

# THE CIP REPORT

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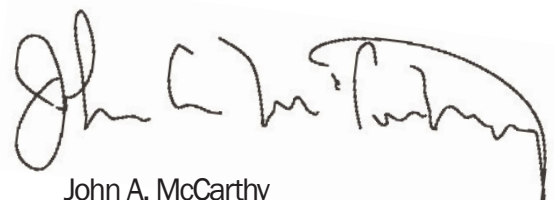
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On November 29<sup>th</sup>, 2005, the CIP Program hosted our 6<sup>th</sup> in a series of Critical Conversations, events targeted towards specific issues paramount to national security and the protection of our critical infrastructures, such as America's vulnerability to a major cyber terrorist attack; the balancing act between the free-flow of commerce against ever-tightening security of U.S. ports; the role of government and industry in the nation's homeland security; and the state of America's power industry and homeland security. This 6<sup>th</sup> Critical Conversation, *After the Storms: Repairing the Damage*, specifically addressed the response issues uncovered in the aftermath of Hurricanes Katrina and Rita in the Gulf Coast region. Moderated by Frank Sesno, a CIP Program Senior Fellow, this event was held at the National Press Club in Washington, D.C. and was well attended by leaders within government, industry, academe and the media.

In the wake of these destructive natural disasters, and as the U.S. government continues to fend off criticism for what many believe to be a failed relief effort on local, state and national levels, former FEMA Director James Lee Witt and Sesno discussed lessons learned in the aftermath of the hurricanes, and whether the government and private sectors are now better prepared. Following this one-on-one discussion, Witt was then joined by Dennis Barbour, Mayor of Carolina Beach, N.C.; J. Michael Hickey, Vice President, Government Affairs for National Security Policy, Verizon; and Catherine A. Allen, CEO, BITS/Financial Service Roundtable for an open discussion on disaster preparedness and response. Following the discussion, Witt and the panelists responded to questions from the press and audience.

Included within this issue of *The CIP Report* are segments from this Critical Conversation, highlighting not only key issues raised in discussion, but capturing the insights provided by all of the panel participants and James Lee Witt. In addition to these segments, we also include a brief overview of the Patriot Act, with several provisions set to expire this month, and highlight two recent events, a panel discussion on the continuity of the Supreme Court and a discussion of cyber security investment in the private sector in cooperation with the I3P, both hosted by the CIP Program. A full transcript of not only this Critical Conversation event, but all past Critical Conversations will soon be available on the CIP Program website, [cipp.gmu.edu](http://cipp.gmu.edu).



John A. McCarthy  
Director, Critical Infrastructure Protection Program  
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School of Law  
CRITICAL INFRASTRUCTURE  
PROTECTION PROGRAM

# After the Storms: Repairing the Damage

*A Critical Conversation featuring former FEMA Director James Lee Witt*

The CIP Program hosted the sixth in a series of Critical Conversations on November 29, 2005, featuring a dialogue between Senior CIP Fellow Frank Sesno and former FEMA Director James Lee Witt. The following is an excerpt from the event, including segments from each of the panelists.

**SESNO:** If you were to take all of your impressions (of the hurricane recovery effort) and distill them onto a bumper sticker, what would that bumper sticker say?

**WITT:** “Unacceptable.” It’s easy to be an armchair quarterback, but I look at the eight years I was at FEMA and I look at the unbelievable hard work, and the dedication of FEMA career employees. It was just incredible. They were so dedicated and they cared about what they did.

And when you demoralize a federal agency in the way it is now and you take the heart of that agency out, it’s very difficult for them, particularly not having the kind of leadership they needed, to be able to respond in a way that’s going to work with state and local government.

**SESNO:** So you’ve blamed FEMA exclusively for this?

**WITT:** No, I don’t. I think there’s enough blame to go around

everywhere, at the local, state, and national levels. But a lot of this is reaching out and working with state and local government. And I think that was minimized by taking so much out of FEMA and putting it in homeland security.

**SESNO:** I don’t want to spend our entire time on FEMA, homeland security, and government processes, but would you make a distinction between the structural changes that led to what you think is now this demoralized agency and the leadership at the top?

I was talking with Mayor Dennis Barbour, who will join us here later. You can have an agency that is well run, an agency that is poorly run, not change the organizational structure at all and have two totally different outcomes.

So, how much of this is due to the person at the top, Michael Brown or anybody else, and how much of this is due to the reorganization as a result of DHS?

**WITT:** I think a high percentage

of it was the reorganization.

