shelter from a hurricane, so they opted to remain there as many had done countless times in the past. This time proved to be like no other. The hospital was "swamped with 10 feet of water."¹⁶² The following is a description of the conditions in the hospital following the hurricane:

The storm blew in early Monday morning, and by Monday morning, there was no power. Their generators at Memorial

157. *Id.*

158. *See id.*

159. *Id.*

160. *See Powell & Purpura, supra* note 90.

161. Eaton, *supra* note 151, at 173.

162. Mary Foster, *Katrina Hospital Deaths Case Progresses*, ASSOCIATED PRESS, Sept. 7, 2006, available at 9/7/06 APONLINEUS 18:59:09 (Westlaw).

Medical Center went out. There was no backup generators. They also were flooded. There was no air-conditioning. Temperatures inside the hospital were over 100 degrees. There was no way to circulate the air. There were nurses that were fanning patients for not just hours, for days. Also, there were patients that were on respirators where nurses had to sit there manually, respirating for them. Just a horrendous situation in that hospital.¹⁶³

In addition, the hospital was without plumbing¹⁶⁴ or water.¹⁶⁵ For five days, the staff and the visitors lived in a state of moment-to-moment survival, and did so in a hot, flooded building that lacked ample supplies and staff, with no indication of when help would arrive.¹⁶⁶

The seventh floor of the hospital housed patients of LifeCare Holdings, Inc. (LifeCare), an acute-care, long-term healthcare facility.¹⁶⁷ LifeCare served patients who suffered catastrophic accidents or life-threatening illnesses.¹⁶⁸ On a normal day, it was a separate operation from the remaining floors where Dr. Anna Pou, a cancer, ear, nose and throat specialist employed by Louisiana State University, usually practiced.¹⁶⁹ Though Dr. Pou was credentialed to practice on the seventh floor, she is reported not to have had any patients there when Hurricane Katrina struck.¹⁷⁰ “LifeCare had its own nurses, doctors and administrative staff, and it had a legal

163. *NPR Morning Edition: Doctor, Nurses Charged in Post-Katrina Deaths* (NPR radio broadcast July 18, 2006), available at 2006 WLNR 22957056.

164. Drew Griffin & Kathleen Johnston, *Report Probes New Orleans Hospital Deaths*, CNN.COM, Dec. 5, 2007, <http://www.cnn.com/2007/US/law/12/05/hospital.deaths/index.html?iref=mpstoryview>.

165. Foster, *supra* note 162.

166. *NPR Morning Edition: Doctor, Nurses Charged in Post-Katrina Deaths*, *supra* note 163.

167. *See id.*

168. Jason Berry, *Charles Foti and the Memorial Three*, INDEPENDENT WEEKLY, Oct. 31, 2006, http://www.theind.com/index.php?option=com_content&task=view&id=106&Itemid=121&ed=164.

169. Foster, *supra* note 162.

170. *See* Press Release, Tenet Healthcare Corp., Tenet Responds to CNN Broadcast of March 8 (March 15, 2006) (on file with author).

responsibility to provide for the care and safety of its own patients.”¹⁷¹

Presumably, the seventh floor was the floor where the beaming southern Louisiana heat could be felt the most. Oddly, it was the floor where the twenty-four suspicious deaths occurred.¹⁷² While many have described the seventh-floor patients as people knocking on death’s door, official accounts suggest otherwise. Several patients were stroke survivors in need of rehabilitation.¹⁷³ One had schizophrenia and dementia.¹⁷⁴ Another had asthma, hypoxia, high potassium, osteoarthritis and renal insufficiency.¹⁷⁵ Doctors of some of the patients described them as alert and not in imminent danger of death.¹⁷⁶ Others have been described as obese and paralyzed, but otherwise functional.¹⁷⁷ For example, one victim is said to have fed himself and conversed with medical staff on the morning of his death.¹⁷⁸ Another source indicated that all of the “victims were expected to live, as none were in danger of imminent death from natural causes.”¹⁷⁹ As to their medical needs, it has been reported that “[t]here were no orders on the victims’ medical charts for the prescription of either morphine or Versed,”¹⁸⁰ and “[n]one of the

171. *Id.*

172. *See NPR Morning Edition: Doctor, Nurses Charged in Post-Katrina Death*, *supra* note 163.

173. *See* CHARLES C. FOTI, JR., LA. DEP’T OF JUSTICE, EXECUTIVE SUMMARY OF INVESTIGATIVE REPORT FOR CASE #59-2652: MEMORIAL MEDICAL CENTER 5, available at <http://i.a.cnn.net/cnn/2007/images/08/27/memorial.medical.center.pdf>; *see also* Griffin & Johnston, *supra* note 164.

174. *See* FOTI, *supra* note 173, at 5; *see also* Griffin & Johnston, *supra* note 164.

175. *See* FOTI, note 173, at 5; *see also* Griffin & Johnston, *supra* note 164.

176. *See* Griffin & Johnston, *supra* note 164.

177. *Id.* (describing Emmett Everett as 380 pounds and as having some health issues, but not being in imminent danger of dying, and later revealing that Mr. Everett was believed to be one of the homicide victims).

178. FOTI, *supra* note 173, at 2; *see also* Griffin & Johnston, *supra* note 164.

179. Charles I. Lugosi, *Natural Disaster, Unnatural Deaths: The Killings on the Life Care Floors at Tenet’s Memorial Medical Center after Hurricane Katrina*, 2 J. HEALTH & BIOMEDICAL L. 195, 195-96 (2006) (quoting an October 10, 2006 interview with Dr. Cyril H. Wecht, an attorney, forensic pathologist, and medical legal consultant who reviewed the results of some of the autopsies performed on the bodies of those found dead on the seventh floor of the hospital).

180. *Id.* at 196.

victims were in pain, and thus did not require any medication like morphine or Versed.”¹⁸¹ Lastly, it has been noted that “[t]hese drugs had not been given previously to these patients as part of their routine care.”¹⁸²

While it is true that the seventh-floor patients are unable, due to death or ailment, to tell what happened on the dates in question, echoes of what happened in the hospital resonate. Initially, staff reported implementation of a triage system for evacuation.¹⁸³ Under this system, “[p]atients rated 3 were the most critical and would have to be evacuated by helicopter. The nine LifeCare patients had been evaluated . . . and were all established as 3’s for evacuation purposes.”¹⁸⁴ Thereafter, it is alleged that a plan to eliminate patients by administering lethal doses of medicines was devised.¹⁸⁵ Dr. Anna Pou and nurses Lori Budo and Cheri Landry were named central figures in the plan.¹⁸⁶ Reports suggest Dr. Pou controlled more than 127 vials of morphine on the day the patients died.¹⁸⁷ In the end, forty-five deaths occurred at Memorial Hospital.¹⁸⁸ Of those, eight or nine were considered homicides.¹⁸⁹ Of these eight or nine deaths, all are said to have occurred between noon and 4:00 p.m. on September

181. *Id.*

182. *Id.*

183. FOTI, *supra* note 173, at 1.

184. *Id.*

185. *See NPR Morning Edition: Doctor, Nurses Charged in Post-Katrina Deaths*, *supra* note 163.

186. *See Griffin & Johnston*, *supra* note 164.

187. *Id.*

188. *See* Press Release, Tenet Healthcare Corp., *supra* note 170. In this statement, Tenet Hospital explained:

Forty-five bodies were removed from Memorial in the aftermath of the hurricane. Of that number, 10 were Memorial patients who had already died of natural causes *before* the hurricane struck but whose bodies had not yet been picked up by funeral homes or the coroner. Eleven others were Memorial patients, most of them elderly and very ill, who did not survive the hurricane aftermath and evacuation. The remaining 24 bodies were patients of a separately licensed, long-term acute care hospital on the seventh floor of the Memorial building that was operated by LifeCare Hospitals Inc., owned by the Carlyle Group of Washington, D.C.

Id.

189. *Griffin & Johnston*, *supra* note 164.

1, 2005.¹⁹⁰ What caused the death of these patients is the hotly contested issue. Dr. Pou admitted administering medicines to the dead patients, but said it was done only to relieve their pain.¹⁹¹ Then-Attorney General Charles Foti and a forensic pathologist hired by the state both deemed the deaths homicides.¹⁹² The attorney general accused Dr. Pou and nurses Budo and Landry of “administering lethal doses of morphine and other drugs to Lifecare patients who they felt were immobile or too sick to be evacuated.”¹⁹³ Thus, euthanasia was alleged.

Attorney General Charles Foti conducted an investigation, which involved interviews with doctors, nurses, hospital administrators, and witnesses; pathology and autopsy reports; forensic evidence; reviews of patient charts and pharmacy inventories; and inspection of syringes and other medical equipment.¹⁹⁴ The autopsy results showed that four of the victims were not terminally ill,¹⁹⁵ and the toxicology results on nine patients revealed high levels of Morphine and/or Versed.¹⁹⁶ Two independent pathologists reviewed the toxicology reports and patient charts and opined that the patients died of Morphine/Versed toxicity, and that their deaths were the result of homicide.¹⁹⁷

Dr. Pou and nurses Budo and Landry were formally charged with second-degree murder.¹⁹⁸ On July 17, 2006, the three were arrested.¹⁹⁹ Initially, all three women professed innocence.²⁰⁰ Subsequently, nurses Budo and Landry entered into immunity agreements in

190. *Id.*

191. *Today Show: No Indictment of Doctor Accused in Deaths of Patients in the Aftermath of Hurricane Katrina* (NBC television broadcast July 25, 2007), available at 2007 WLNR 14233878.

192. *See* Griffin & Johnston, *supra* note 164.

193. *Id.*

194. *Id.*

195. Lugosi, *supra* note 179, at 199.

196. FOTI, *supra* note 173, at 4.

197. *Id.* (referring to the opinions of Dr. Cyril Wecht and Dr. James Young).

198. Drew Griffin & Kathleen Johnston, *Three Charged with Second-Degree Murder in Katrina Hospital Deaths*, CNN.COM, July 18, 2006, <http://www.cnn.com/2006/US/07/18/hospital.deaths/index.html>.

199. *Id.*

200. *See* Griffin & Johnston, *supra* note 164.

exchange for their testimony against Dr. Pou.²⁰¹ The case was presented to an Orleans Parish grand jury. The grand jury refused to indict Dr. Pou.²⁰² Subsequent to this, and as much as five years removed from the hurricane, New Orleans officials have steadfastly maintained their stance that culpability will not be pursued.²⁰³

Many sympathizers have made much of the fact that deaths occurred at other New Orleans hospitals, yet this is the only case to result in criminal charges.²⁰⁴ Perhaps this is because Memorial Medical Center was the only facility to self-report possible cases of euthanasia.²⁰⁵ Others have waved high Dr. Pou's record. Before Hurricane Katrina struck, Dr. Pou was one of the few Louisiana physicians performing microvascular reconstructive surgery.²⁰⁶ A significant number of her patients were poor, African American, and/or Medicaid recipients.²⁰⁷ Some have complained that nurses Budo and Landry were unable to work as a result of the criminal case.²⁰⁸ Funds were started for all three women.²⁰⁹ Legislation offering immunity from civil liability for medical professionals and

201. *Id.*

202. *See Today Show: No Indictment of Doctor Accused in Deaths of Patients in the Aftermath of Hurricane Katrina*, *supra* note 191.

203. *See Bill Barrow, Memorial Death will not be Reclassified as a Homicide, Coroner Says*, *TIMES-PICAYUNE* (New Orleans), Mar. 11, 2010, available at http://www.nola.com/crime/index.ssf/2010/03/memorial_death_will_not_be_rec.html. "I can't tell you whether the morphine was a 50 percent contribution. I can tell you it wasn't a 100 percent contribution." *Id.* (quoting New Orleans Coroner, Frank Minyard). After conducting a new investigation with the use of the original case file, the coroner decided not to classify one of the Memorial Medical Center deaths as a homicide. *Id.*

204. *See Press Release, Tenet Healthcare Corp.*, *supra* note 170. In this statement, Dr. Louis Cataldie, the Louisiana state coroner, indicated in a press conference in late September that as many as fifty bodies had been removed from another New Orleans hospital in the aftermath of Hurricane Katrina. *Id.*

205. *See Berry*, *supra* note 168.

206. *See id.*

207. *Id.*

208. *See id.*

209. *See NursingAdvocacy.org, Defense Funds for Lori Budo, Cheri Landry, and Anna Pou*, http://www.nursingadvocacy.org/news/2006/jul/20_nyt.html#fund (last visited Apr. 7, 2010); *see also CDMR.org, Pou Defense Fund Event Huge Success*, <http://www.cdmr.org> (last visited Apr. 7, 2010).

personnel acting after a natural disaster has been enacted.²¹⁰ This group of defendants has garnered much sympathy and support. The fact of the matter is that penal institutions house countless people who were nice and respected, but had a lapse in judgment, or who, under duress, acted in a way that violated the law. Our judicial system is not designed to give weight to such factors when those factors are not embodied in the law a person is charged under. It is supposed to impose punishment upon anyone who acts in conflict with the law, even if the actor is sorry, respected, or acted in an emotional way due to a stressful event. One could compellingly assert that is what happened with these members of “group A.” Based on the overwhelming evidence cited, they were not given their due for the injury and hurt they were alleged to have caused and for what is best described as conduct in conflict with the law.

210. See S. 301, 2008 Leg., Reg. Sess. (La. 2008); S. 330, 2008 Leg., Reg. Sess. (La. 2008). Senate Bill 301 states:

A. During a declared state of emergency, medical personnel, who render or fail to render emergency care, health care services, or first aid, shall not be liable for any civil damages to a person as a result of an evacuation or treatment or failed evacuation or treatment conducted in accordance with disaster medicine protocol and at the direction of military or government authorities, unless the damage or injury is caused by willful and wanton misconduct.

B. As used in this Section:

(1) “Disaster medicine protocol” means the order of evacuation and treatment of persons by priority in accordance with recognized triage process applicable when disastrous conditions prevent evacuation or treatment of all patients.

S. 301, 2008 Leg., Reg. Sess. (La. 2008). Senate Bill 330 reads, in pertinent part:

A. Medical personnel who, in good faith and regardless of compensation, render or fail to render emergency care, health care services or first aid during a declared state of emergency when the state of emergency affects the rendering of medical care shall not be liable for any civil damages or injury as a result of any act or omission related to the rendering of or failure to render services, unless the damages or injury was caused by gross negligence or willful and wanton misconduct.

B. As used in this Section:

(1) “Health care services” means any act or treatment performed or furnished or which should have been performed or furnished, by a health care provider for, to, or on behalf of a person.

S. 330, 2008 Leg., Reg. Sess. (La. 2008).

3. Algiers Point

Algiers Point is a majority-white neighborhood on the outskirts of New Orleans.²¹¹ It did not flood after Hurricane Katrina.²¹² Residents are said to have barricaded the entry and exit-points to the subdivision with downed trees and debris and armed themselves with weapons.²¹³ Residents are said to have patrolled the streets and confronted any African American they encountered or person they thought did not belong.²¹⁴ At least eleven African Americans are believed to have been shot by white shooters.²¹⁵ The exact number of dead or injured is unknown, but medical records indicate that at least four people died in or around Algiers Point during the time in question.²¹⁶ The New Orleans Police Department reported never receiving complaints or information to substantiate the allegations of vigilantism in Algiers Point; thus, no charges were brought, nor arrests made.²¹⁷ The only governmental response that could be argued to have resulted from this occurrence was the introduction of legislation purposed to “protect and uphold the citizens’ right to keep and bear arms in their residences, businesses, and means of transport, and on their persons . . . for their protection and as a deterrent to criminal activity.”²¹⁸ Countless people who have violated society’s rules, though they had noble intentions, are reflected on the prison scrolls. Yet, in this case, none of the “group A” actors have been dealt their due.

211. See A. C. Thompson, *Katrina’s Hidden Race War*, THE NATION, Dec. 17, 2008, <http://www.thenation.com/doc/20090105/thompson>.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.* (explaining that a review of autopsy records established that many deaths were never investigated and many records did not isolate where the bodies were found).

217. See Press Release, New Orleans Police Department, Response to Inquiries Regarding Racial Conflicts and Vigilantism (Dec. 24, 2008) (on file with author).

218. H.R. Con. Res. 39, 2005 Leg., 1st Extraordinary Sess. (La. 2005).

4. *Danzinger Bridge Case*

On September 4, 2005, about a week after Hurricane Katrina struck, many people had still not been evacuated.²¹⁹ Dead bodies remained about the city.²²⁰ Water levels were still at flood stage.²²¹ Exhaustion was taking its toll, and desperation was the word of the day.²²² By this point, a number of New Orleans police officers had already abandoned their posts or evacuated the city, leaving behind only a few to protect and serve an entire city of people in turmoil.²²³ Against this backdrop, the Danziger Bridge incident unfolded.

Police report being dispatched to the bridge in response to reports that shots were fired (either upon a fellow officer or upon Corps of Engineer workers).²²⁴ Upon arrival, police observed mayhem.²²⁵ The bridge was littered with people, some in survival mode, peacefully seeking escape, and others seizing an opportunity to memorialize their rage, frustration, and deviance by engaging in acts of lawlessness.²²⁶ Official accounts differ on the logistics of the situation, but there is agreement that within the group traversing the bridge, there was some contained shooting that caused travelers to scurry.²²⁷ At this point, officers arrived in an unmarked truck.²²⁸ Officers claim they fired shots only after they were shot at and directed those shots only toward

219. See CNN, *supra* note 119, at 106-117.

220. See *id.*

221. See *id.*

222. See *id.*

223. See *id.* at 112-13, 124.

224. See *New Orleans Police Indicted in Bridge Shootings*, CNN.COM, Jan. 2, 2007, <http://www.cnn.com/2006/LAW/12/28/katrina.cops/index.html>.