**SESNO:** You blame the reorganization?

**WITT:** Primarily. Simply for the fact when we had 9/11 in New York City, FEMA was still intact and still was the agency that had the capability to respond to that, and they did a really good job.

After 9/11 they talked about creating the Department of Homeland Security, which is really critical and important, don’t get me wrong. We need it. But I met with the White House and they asked me what my thoughts were. And I (Continued, Page 3)



**Critical Conversation** (Cont. from Page 2) said "Look, take the INS, border patrol, the Coast Guard, and the intelligence gathering and analysis, and build that as the foundation the first year. Make it functional for the President and the country. That's what he needs and that's what the country needs. Don't combine 22 federal agencies, 180,000 employees, under one cabinet sector because it will be 10 years before it's functional."

Well, they took training and exercise out of FEMA. They took the National Fire Administration and put it under the Department of Homeland Security. They took all the grant programs and put them under the Department of Homeland Security. And basically all FEMA had left was the National Flood Insurance Program, response and recovery.

Now then, you cannot maintain and build capability and capacity when you do not have the expertise and the leaders and the funding and the people within that agency. They took 400 positions out of the agency and put it under homeland security.

**SESNO:** Well, here's what they say. What they say is they're going to create a preparedness directorate. And FEMA should focus on its traditional core responsibilities of response and recovery because, in an all-hazards environment, you need preparedness to cut across the many agencies and not duplicate and be able to focus it that way.

**WITT:** Well, you know, it was interesting. We had training, exercise, planning and preparedness in one division.

**SESNO:** But there wasn't DHS at the time.

**WITT:** Yes, but they separated all those and put it under DHS. And the thing is, they took one of the best programs that you could possibly have, which we need, a mitigation and prevention program, and minimized it.

You know, if you can work with state and local governments identifying the risk and work together to minimize the risk, you're going to save money, you're going to save lives.

**SESNO:** Well, now, what about state and local governments? I know this is going to be an awkward question for you because you're still consulting, you're still working for the state of Louisiana so you may not, you know, fire away here.

**WITT:** Oh, I'll fire away anyway I think I need to.

**SESNO:** Oh good. OK. There was ample criticism of state and local authorities who weren't communicating, weren't coordinating, and were quick to blame the feds, but our understanding is that the first line of disaster

response lies with local authorities.

**WITT:** And that's true. It is.

**SESNO:** And local authorities dropped the ball?

**WITT:** Well, think about this. In Louisiana, they evacuated 1.3 million people, which, in Louisiana, is an incredible job. They survived the hurricane. The governor actually had the National Guard – when the hurricane came through.

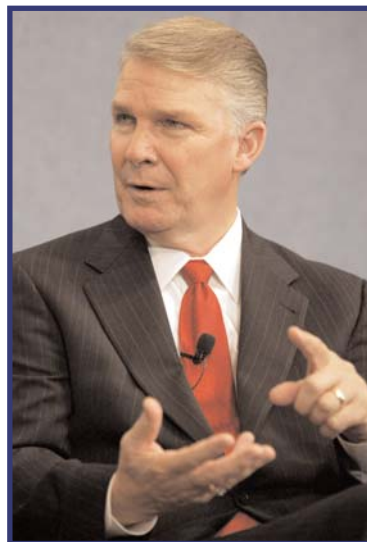
And then when the levies broke and the flood water started coming in, what happened was the communications broke down because the communication systems at state and local government broke down. They did not have any way of even communicating.

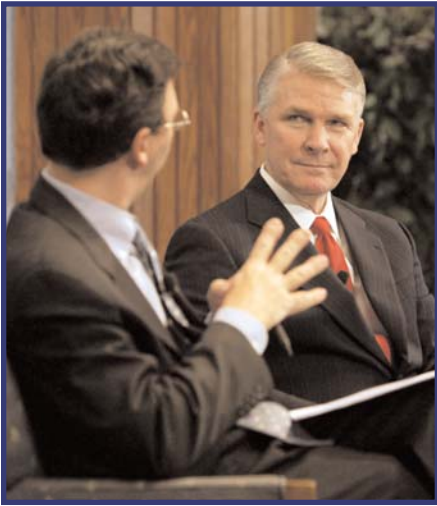
**SESNO:** That's why the buses were sitting there? That's why the police were...

**WITT:** Well, I can't answer why the buses sat. I can tell you what the governor did, though. The governor requested 500 buses through FEMA.