225. *All Things Considered: What Happened on New Orleans' Danziger Bridge?* (NPR radio broadcast July 22, 2009), available at <http://www.npr.org/templates/story/story.php?storyId=6063982>.

226. *Id.*

227. See James Polk, Drew Griffin & Kate Albright-Hanna, *Katrina Autopsy: Police Shot Mentally Disabled Black Man in Back*, CNN.COM, May 23, 2006, <http://www.cnn.com/2006/US/05/22/katrina.shotinback/index.html> (quoting Lance Madison as he recalled witnessing a group of teenagers opening fire on the bridge).

228. Press Release, U.S. Dep't of Justice, *Former Police Officer Pleads Guilty in Danziger Bridge Case* (Apr. 7, 2010), available at <http://www.justice.gov/opa/pr/2010/April/10-crt-379.html>.

armed persons who were attempting to injure them.²²⁹ Witnesses report that police fired shots wildly as if to make their presence known.²³⁰ Others recall witnessing police fire directly at Ronald Madison, a forty-year-old mentally handicapped man with the mental capacity of a seven or eight-year-old, as he was fleeing gunshots and running away from police with his hands raised.²³¹ In the end, a teenage boy was shot in the stomach, requiring him to live permanently with a colostomy bag; Susan Bartholomew was shot in the arm and had to have it amputated below her elbow; two others were wounded; and two were killed: James Brissette, a nineteen-year-old high school senior, and Ronald Madison.²³² “[N]o officers involved in the incident at the bridge were injured that day.”²³³

In defense of their use of fatal fire, police reported Ronald Madison was reaching into his waistband to retrieve a weapon when he was shot.²³⁴ The family reports that he and his brother, Lance Madison, were attempting to get to another brother’s dental office, and that Ronald was unarmed and nonviolent.²³⁵ Ronald Madison did not have a criminal history.²³⁶ His body was examined by the Orleans Parish Coroner and, at the request of the family, by Dr. Michael

229. *Id.*

230. See *All Things Considered: Seven Policemen Indicted for Katrina Shootings* (NPR radio broadcast Dec. 28, 2006), available at 2006 WLNR 22650682.

231. See Drew Griffin, James Polk & Kate Albright-Hanna, *Witness: New Orleans Cops Shot Man in Back as He Ran Away*, CNN.COM, Dec. 18, 2006, http://www.cnn.com/2006/US/12/18/nopd.shooting/index.html?section=cnn_topstories&eref=yahoo (quoting Kasimir Gaston, an eyewitness who observed the events unfold from a neighboring motel balcony).

232. See *All Things Considered: Seven Policemen Indicted for Katrina Shootings*, *supra* note 230; see also *Nightly News: Dozens Show Support for Seven Police Officers Facing Murder Charges in Post-Katrina Chaos in New Orleans* (NBC television broadcast Jan. 2, 2007).

233. Press Release, National Dental Association, Membership NDA Mobilizes on Katrina Police Killings (Feb. 8, 2007), available at <http://www.ndaonline.org/Downloads/NDA%20Press%20Release-%20Dr%20Romell%20Madison%27s%20Brother.pdf>.

234. See Polk, et al., *supra* note 227 (Lance Madison recalling witnessing a group of teenagers opening fire on the bridge).

235. *All Things Considered: What Happened on New Orleans’ Danziger Bridge?*, *supra* note 225.

236. Polk, et al., *supra* note 227.

Baden, a pathologist.²³⁷

The coroner's findings support the witnesses' accounts of what happened and call into question the version offered by the police. The coroner's report apparently concludes that Mr. Madison sustained five separate gunshot wounds to the back and that no shots entered the body from the front.²³⁸ Dr. Baden found similarly. He reportedly concluded that Mr. Madison was shot from behind.²³⁹ Additionally, a police investigation revealed no weapon was found on or near Ronald Madison's body, and no weapon was found on the person of his brother, Lance Madison.²⁴⁰

Prosecutors admitted there was a "possibility of police wrongdoing" and the New Orleans Police Chief expressed uncertainty as to whether the Madisons were a part of the peaceful camp or the criminal camp on that bridge on the day in question.²⁴¹ State-initiated criminal charges were brought against seven of the officers.²⁴² Four were charged with first-degree murder.²⁴³ The remaining three were charged with attempted murder.²⁴⁴ An Orleans Parish grand jury indicted the seven New Orleans Police Officers.²⁴⁵ However, all state-initiated charges against the officers were later dismissed.²⁴⁶ Lance Madison, a twenty-five-year career employee at Federal Express, was also charged with attempted murder (against the police).²⁴⁷ Lance Madison, who did not have a criminal record, was released from jail after a six-month stay because the district attorney's office had not

237. *Id.*

238. *Id.* (referring to the findings of the Orleans Parish coroner).

239. *Id.*

240. *Id.*

241. *Id.*

242. *New Orleans Police Indicted in Bridge Shootings*, *supra* note 224.

243. *All Things Considered: Seven Policemen Indicted for Katrina Shootings*, *supra* note 230.

244. *Id.*

245. *New Orleans Police Indicted in Bridge Shootings*, *supra* note 224.

246. *See Nightly News: Charges Dismissed Against Seven Police Officers Accused of Killing Two Men after Hurricane Katrina* (NBC television broadcast Aug. 13, 2008), available at 2008 WLNR 15171356. The state appealed, but subsequently withdrew the appeal. *Id.*

247. *See All Things Considered: Seven Policemen Indicted for Katrina Shootings*, *supra* note 230; *see also* Polk, et al., *supra* note 227.

initiated prosecution.²⁴⁸

Lance Madison can never be given back the time that he lost while incarcerated, nor can the emotional wounds of the day ever be washed away. He was not given his due. Ronald Madison cannot be resurrected. He was not given his due. The other victims cannot be restored to the condition they were in when they arrived at the bridge. In the state court system, they were not given their due.²⁴⁹ The officers caused injuries to people who, from all indicators, did not commit criminal acts. In state court, these “group A” members were not given their due.

5. *St. Rita's Nursing Home*²⁵⁰

Salvador and Mabel Mangano co-owned and operated St. Rita's Nursing Home for approximately twenty years at the time Hurricane Katrina struck.²⁵¹ Salvador was sixty-seven years old and Mabel was sixty-four years old.²⁵² The day before the storm, the Manganos spoke with another nursing home about the possibility of accommodating St. Rita's residents if an evacuation was attempted.²⁵³ Having to decide between endangering the lives of their frail residents by an attempted,

248. See Polk, et al., *supra* note 227.

249. An investigation by the United States Department of Justice has resulted in federal guilty pleas on the part of some police officers in the instant case. See Press Release, U.S. Dep't of Justice, *supra* note 228. One might see a similarity in the federal government's intervention in the Danziger Bridge case and the federal government's intervention in the affairs of the southern states during the Civil Rights era where issues of voting and education were concerned. Because this work only considers state criminal cases, the writer has abstained from further discussion of the federal case or the federal government's post-disaster role in the administration of justice.

250. This St. Bernard Parish facility is technically outside of New Orleans. Because the parish closely borders Orleans Parish, this case is included in the representative sample of Orleans Parish cases.

251. See Laura Parker, *Louisiana Nursing Home Case Puts the Response to Katrina on Trial*, USA TODAY, Aug. 9, 2007, available at 2007 WLNR 15368435.

252. See Paul Rioux, *Nearly Two Years After 35 Elderly Residents of St. Rita's Nursing Home Died in the Floodwaters of Hurricane Katrina, the Owners of the Home go on Trial Monday*, TIMES-PICAYUNE, Aug. 12, 2007, available at 2007 WLNR 15584364.

253. See Paul Rioux, *Doctor: St. Rita's Move Viable*, TIMES-PICAYUNE (New Orleans), Aug. 22, 2007, available at 2007 WLNR 16326425.

stressful evacuation in prolonged traffic and unfavorable conditions or not evacuating a facility that had never before flooded, the Manganos opted to shelter in place.²⁵⁴ They stocked up on food, supplies, and other necessities, and ensured the availability of generators.²⁵⁵ Feeling sound in their decision, they stayed at the facility along with their children, grandchildren, and staff, and declined evacuation assistance.²⁵⁶ Presumably, they felt wise when, the day after Hurricane Katrina struck, they were not in danger and their residents had survived. However, before a celebration could unfold, the levees breached and water descended upon the building full of immobile residents, many of whom were wheelchair-bound or bedridden and secured to their beds.²⁵⁷ “[T]he rapidly rising water . . . turned the single-story building into a tomb within 20 minutes.”²⁵⁸ The building “filled with water to within a foot of the ceiling.”²⁵⁹ Due to the plastic covering on the mattresses, a number of patients floated instead of drowned.²⁶⁰ Some were pulled through holes made in the roof.²⁶¹

The Manganos saved twenty-four residents, but thirty-five patients died.²⁶² The Manganos were charged with thirty-five counts of negligent homicide and twenty-four counts of cruelty to the infirm.²⁶³ At trial, the defense’s theory was that the Manganos did nothing more or less than the mayor, governor, or federal government: they too, it was argued, were caught off guard by the levee breach.²⁶⁴

254. *Id.*

255. *See* Rioux, *supra* note 252.

256. *Id.* (quoting St. Bernard Parish Coroner Bryan Bertucci who said he contacted the Manganos about 24 hours before the hurricane made landfall to offer the use of buses).

257. *Id.*

258. *Id.*

259. Loree Cook-Daniels, *Criminal Cases Show No-Win Evacuation Choices*, 10 VICTIMIZATION OF THE ELDERLY & DISABLED 1 (Jan./Feb. 2008).

260. Paul Rioux, *Every Death was Avoidable*, TIMES-PICAYUNE (New Orleans), Sept. 6, 2007, available at 2007 WLNR 173883396.

261. *Id.*

262. *See* Parker, *supra* note 251.

263. *Id.*

264. *See* Michael Kunzelman, *Nursing Home Owners’ Lawyer Blames Government for Katrina Deaths*, ASSOCIATED PRESS, May 18, 2007, available at <http://louisianaquestions.wordpress.com/levee-lawsuits/>.

Because no other official was found criminally responsible, the Manganos argued they should not be either, particularly since, in the view of their attorneys, the deaths were not the result of a natural disaster, but the consequence of failed projects of the Army Corp of Engineers.²⁶⁵ At trial, testimony revealed that there was no mandatory evacuation ordered for St. Bernard Parish.²⁶⁶ The Manganos were acquitted in less than four hours.²⁶⁷ The victims did none other than depend on the Manganos. They were not given their due. The Manganos did none other than exercise judgment, which is not a crime. Their decision-making turned out to be poor. This outcome begs one to consider the drivers whose decision to drink and drive resulted in unintentional harm to others, or the bus drivers and parents who unintentionally caused the death of a child left restrained and unattended in a car. In this country, we punish such behavior though the harm was never intended, but because it resulted. For these “group A” members, a bad decision that ended in multiple deaths did not result in criminal culpability.

6. Lafon Nursing Home

When Hurricane Katrina struck, Lafon Nursing Home was run by the Sisters of the Holy Family, a congregation of African American nuns.²⁶⁸ At Lafon Nursing Home in New Orleans, where there was a mandatory evacuation, more than 100 patients were in the facility at the time of the storm.²⁶⁹ Some could walk; others were wheelchair-

265. *Id.*

266. See Rioux, *supra* note 252.

267. See Mary Foster, *Pair Found Not Guilty in Deaths of Patients Left in Nursing Home*, VIRGINIAN-PILOT & LEDGER-STAR Sept. 8, 2007, available at 2007 WLNR 17555080.

268. See Ann Hull & Doug Struck, *At Nursing Home, Katrina Dealt Only the First Blow*, WASHINGTONPOST.COM, Sept. 23, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/22/AR2005092202263.html>.

269. See Rioux, *supra* note 252. The mandatory evacuation order that Mayor Ray Nagin eventually issued for New Orleans did not specifically address nursing homes, though many nursing homes adhered to the portion of the order that applied to hospitals. *Id.* The evacuation order read, in pertinent part:

[A] mandatory evacuation order is hereby called for all of the parish of Orleans, with only the following exceptions. Essential personnel of the

bound. When the floodwaters hit, it destroyed much of the food, water, and medical supplies. Staff members, using bed sheets, transported the residents on the bottom floor to the second floor. Shortly after, a generator failed. Residents remained in the heated building for days.²⁷⁰

“Two days before Katrina made landfall, the Sisters of the Holy Family evacuated elderly nuns living on the second floor of the nursing home but not the lay residents on the first floor.”²⁷¹ All sixty nuns living in the motherhouse across the street were also evacuated.²⁷² Twenty-two patients died.²⁷³ Most of the deaths appeared to be heat or stress related.²⁷⁴ No criminal charges were filed.²⁷⁵ Once again, the victims did none other than depend on their caregivers. They were not given their due. The nuns did nothing other than exercise judgment. Their decision-making turned out to be poor, but never showed to be criminal.²⁷⁶ Their actions resulted in loss of life. Many would argue these “group A” members were not given their due.

United States of America, state of Louisiana and city of New Orleans. Essential personnel of regulated utilities and mass transportation services. Essential personnel of hospitals and their patients. Essential person of the media. Essential personnel of the Orleans Parish criminal sheriff’s office and its inmates. And the essential personnel of operating hotels and their patrons.

Breaking News: New Orleans Mayor, Louisiana Governor Hold Press Conference, (CNN television broadcast Aug. 28, 2005), available at <http://transcripts.cnn.com/TRANSCRIPTS/0508/28/bn.04.html>; see also Steven Ward, *State Plans Evacuation Option*, THE ADVOCATE (Baton Rouge), June 11, 2008, at 1B, available at <http://www.2theadvocate.com/news/19754364.html?showAll=y&c=y> (revealing that, before Hurricane Katrina, nursing homes were left to their discretion when an evacuation was at issue, but, due to subsequent changes in laws and regulations, when there is a mandatory evacuation order, nursing homes must now evacuate).

270. See Hull & Struck, *supra* note 268.

271. Paul Rioux, *New Orleans Nursing Home Avoids Spotlight*, TIMES-PICAYUNE (New Orleans), Aug. 12, 2007, available at 2007 WLNR 15584366.

272. *Id.*

273. See Parker, *supra* note 251.

274. See Hull & Struck, *supra* note 268.

275. See Parker, *supra* note 251.

276. Since the evacuation order did not explicitly exempt nursing homes, one might argue that a criminal violation was committed. See *supra* note 269.

*B. Orleans Parish Looting Cases*²⁷⁷

*1. State v. Lopez*²⁷⁸

Approximately six months after Hurricane Katrina struck, Mr. Lopez and Mr. Hernandez were found inside of a home destroyed by Hurricane Katrina.²⁷⁹ No items were found on the person of either defendant, but a coin purse and a bottle of perfume was found to have been moved from the second story to the bottom floor of the home.²⁸⁰ Both men were charged with looting during a state of emergency.²⁸¹ Following a bench trial, the pair was found guilty.²⁸² They were sentenced to *three years* at hard labor.²⁸³

Besides the sentence, there are two confounding aspects of this case. First, neither defendant was caught in direct possession of the items at issue, nor was there any constructive possession, one might reasonably argue.²⁸⁴ Second, these defendants were charged with looting *during a state of emergency*, a crime carrying harsher penalties than mere looting.²⁸⁵ The offense happened an entire six months after

277. Because sentences for habitual offenders punish conduct greater than the offense at issue, cases involving habitual offenders were not included in the sampling of cases involving “group B” members. Thus, all sentences discussed in this section were imposed for Katrina-related acts only.

278. *State v. Lopez*, 07-0701 (La. App. 4 Cir. 11/07/07); 971 So. 2d 416 (affirming the sentence).

279. *See id.* at p.1-2; 971 So. 2d at 417-18.

280. *See id.* at p.6; 971 So. 2d at 420.

281. *Id.* at p.1; 971 So. 2d at 417.

282. *Id.* at p.1; 971 So. 2d at 417.

283. *Id.* at p.1; 971 So. 2d at 417.

284. *See id.* at p.6; 971 So. 2d at 420.

285. The looting statute provides for enhanced penalties for looting when the governor or chief executive officer of the parish declares a state of emergency. LA. REV. STAT. ANN. § 14:62.5 (2007). It reads:

A. Looting is the intentional entry by a person without authorization into any dwelling or other structure belonging to another and used in whole or in part as a home or place of abode by a person, or any structure belonging to another and used in whole or in part as a place of business, or any vehicle, watercraft, building, plant, establishment, or other structure, movable or immovable, in which normal security of property is not present by virtue of a hurricane, flood, fire, act of God, or force majeure of any kind, or by virtue of a riot, mob, or other human agency, and the obtaining or exerting control over or damaging or removing property of

the actual hurricane.²⁸⁶ Given the gravity of the recovery effort, it is certain normalcy had not yet resumed, but it takes a stretch to conceive of an emergency lingering this long. Even with the state court system in turmoil, justice was somehow administered and these “group B” members were given their due (and possibly more) under the law.

2. State v. Brown²⁸⁷

More than a year after Hurricane Katrina, police found cut pipes in a school that had been destroyed by Hurricane Katrina.²⁸⁸ The school sat unoccupied and unsecured with no windows or doors since Hurricane Katrina struck.²⁸⁹ The fence was also open and

the owner.