**SESNO:** It was FEMA's job to supply the buses?

**WITT:** Yes. Yes. A governor requests a resource to be able to help when they do not have the capability to do it. That's what the government's role and responsibility (Continued, Page 4)





**Critical Conversation** (Cont. from Page 3) is, to supplement those resources – ask for 500 buses to evacuate those people out of New Orleans and the areas that did not have a way to evacuate. They were told that the buses were on the way. The buses never came.

There's a lot of finger-pointing from everyone. And I told the governor, "Governor, the most important thing that you need to do now is to go back and do a day-by-day action report. Look at this report and what happened, why it happened, and what needs to be fixed and fix it before something else happens."

And the federal government needs to be sent that.

**SESNO:** So let me ask you about that. I have some colleagues here – Todd La Porte is one and Phil Auerswald is back over there, who have been working on some research and looking into public opinion.

This was their survey for George Mason University and for the CIP Program, taken before Katrina.

They found nationally that nearly two-thirds expressed confidence in their local law enforcement. This was before Katrina.

Forty-five percent expressed confidence in FEMA, and thirty-three percent in DHS to do their jobs properly, given a disaster. Now Katrina surely shook confidence further.

I'll ask you two questions. What do you think the impact of Katrina has been on state, local and federal agencies? And how do they go about repairing the damage?

**WITT:** Well, first of all, I think the impact on state and local public safety agencies across the country and what's happened to FEMA in emergency management, I hope, has had a tremendous impact. The relationships are not there like they used to be. The coordination and working together is not there.

**SESNO:** And that's been revealed?

**WITT:** The National Emergency Management Association has come out with a white paper stating their concerns...

**SESNO:** Do you think the public is aware of that?

**WITT:** No, I do not. But this is so important. And, you know, I think when you had FEMA in its role and responsibility and they fulfill that role and responsibility, they could minimize a lot of the things with the state and local government. Not take it over but minimize and

help people to not only recover but to build back better and safer.

But now, to give an example, the state of Texas actually went out on a bid to outsource their public assistance program because they did not have the capability within the state programs to do that.

One emergency management director told me when I testified last year for Congress that it's like a stake has been driven in the heart of emergency management in this country. Now, that's serious.

**SESNO:** And you believe that to be the case?

**WITT:** I do.

**SESNO:** You think it's that bad?

**WITT:** It's that bad.

**SESNO:** And so what do you think is going to happen over the next six to 12 months? More of that? More outsourcing?

**WITT:** Most likely yes. There's a lot of contributing factors here. One is inoperability of public safety communications, which I've been preaching since 2001. It is so critical to develop national standards of fixing that problem across public safety.

Going out and bringing the private sector in – and I shared this with homeland security – bring the private sector in. Let the private sector be the driver of fixing some of these problems, because (Continued, Page 5)

**Critical Conversation** (Cont. from Page 4) you've got technology problems, you've got communications problems.

And all of the grant money that's been going to homeland security is very important. But there needs to be a consistency in how it's being developed for the future.

**SESNO:** I want to get to the private sector some more in a moment, but I want to stay on this issue of repairing the damage in terms of public confidence to these state, local and federal organizations. It seems that you do think there's been an impact in public confidence, and the numbers weren't great to begin with, though much higher for locals. What needs to be done to repair public confidence?

**WITT:** I think that the President and Congress need to revisit how the organization is structured now, and homeland security and FEMA, and look at those roles and responsibilities.

We had the Federal Response Plan when I was there, which worked. Every single state mirrored the Federal Response Plan. Each state developed the emergency support functions. Each state mirrored those emergency support functions.

And the states worked with us diligently in amending the Federal Response Plan to add a terrorism component to it, after the Murrah bombing in Oklahoma City.

But when they developed the National Response Plan, they contracted it out, which is OK, but they didn't involve the states at the beginning to develop it.

And then they brought the states in, they put it back on FEMA, to basically re-write the National Response Plan. And now you have states that still have planning that's under the Federal Response Plan, and not every state has been consistent in redesigning their plan with the new national plan. It's got to be consistent.

**SESNO:** States, localities? What do mayors need to do? What do governors need to do? We watched it on our television sets. We watched the police department melt away. We watched the mayor's office that couldn't communicate with his emergency responders. We watched people gather at convention centers and the Superdome and be left – left. And not too long later in Houston, we saw a very difficult evacuation process. People looked at that and said, "my God, there but for the grace of God go all the rest of us." Now what?

**WITT:** Well, I think it's important. And I think it taught us a really valuable lesson. There were 1,079 lives lost in this state of Louisiana alone. And I think it's important that every local government and every state government realize what we preached for so many years: you are not immune to being a victim of a disaster.