A. Looting is the intentional entry by a person without authorization into any dwelling or other structure belonging to another and used in whole or in part as a home or place of abode by a person, or any structure belonging to another and used in whole or in part as a place of business, or any vehicle, watercraft, building, plant, establishment, or other structure, movable or immovable, in which normal security of property is not present by virtue of a hurricane, flood, fire, act of God, or force majeure of any kind, or by virtue of a riot, mob, or other human agency, and the obtaining or exerting control over or damaging or removing property of the owner.

B. Whoever commits the crime of looting shall be fined not more than ten thousand dollars or imprisoned at hard labor for not more than fifteen years, or both.

C. Whoever commits the crime of looting during the existence of a state of emergency, which has been declared pursuant to law by the governor or the chief executive officer of any parish, may be fined not less than five thousand dollars nor more than ten thousand dollars and shall be imprisoned at hard labor for not less than three years nor more than fifteen years without benefit of probation, parole, or suspension of sentence.

Id.

286. Hurricane Katrina made landfall in late August, 2005. LESSONS LEARNED, *supra* note 13, at 1. The alleged looting in *Lopez* did not occur until February 6, 2006. *Lopez*, 07-0701, at p.2; 971 So. 2d at 417.

287. See *State v. Brown*, 08-0661 (La. App. 4 Cir. 12/17/08); 3 So. 3d 547 (affirming the sentence), *cert. denied*, 18 So.3d 79 (La. 2009).

288. See *id.* at p.1-2; 3 So. 3d at 548-49; see also Application for Writ of Certiorari at 2-3, *Brown*, 08-0661; 3 So. 3d 547 (No. 2008-KA-0661).

289. See *Brown*, at p.7; 3 So. 3d at 551; see also Application for Writ of Certiorari, *supra* note 288, at 2-3.

unsecured.²⁹⁰ The building was awaiting demolition and was in the process of being stripped.²⁹¹ On the day in question, officers found pieces of cut pipe inside the building near a pipe cutter.²⁹² Robert Brown was on the property.²⁹³ He was charged with unauthorized entry of a place of business.²⁹⁴ Following a jury trial, he was sentenced to *three years* at hard labor.²⁹⁵

3. State v. Collier²⁹⁶

Ten months after Hurricane Katrina, Reuben Collier was found inside a home that was destroyed by Hurricane Katrina.²⁹⁷ When police approached him, he was found rummaging through the drawers of an armoire.²⁹⁸ A search of his person revealed a watch and a letter opener.²⁹⁹ He was charged with looting.³⁰⁰ A jury convicted him of attempted looting.³⁰¹ He was sentenced to *four years* at hard labor.³⁰²

Concerning Mr. Brown in *State v. Brown*, if the fence was unsecured and there were no windows or doors, and stripping was in progress, could any number of people have entered the building and cut the pipes and/or left the pipe cutters? If the building was abandoned, was it a place of business? Concerning Mr. Collier in *State v. Collier*, there is an absence of violence and a minimal monetary value attached to the items at issue.³⁰³ The jury felt more compelled to affect justice for the people of New Orleans than they

290. See Application for Writ of Certiorari, *supra* note 288, at 2-3.

291. See *id.*

292. *Brown*, at p.2; 3 So. 3d at 549.

293. See *id.* at p.2; 3 So. 3d at 549.

294. *Id.* at p.1; 3 So. 3d at 548.

295. *Id.* at p.1; 3 So. 3d at 548.

296. *State v. Collier*, 08-0013 (La. App. 4 Cir. 06/16/08); 987 So. 2d 869 (wherein the sentence was affirmed).

297. *Id.* at p.3; 987 So. 2d at 871.

298. *Id.* at p.3; 987 So. 2d at 871.

299. *Id.* at p.3; 987 So. 2d at 871.

300. *Id.* at p.1; 987 So. 2d at 870.

301. *Id.* at p.1; 987 So. 2d at 870.

302. *Id.* at p.1; 987 So. 2d at 870.

303. See generally *State v. Collier*, 08-0013 (La. App. 4 Cir. 06/16/08); 987 So. 2d 869.

did to entertain these concerns. After all, the entire prosecutorial process is intended to ensure impermissible conduct is punished in a civilized society. In this respect, the quest for justice existed.

C. Jefferson Parish Looting Cases

Unlike Orleans Parish, Jefferson Parish prosecutions almost exclusively involve cases brought against members of “group B”³⁰⁴ and almost entirely involve acts that occurred during or immediately after Hurricane Katrina.

1. State v. Harris³⁰⁵

Bryan Harris was an eighteen-year-old high school student when Hurricane Katrina struck.³⁰⁶ In addition to attending school, he worked part-time.³⁰⁷ His parents evacuated to a hotel, leaving him at an apartment to ride the storm out.³⁰⁸ The apartment roof collapsed, so he left.³⁰⁹ On his travels to his aunt’s apartment, he was stopped for suspicion of looting (along with two others) by the Gretna Police Department.³¹⁰ Subsequently, he was charged with looting during a declared state of emergency.³¹¹ Mr. Harris was tried with Phillip Brumfield, his co-defendant.³¹² They were accused of taking the following: twenty-two bags of hair extensions, thirty-one cans of Mad Dog 20/20 alcohol, thirty-four cans of Budweiser beer, and fourteen cartons of King Kool cigarettes.³¹³ A mistrial was declared as to Mr. Brumfield.³¹⁴ Mr. Harris was convicted and sentenced to *five years* at hard labor without the benefit of parole, probation, or suspension of

304. See *supra* notes 117-18 and accompanying text.

305. State v. Harris, 07-0124 (La. App. 5 Cir. 09/25/07); 968 So. 2d 187.

306. *Id.* at p.20; 968 So. 2d at 196.

307. *Id.* at p.20; 968 So. 2d at 196.

308. *Id.* at p.4; 968 So. 2d at 191.

309. *Id.* at p.4; 968 So. 2d at 191.

310. *Id.* at p.4-5; 968 So. 2d at 191.

311. *Id.* at p.2; 968 So. 2d at 190.

312. *Id.* at p.2 n.1; 968 So. 2d at 190 n.1.

313. *Id.* at p.4; 968 So. 2d at 191.

314. *Id.* at p.2 n.1; 968 So. 2d at 190 n.1.

sentence.³¹⁵ Mr. Harris had never before been convicted of a crime.³¹⁶ On appeal, Mr. Harris' sentence was vacated and remanded for resentencing, indicating the sentence was likely excessive.³¹⁷ Upon the court's order, a new sentence of *three years* at hard labor was imposed (credit for time served was given and boot camp was recommended).³¹⁸

A high school student never before convicted of a crime was convicted of taking what might be characterized as recreational items and sentenced to three years of hard labor.³¹⁹ In three years, this student could have nearly completed a college education. Instead, he was housed and fed at the expense of taxpayers. One must wonder if this expense equates to the cost of the items at issue. Who was harmed more by this: the public who will have to confront the Bryan Harris the prison system outputs once the sentence is satisfied; or Bryan Harris himself who will experience life with the tangible and emotional scars a three-year prison sentence assures?

2. State v. Mahogany³²⁰

In Antonio Mahogany's case, an unknown party used a car to create a point of entry into a pawn shop.³²¹ Mr. Mahogany was caught inside the pawn shop.³²² He did not have any stolen property when he was caught.³²³ By way of explanation, he claimed that he was searching for a generator or anything that might be used to help him, his partner, and three children survive the immediate crisis.³²⁴ His partner testified that at the time of his arrest they had no food to feed

315. *Id.* at p.2-3; 968 So. 2d at 190.

316. *Id.* at p.14; 968 So. 2d at 196.

317. *Id.* at p.14-16; 968 So. 2d at 196-97.

318. *See* Trial Order, *Harris*, No. 05-5812, 2007 WL 4470807 (La. Dist. Ct. 2007).

319. *See generally* State v. Harris, 07-0124 (La. App. 5 Cir. 09/25/07); 968 So. 2d 187.

320. State v. Mahogany, 07-0360 (La. App. 5 Cir. 10/30/07); 970 So. 2d 1150 (wherein the sentence was affirmed).

321. *Id.* at p.3; 970 So. 2d at 1152.

322. *See id.* at p.4; 970 So. 2d at 1152.

323. *See id.* at p.4; 970 So. 2d at 1152-53.

324. *Id.* at p.4-5; 970 So. 2d at 1153.

their children and did not have enough gas in their unreliable cars to leave the area.³²⁵ After a bench trial, it was concluded that Mr. Mahogany acted with criminal intent.³²⁶ He was found guilty of unauthorized entry into a place of business.³²⁷ A sentence of *two years* at hard labor was imposed.³²⁸

3. State v. Browning³²⁹

In John Browning's case, a hole creating the only point of entry was made on the side of a locked and closed audio-video store by an unknown person.³³⁰ Approximately two weeks after the hurricane, police responded to a looting call and testified that they found Mr. Browning hiding in the corner of the store.³³¹ He was the only person found there.³³² Sitting neatly away from him was one unpackaged forty-two-inch flat screen television on the top of a pile of debris.³³³ The other televisions were packaged and on shelves in a storage room.³³⁴ Mr. Browning was charged with looting,³³⁵ though no one witnessed him even touching the unpackaged television.³³⁶ The business owner testified that the business had not been opened from the time of the hurricane until the date of Mr. Browning's arrest.³³⁷ He further testified that it was possible that unauthorized persons could have gained entry into the building between the storm and Mr. Browning's arrest.³³⁸ A jury convicted Mr. Browning of attempted

325. *Id.*

326. *See id.* at p.2; 970 So. 2d at 1152.

327. *Id.* at p.2; 970 So. 2d at 1152.

328. *Id.* at p.2; 970 So. 2d at 1152.

329. *State v. Browning*, 06-0929 (La. App. 5 Cir. 04/11/07); 956 So. 2d 65 (affirming the sentence).

330. *Id.* at p.3; 956 So. 2d at 68.

331. *Id.* at p.3; 956 So. 2d at 68.

332. *Id.* at p.3; 956 So. 2d at 68-69.

333. *Id.* at p.3; 956 So. 2d at 68.

334. *Id.* at p.3; 956 So. 2d at 68.

335. *Id.* at p.2; 956 So. 2d at 68.

336. *Id.* at p.4; 956 So. 2d at 69.

337. *See id.* at p.4; 956 So. 2d at 69.

338. *Id.* at p.4; 956 So. 2d at 69.

looting after a declared state of emergency.³³⁹ He was sentenced to *two years* at hard labor and was ordered to pay restitution in the amount of \$2500.³⁴⁰

In *State v. Mahogany*, a person seemingly on a manhunt for survival items was convicted, though he retrieved no items.³⁴¹ In *State v. Browning*, with less than proof of possession and without the accused actually taking anything, a conviction was also obtained.³⁴² Why, in the larger scheme of things, with so little at issue, was justice effected for these “group B” members, and why, in the case of the “group A” members, with so much at stake, was the same or similar outcome not achieved? Do the sentences of these “group B” members balance the scales when the harm to society is placed on the opposite side?

4. *State v. Maten*

Merlene Maten, a seventy-three-year-old diabetic woman, evacuated New Orleans and chose to seek shelter at a hotel in Kenner, Louisiana with her eighty-year-old husband.³⁴³ Mrs. Maten reports going to the trunk of her car to retrieve clothing and food the day after the hurricane.³⁴⁴ The police, believing she had taken \$63.50 worth of beer and sausage from a deli that had been looted, arrested her.³⁴⁵ The deli was a block away from her car.³⁴⁶ They refused her request to notify her husband, who was upstairs in the hotel, of her arrest and detention.³⁴⁷ Mrs. Maten had never before been convicted of a crime.³⁴⁸ Her bail was set at \$50,000.³⁴⁹ She remained in prison for

339. *Id.* at p.2; 956 So. 2d at 68.

340. *Id.* at p.3; 956 So. 2d at 68.

341. *See generally* *State v. Mahogany*, 07-0360 (La. App. 5 Cir. 10/30/07); 970 So. 2d 1150.

342. *See generally* *State v. Browning*, 06-0929 (La. App. 5 Cir. 04/11/07); 956 So. 2d 65.

343. *See Granny Accused of Looting Freed*, FOXNEWS.COM, Sept. 16, 2005, <http://www.foxnews.com/story/0,2933,169610,00.html>.

344. *Id.*

345. *Id.*

346. *Id.*

347. *See id.*

348. *See id.*

approximately sixteen days.³⁵⁰ After the national media reported the story, the looting charges were dropped.³⁵¹

The defense of necessity has long been recognized in the annals of American jurisprudence.³⁵² One must wonder, if a taking did occur, why was this legal consideration ignored? One must also ponder whether dropped charges eliminate the effects of the actual arrest or the lasting anxiety and trauma an elderly woman experiences when she is impulsively forced to abandon her life-partner in the midst of a crisis. When there is an arrest on one side of the scale and dropped

349. *Id.*

350. See Sean Alfano, *73 Year Old Locked Up Over Two Weeks for Allegedly Stealing from Deli*, CBSNEWS.COM, Sept. 17, 2005, <http://www.cbsnews.com/stories/2005/09/17/katrina/main856304.shtml>.

351. See *Woman, 73, Won't Face Looting Count from Katrina*, ARIZONA DAILY STAR, Jan. 14, 2006, <http://www.azstarnet.com/sn/printDS/111327> (last visited July 17, 2009).

352. See Lundy Langston, *Why Hurricane Katrina's So-Called Looters Were Not Lawless: They Are Entitled to the Well-Established Defense of Necessity*, FINDLAW.COM, Sept. 13, 2005, http://writ.news.findlaw.com/commentary/20050913_langston.html. The defense of necessity has been explained and analytically applied to the looting cases of Hurricane Katrina accordingly:

Yes, some victims of Hurricane Katrina stole. It was not their property and it was a crime: theft. But necessity is a defense. Of course, there are certain restrictions. You cannot kill another person and invoke the defense of necessity - no matter what the circumstances might be. But you may commit burglary or theft to protect yourself from death or serious bodily harm. There are limitations on the defense, however: There has to be an immediate threat of death or serious bodily harm. That threat has to be caused by nature, not man-made (and especially, not created by the individual invoking the defense). There can be no reasonable alternative means to prevent the impending threat, other than the theft. And finally, the individual is only permitted to do what is needed to ward off the impending threat; the necessity of stealing bread or baby food is not a license to steal books and magazines, too. (Sometimes, the defense of necessity is confused with the argument that a crime was justified because it was done in self-defense. But they are separate. As noted above, necessity cannot justify what would otherwise be murder, but self-defense can. Still, the defense is only available to an individual who fears his or her life is endangered - that is, one who faces a threat of death or serious bodily harm. In addition, if one is threatened with harm that does not rise to the level of a threat of death or serious bodily harm, the doctrine of self-defense still permits one to use reasonable means to defend oneself.)

Id.

charges on the other side of the scale, is the scale balanced?

In *State v. McGee*, Deborah McGee was convicted of looting a convenience store.³⁵³ Her crime involved the taking of two bottles of Heineken beer and nine other bottles of alcohol.³⁵⁴ Following a bench trial, she was found guilty and sentenced to *three years* at hard labor without the benefit of probation, parole, or suspension of sentence.³⁵⁵

In *State v. Jones*, Allen Jones, Jimmy Carter, and Corey Cheateam were arrested for looting after being observed leaving a clothing store with backpacks during the state of emergency.³⁵⁶ Inside the three backpacks were twenty-six items, including tee shirts, shirts, and a pair of tennis shoes.³⁵⁷ The total value of all twenty-six items was \$368.00.³⁵⁸ A single jury tried the three men jointly, returning a verdict of guilty as to all three.³⁵⁹ Allen Jones was sentenced to *eight years* at hard labor.³⁶⁰

353. *State v. McGee*, 07-0130 (La. App. 5 Cir. 06/26/07); 963 So. 2d 449 (affirming the sentence).

354. *Id.* at p.3; 963 So. 2d at 451.

355. *Id.* at p.2; 963 So. 2d at 450.

356. *See State v. Jones*, 07-0271, p.4-5 (La. App. 5 Cir. 10/30/07); 970 So. 2d 1143, 1146. Separate appeals for each defendant were filed. *Id.* at p.3 n.2; 970 So. 2d at 1145 n.3. On appeal, Allen Jones' eight-year conviction was affirmed. *Id.* at p.2; 970 So. 2d at 1145. The remaining two defendants were sentenced as habitual offenders. *See State v. Carter*, 07-0270 (La. App. 5 Cir. 12/27/07); 976 So. 2d 196; *see also State v. Cheateam*, 07-0272 (La. App. 5 Cir. 05/27/08); 986 So. 2d 738. Jimmy Carter's habitual offender sentence of eighteen years was found not to be unconstitutionally excessive. *See State v. Carter*, 07-0270 (La. App. 5 Cir. 12/27/07); 976 So. 2d 196. As to Corey Cheateam, a twenty-eight-year habitual-offender sentence was imposed. *See State v. Cheateam*, 07-0272 (La. App. 5 Cir. 05/27/08); 986 So. 2d 738. Due to deficiencies in the transcript, the conviction was reversed (on procedural grounds, not on the issue of the actual conviction) and the case was remanded for a new trial. *See id.* at p.2; 986 So. 2d at 739. As to Mr. Cheateam's assignment of error concerning the evidence of looting, the court indicated it lacked merit (suggesting further review would not change the conviction). *See id.* at p.27-28; 986 So. 2d at 755. Because enhanced sentencing punishes behavior beyond that committed during the state of emergency, the sentences of Jimmy Carter and Corey Cheateam have not been included in the larger discussion.