It could be a wildfire. It could be

a tornado. It could be a flood. It could be an earthquake. It could be a hurricane. But you are not immune. And you need to know your risk and prepare for those risks.

Just recently I was in Phoenix talking to the Western Governors Conference. And you the governors asked, "What do we need to do?"

**SESNO:** What did you tell them?

**WITT:** "I want to tell you something." I said, "Under the circumstances I would revisit my state plan with the local communities and then I would start building a public/private partnership with the industry and the businesses across my state. Then I would make sure, through those available resources within your state, through this public/private partnership, that I could survive at least 72 hours."

**SESNO:** On your own.

**WITT:** On your own.

**SESNO:** You mentioned private sector a while ago, and you spent this time down in the region in Louisiana. What most surprised you when you watched the response from the private sector?

**WITT:** You know, I was just absolutely amazed at the amount of resources that the private sector put into this. And one of the areas that was so critical was getting some form of communications back up very quickly. ❖

## Panelist Dennis Barbour Mayor, Town of Carolina Beach, North Carolina

Mayor Dennis Barbour is Program Manager - Reactor & Field Services Memphis Startup with the General Electric



Company and owner of the Island True Value Tackle and Hardware Store. He served on Town Council as Mayor Pro Tem from 1997 to 2003 and was elected Mayor in November 2003. Some of the Mayor's top priorities for the Town of Carolina Beach include beach renourishment, improving customer service, process flow and continuing to support Carolina Beach youth and seniors by providing expanded recreational programs. He is married to Wanda Barbour and they have two sons, one daughter and one granddaughter. Mayor Barbour states "my role as mayor is to provide the best leadership possible for the council, staff, town employees and especially the people of Carolina Beach by promoting "positive" change that improves the quality of life for all who work and live here".

**BARBOUR:** I know you've been talking about the federal government and state government. As we all know, hurricane preparedness, and more especially, communication and coordination are the keys to handling any emergency situation. And we also know that the devil is in the details. Any time we have a hurricane, our emergency plans will be tested to the limits, and any failures in that plan will come out very quickly.

Our local community, Carolina Beach, has had eight hurricanes in ten years. The fortunate side of that is so many hurricanes have allowed us to review our emergency plan through critiques and lessons learned and fine-tune it to the point that we're now in a situation where we know what to do and when to do it to prepare, especially for hurricanes we have had, which are mostly Category 1 and 2 hurricanes.

**SESNO:** What did you learn, or what changes after Katrina and Rita?

**BARBOUR:** Well, we have made a few changes in our emergency plan, especially communication-wise. We had Hurricane Ophelia, which was our eighth hurricane in October, come directly through Carolina Beach. And while it was a Category 1, what went first? A lot of the communications. We maintained our phone service but we relied upon our emergency personnel using cell phones and 800 megahertz. Both of those systems went out. Cell phone service went out because of the lack of emergency back-up for the system.

We have since changed companies that have installed an emergency generator to pick up the cell service so we can maintain that communication.

**SESNO:** Other things that you've changed as a result of Katrina?

**BARBOUR:** A lot of the emergency personnel in the town of Carolina Beach were a little bit anxious in terms of going to work too early in the hurricane. And, as you've seen in New Orleans, they have a tendency to run out of speed if they start too early.

So, we've changed some of our procedures to know when to put those people on the streets.

**SESNO:** So you're timing things a little differently. Is that so they're not exhausted or so they're with family? What's the purpose?

**BARBOUR:** So they're not exhausted when we really need them the most. *(Continued, Page 7)*

**“As we all know, hurricane preparedness, and more especially, communication and coordination, are the keys to handling any emergency situation. And we also know that the devil is in the details. Any time we have a hurricane, our emergency plans will be tested to the limits, and any failures in that plan will come out very quickly.”**

*(Cont. from Page 6)*

**SESNO:** What about family issues?

**BARBOUR:** Family issues? One of my points that I was going to make here, again, we've had mainly Category 1 and 2 hurricanes. We need to look at the effects from different categories of hurricanes.

Category 1 and 2 hurricanes cause incidental damage and very little injuries. Category 3 and above causes destruction and death. So, we need to look at – now that we have all the information from our eight hurricanes and now that the Category 3 and Category 4 have hit the Gulf Coast – we need to look at those different categories and try to predict better what the results of the damage will be and forecast what we can expect to see and educate people, like you mentioned. Education is key.