357. *State v. Jones*, 07-0271, at p.5; 970 So. 2d at 1146.

358. *Id.* at p.5; 970 So. 2d at 1146.

359. *Id.* at p.2; 970 So. 2d at 1145.

360. *Id.* at p.2; 970 So. 2d at 1145.

In *State v. Pearson*,³⁶¹ Paul Pearson, Rhonda McGowan, and Coralnell Little were together during the state of emergency.³⁶² On September 4, 2005, the three were caught inside a grocery store in possession of twenty-seven bottles of wine, seven cases of beer, and four carriers of wine coolers.³⁶³ They claimed to have gone there to get food, poison ivy medicine, and insulin for Mr. Pearson's mother.³⁶⁴ Insulin was found in Mr. Pearson's possession at the time of their arrest.³⁶⁵ A jury convicted each of the three of looting during a declared state of emergency.³⁶⁶ They were each sentenced to *fifteen years* at hard labor without the benefit of parole, probation, or suspension of sentence.³⁶⁷ None of the three had a criminal record.³⁶⁸ They jointly appealed.³⁶⁹ Ms. Little's sentence was vacated for procedural reasons.³⁷⁰ Mr. Pearson and Ms. McGowan's sentences were deemed excessive, and their cases were remanded for resentencing.³⁷¹ At resentencing, a sentence of *three years* at hard labor was handed down to each defendant.

In the above three referenced cases, convictions for survival or recreational items were at issue.³⁷² None of the cases involved great harm to society at large (by monetary measures).³⁷³ In all, actual prison time was imposed.³⁷⁴ The fact that a fifteen-year sentence could ever be imposed for this type of conduct shocks the conscience. A lesser sentence of three years, under these facts, does little less when contrasted with the severity of the group "A" offenses and the absence of punishment therein. Because justice requires a balancing of the

361. *State v. Pearson*, 07-0332 (La. App. 5 Cir. 12/27/07); 975 So. 2d 646.

362. *Id.* at p.3-4; 975 So. 2d at 649.

363. *Id.* at p.3-4; 975 So. 2d at 649.

364. *Id.* at p.4-5; 975 So. 2d at 649-50.

365. *Id.* at p.5; 975 So. 2d at 650.

366. *Id.* at p.3; 975 So. 2d at 649.

367. *Id.* at p.3; 975 So. 2d at 649.

368. *Id.* at p.14; 975 So. 2d at 655.

369. *Id.* at p.3 n.1; 975 So. 2d at 649 n.1.

370. *Id.* at p.18; 975 So. 2d at 657.

371. *Id.* at p.18; 975 So. 2d at 657.

372. *See supra* notes 313, 315, 324, 327, 335-42 and accompanying text.

373. *See supra* notes 313, 323-24, 333-34, 341-42 and accompanying text.

374. *See supra* notes 318, 328, 340 and accompanying text.

scales, we must compare the harm to society with the sentence imposed. Only if the two accord is there justice.

5. State v. Falkins³⁷⁵

Larry Falkins was found to have engaged in a shoot-out with police officers on September 1, 2005, one day following Hurricane Katrina.³⁷⁶ He was convicted of attempted murder of a police officer and sentenced to *forty years* at hard labor.³⁷⁷

To society, law enforcement serves one of its most vital needs. Without argument, unprovoked attacks upon law enforcement should be punished and punished in a meaningful way. Thus, few would question the sentence imposed or ask if justice was delivered in this instance. Given the fact that many police abandoned their posts during the hurricane, and given the enormous need for calm after the hurricane, one willing to shoot at a police officer at this time and in this circumstance would be said to have been given his due with a forty-year prison sentence. However, silently contained in this case summary is an opportunity to contrast the outcomes of the two cases involving “group A” members (police) accused of actually shooting and/or shooting at innocent citizens.³⁷⁸ The punishment imposed on Mr. Falkins only seems just when viewed in isolation. When this “group B” member’s deeds (*attempted* murder) are contrasted with a worse criminal act (*actual* murder) committed by members of “group A,” the outcome may no longer seem just. An application of the meaning of justice suggests cause for concern is warranted.

VII. ANALYSIS: WHAT NATIONAL LESSONS EXIST? IS THE BRIDGE A CONNECTOR OR DIVIDER?

The justice systems in Orleans and Jefferson Parishes yielded radically different results. In the Jefferson Parish cases, less damage to the city resulted in a swifter judicial response.³⁷⁹ Criminal charges

375. State v. Falkins, 08-0745 (La. App. 5 Cir. 01/27/09); 9 So. 3d 190 (affirming the conviction).

376. *Id.* at p.2-3; 9 So. 3d at 191.

377. *Id.* at p.2; 9 So. 3d at 191.

378. See discussion *supra* Parts VI.A.1, VI.A.4.

379. The Jefferson Parish judicial system was far less impacted than the

were imposed more quickly after the disaster, and cases were disposed of promptly.³⁸⁰ When sentences were imposed, they were largely consistent, and consistently not merciful.³⁸¹ Perhaps these things served as deterrents and ultimately reduced lawlessness in Jefferson Parish. Maybe sentences were consistent because the victims were arguably of the same class, that being the class of Jefferson Parish residents, and the defendants were all members of the same class (“group B”), that being lay persons who were thought to have taken things that were not theirs to take. Another noteworthy observation involves the fact that the Jefferson Parish “group B” members committed acts that would always be outlawed, whether there was a disaster or not. Of note, taking is an act the consensus agrees is not permissible in civilized society. Perhaps this made convicting less of a challenge.

In Orleans Parish, there was massive damage to the judicial system.³⁸² As a result, there was a long delay between prosecution and

Orleans Parish judicial system. *See, e.g.*, Amended Closure Order, 24th Judicial District Court (Sept. 15, 2005), <http://www.jpclerkofcourt.us/ClosureOrders/AMENDED24thOrder.pdf> (decreeing the October 11, 2005 reopening of the district court in Jefferson Parish, approximately six weeks after the hurricane hit). Given its smaller size and its larger working class population, recovery in Jefferson Parish was somewhat swifter than in New Orleans. *See id.*

380. *See* discussion *supra* Part VI.C.

381. *See* discussion *supra* Part VI.C.

382. In New Orleans, courts and judicial functions were washed away, both literally and figuratively. Every aspect of the judicial system was touched by Katrina’s waters. The Louisiana Supreme Court building was uninhabitable for approximately three months. *See* Press Release, Louisiana Supreme Court, Louisiana Supreme Court Returns to French Quarters Address (Nov. 23, 2005), available at http://www.lasc.org/press_room/press_releases/2005/2005-16.asp. The Orleans Parish Criminal District Court was flooded and, as a result, closed for nine months. *See* CATERINA GOUVIS ROMAN, ET AL., URBAN INST. JUSTICE POLICY CTR., AFTER KATRINA: WASHED AWAY? JUSTICE IN NEW ORLEANS 5 (2007), available at http://www.urban.org/UploadedPDF/411530_washed_away.pdf. Records, evidence, and mechanical equipment were stored on the ground level and, because of the floodwaters, were damaged. Mary Boland, *Will Your Criminal Justice System Function in the Next Disaster?*, 2007 A.B.A. SEC. CRIM. JUST. REP. 28-29, available at <http://www.abanet.org/crimjust/cjmag/22-1/Boland.pdf>. “It was nine months before the first state criminal trial could be physically held in New Orleans, and more than a year before all sections of the criminal court were operational.” *Id.* at 29. Not only were court employees displaced, so were victims and witnesses. *See id.* at 28. It was almost a year after the hurricane struck before a system for contacting

sentencing.³⁸³ Maybe this contributed to the continued lawlessness in this jurisdiction. Another distinction between the parishes involves the fact that, in Orleans Parish, there was more variety amongst the categories of defendants. Cases involved both “group A” members and “group B” members, thereby involuntarily interjecting a class component to this conversation.³⁸⁴ Also, in Orleans Parish, there was no clear line of demarcation between the victims and the criminal

and subpoenaing displaced police officers (many needed as witnesses) was implemented. See Susan Saulny, *New Orleans Details Steps to Repair its Legal System*, N.Y. TIMES, Aug. 8, 2006, at A12, available at 2006 WLNR 13663874. Because of this, court functions, once business resumed, were still very compromised. See *id.* When the criminal court reopened, it was charged with the task of deciphering who was in custody, and once known, finding the location of that particular inmate and deciding who should remain in custody and who should be set free. See Peter Whoriskey, *In New Orleans, Justice on Trial*, WASH. POST, April 15, 2006, at A1, available at http://www.washingtonpost.com/wp-dyn/content/article/2006/04/14/AR2006041401657_pf.html.

Despite its best efforts, the process had its shortcomings:

[There were] indigent defendants who were arrested on misdemeanor charges just before or after Hurricane Katrina hit They often lack attorneys and their cases get “lost” in the system . . . leaving the accused to serve weeks or months of extra incarceration. Around the courthouse, it’s known as “doing Katrina time.” . . . [S]ome defendants have been kept in jail even after charges were dropped. Others have been kept in jail awaiting trial longer than the maximum possible sentence, and still others were being held in jail after being sentenced to a boot camp that is no longer in operation. . . . [In March 2006, court staff] discovered that a woman charged on Aug. 25 [2005] with prostitution was still in jail – having served seven months awaiting trial on a charge for which the maximum sentence is six months. She was released. . . . Another defendant, Greg Davis, 50, was held in prison from before Katrina until [March, 2006] for failing to pay \$448 in court fines, which stemmed from a misdemeanor drug paraphernalia charge, according to court records. . . . He had been picked up on a burglary charges, but although those were soon dropped, he stayed in jail because of the fines.

Id. Calvin Johnson, former chief judge at the Orleans Parish Criminal District Court, described the rebuilding process as “a funeral that never ends.” See Videotape: Katrina and the Courts (Orleans Parish Criminal Court 2006) (on file with the Orleans Parish Criminal Court). He elaborated: “We have experienced something that no other justice system in the history of this country has had to endure. We have had to reinvent the criminal justice system in the sense of how we operate—we have had to change fundamentally how we operate.” *Id.*

383. See discussion *supra* Part VI.A-B.

384. See discussion *supra* Part VI.A-B.

actors.³⁸⁵ Victims and defendants represented all classes and ethnicities.³⁸⁶ Further complicating the discussion is that the crimes were not all crimes that clearly crossed the bounds of permissible behaviors on an ordinary day. For example, on an ordinary day, a doctor administering medicine that led to death always invites civil remedies, but does not necessarily solicit criminal action.³⁸⁷ On a normal day, a bad judgment on the part of a government official or corporate head would not result in criminal charges.³⁸⁸ Further, the timing of the crimes very likely engendered a more intense emotional reaction. For example, taking alcohol, or hair extensions, or cigarettes, or televisions under normal societal conditions does not warrant the masses to feel violated in the same way it does when the same occurs simultaneously with an entire region losing possessions, control of its affairs, and existence. Perhaps this offers a window into the outcomes.

Looting is an offense that robs citizens of their security and possessions. The harm is inflamed by the fact that a looter's actions occur when people are vulnerable. As a deterrent, and because the conduct is despicable, looters should be punished and punished aggressively. In no way does this article intend to convey sympathy for looters or ingratitude toward law enforcement and the judicial system for their work in securing the looting convictions that were rightfully obtained. This commentary does not take aim at the fact that looters were brought to justice. Rather, it questions the quest for justice that results in certain citizens being prosecuted and convicted, and other citizens who are often guilty of offenses that are far more injurious to society not receiving the same or similar treatment. Of special note are the doctors, clergy, police, homeowners, and proprietors whose actions and inactions seemingly were judged by *circumstances* and not at face value or according to the letter of the law. This work also questions how and why these outcomes have not been contested by society at large. Perhaps our societal willingness to presume innocence on the part of certain citizens and to presume guilt on the part of others contributed to the disparity. One must wonder if

385. See discussion *supra* Part VI.A-B.

386. See discussion *supra* Part VI.A-B.

387. See discussion *supra* Part VI.A.2.

388. See discussion *supra* Part VI.A.1, VI.A.3-6.

social perceptions of crime and criminals have been subconsciously limited by the images and reports parlayed by the media, such that society has become collectively more willing to punish what it sees as bad behavior on the part of convictable citizens. Because the conduct of the “group A” members was never marketed to the public as punishable conduct, there may have been a psychological resistance to seeing those behaviors for what they actually were. Thus, a charge to embrace a more expansive definition of justice might very well be warranted. It has been explained:

Katrina’s harms are multitudinous and broad. In order for [a number of the Katrina] offenses to be treated as crimes, we have to reimagine what justice means. In the long run, the failure to engage a broader vision of justice leaves in place a one-dimensional and static view of what constitutes harm in our society, and this limits the ways in which these harms can be redressed. Have we accepted a justice system that focuses almost exclusively on street crime? In this fog, other wrongs involving serious harms routinely go unnoticed and unpunished Katrina offers . . . hope in the form of an object lesson. It . . . exhorts us to adopt new meanings and expectations for crime and justice. Ultimately Katrina commands us to believe our lying eyes and to do something about what we see.³⁸⁹

Within these speculations lie insights that could lead to more balanced outcomes following future disasters. It seems the Crescent City Connection Bridge served as neither a connector nor a divider, but more of a passageway between these two jurisdictions, a mere corridor between venues. Present in this bridge, in effect, are two close but rebelling forces. As a symbol of all bridges, roadways, and highways across this country, of each and every means by which one jurisdiction connects to the next, the bridge warns that a small divide can lead to a national divide. The bridge reminds us ethnicity and class can be used to divide, but should be used to connect. Justice

389. Katheryn Russell-Brown, *While Visions of Deviance Danced in Their Heads*, in *AFTER THE STORM* 121 (David Dante Troutt ed., 2006).

demands nothing less.

CONCLUSION

Water, in the public domain, exists in different forms: swamp, beach, river, lake, fall, or flood. No matter the visual differences, at the core, the same unifying factor is present. Such is the case with post-disaster justice. Whether it be a terrorist attack, a national disaster, or a natural disaster, the study of post-Katrina justice is fertile ground for disaster planning for all states and nations. Though each disaster is different, at the core lies the same obstruction: an unwelcomed interruption of normalcy. The local outcomes discussed are not exclusive and limited to Louisiana and/or the parishes discussed; the lessons and insights apply nationally and globally.

What has been exposed is varying judicial initiatives and radically different outcomes in Orleans and Jefferson Parishes. Perhaps, on an individual basis, one might appreciate a particular case disposition. However, when viewed in concert, the collective disparities boggle the rational mind. Maybe racism is to blame. As one scholar observed: "The dominance of race as a variable in any discussion of Katrina is an irresistible force."³⁹⁰ It has even been said that "[r]ace is a part of every single decision made along the Gulf Coast."³⁹¹ But if racism was the culprit, how does one explain African American leadership neglecting an African American electorate, or African American caregivers abandoning African American patients, or African American officers injuring African American victims, or African American defendants preying upon other African Americans?

Could the disparities be the result of class distinctions? After all, it is true that members of "group A," who stood accused and suspected of major crimes that effected and impacted society in unbounded proportions, escaped the wrath experienced by members of "group B," whose offenses were mostly nonviolent and had a limited impact on

390. Alfreda A. Sellers Diamond, *Black, White, Brown, Green, and Fordice: The Flavor of Higher Education in Louisiana and Mississippi*, 5 HASTINGS RACE & POV. L.J. 57, 58 (2008).

391. *Live Talk Web Exclusive: Katrina and Public-Service Law* (Newsweek web broadcast Aug. 29, 2007) (quoting Bill Quigley, director of the Law Clinic and the Gillis Long Poverty Law Center at Loyola University New Orleans), <http://www.newsweek.com/id/39620/output/print>.

society at large.³⁹²

Preceded by birth's gushing waters, justice arrived in this world to be an equalizer and neutralizer on all days, on all occasions, through all times, and for all people. So says the Constitution: we own justice equally, not one group more or less than another. Disaster or not, justice cannot be aborted, and we cannot surrender our parental rights.

[I]f we are ever going to be a civilized city, or country, we are going to have to begin to work as hard for the weakest and most maligned among us as we do for the strongest and most sympathetic. If we don't, any of us could one day face the consequences.³⁹³

Near or far from the issue, we must stay connected and not become passersby. After all, the Crescent City Connection Bridge has demonstrated how it is possible to be close but far, connected yet not attached. "The law is not the private property of lawyers, nor is justice the exclusive province of judges and juries. In the final analysis, true justice is not a matter of courts and law books, but of a commitment in each of us to liberty and to mutual respect."³⁹⁴ Hurricane Katrina's troubled waters have washed ashore a collective lack of commitment to the virtues justice offers. At present is a great opportunity to renew our collective commitments.

"Indeed I tremble for my country when I reflect that God is just; that his justice cannot sleep forever . . ." ³⁹⁵ Now or later, through personal commitment, a disaster or spiritual wrath, this nation must pay homage to the sacred birth of justice. We must ensure its presence and administer it consistently and equally, no matter the circumstance. If we do not, we are guilty of birthing the next disaster instead of preventing it.

392. See discussion *supra* Part VI.

393. Billy Sothern, *Left to Die*, THE NATION, Jan. 2, 2006, <http://www.thenation.com/doc/20060102/sothern>.

394. National Law Day, Proclamation No. 4565, 3 C.F.R. 22 (Apr. 25, 1978), available at <http://www.loc.gov/law/help/commemorative-observations/law-day.php>.

395. Thomas Jefferson, NOTES ON THE STATE OF VIRGINIA 174-75 (Richmond, J.W. Randolph 1853).