**SESNO:** Are you prepared? Are you educating them for the catastrophic events, for the Category 5?

**BARBOUR:** We're working on that. We're not there yet. But we're working on that.



*Front Row: John McCarthy, James Lee Witt, Frank Sesno and Michael Hickey. Back Row: Dennis Barbour and Catherine Allen.*



## Panelist Catherine A. Allen, CEO/BITS Financial Services Roundtable

Catherine Allen is a noted innovator and visionary in the financial services industry. Named as one of 16 "unsung



heroes and rising stars" by Fast Company magazine, Catherine led BITS from a fledgling organization in 1996 to its current status as a key industry forum for cutting-edge issues in financial services. Catherine is frequently consulted as an expert on the subjects of security, e-commerce and payments. She sits on the boards of the Financial Services Technology Consortium, the Financial Services Sector Coordinating Council, MIST, and Hudson Ventures, and serves on task forces for Congressman Adam Putnam (R-Fla.) and a number of industry groups. She is co-author of the book *The Artist's Way at Work: Riding the Dragon-Twelve Weeks to Creative Freedom*. Catherine was appointed by Governor Richardson of New Mexico to two state-level task forces on economic development and education. She holds a BS from the University of Missouri, an MS from the University of Maryland, and completed doctoral work at the George Washington University.

**ALLEN:** Well, first of all, the nature of our industry, financial services, is really to manage risks. And it's been one of the things that, when we go through an event like Katrina, we not only manage the risk but we look at what are the lessons learned from that.

So, I'm going to share a few of those with you. Our business is based on reputation. It's based on safety and soundness, making sure that our customers can access information and their money when they need to.

And during Katrina we saw a good example of the financial services industry, I think, weathering the storm pretty well. It worked. It worked because our regulators in the financial institutions talked constantly. There were websites up that let you know which financial institutions were down.

There were meetings to relax some of the regulations so that cash was available – they planned for it and had cash there on time. They used mobile ATMs that use wireless phones to get cash to people.

So, all in all there were a lot of things that went very well. Part of this is because we're regulated, we're required to have business continuity plans for any kind of disaster. This was just one example. And those business continuity plans are tested and examined every year by our regulators. So we really have to know what we're doing to make sure that the payments and settlement systems continue to go.

We also have a system in place to communicate with our regulators. We have – I'm not going to give you the acronyms, but there's a group of the financial services industry players and associations and then a group of the regulators, and we meet on a quarterly basis. We share information. We share best practices.

And that group, we were on the phone all the time during the whole Katrina effort. And through that, we were able, again, to relax some of the regulations. A good example is many people did not have identification because they either lost it in the flood or left and were evacuated so quickly.

Well, we have Bank Secrecy Act regulations that say, "I can't cash a check for you unless you have identification." So we worked around that with the regulators.

**SESNO:** How did you work around that with the regulators?

**ALLEN:** Well, for one thing, the Social Security Administration worked with Treasury to make sure that the (Continued, Page 9)



**“Our business is based on reputation. It's based on safety and soundness, making sure that our customers can access information and their money when they need to. And during Katrina we saw a good example of the financial services industry, I think, weathering the storm pretty well.”**

*(Cont. from Page 8)* checks went to a separate deposit, a place, so that people knew where to go get their checks, and then we had verification from Social Security.

In some cases, we would call people. They'd say, "I am who I am but you can call this person to verify." And we would trust that verification. So, we tried to work with people.

Treasury, actually it was managed by DHS - FEMA – piloted a debit card. Instead of getting checks for people who were victims of the storm, they had debit cards. That actually worked pretty well.

**SESNO:** My recollection is that was yanked pretty fast...

**ALLEN:** It did. It was. It was yanked by DHS. And we won't go into that. But let's just say it was a good program and it worked.

**SESNO:** It was a good program. It was a model for the future. Should that be done in the future?

**ALLEN:** Yes, it should be. Because what it did was allow people to use a debit card instead of using cash or cashing a check. And many of the ATMs were running because they were wireless ATMs so that they could get cash.

And there were regulations that – restrictions, that were taken off so that you could get more cash out of an ATM. Today you can maybe get 200 or 300 a day and that was upped. So, you know, again there's safeguards.

What happened, I think, was not enough rigorous control and there was a concern about liability is the reason it got pulled. But let's just say that the program worked and they were able to disseminate.

The second thing we did is to maintain backup systems, again, by regulation. So many of the employees were evacuated before Katrina happened to Baton Rouge and Shreveport and other places, so that there was no glitch, that the systems, the cell and the containment systems continued.

Now, not all people who lived in the affected area could access information because they're telecommunications lines were down, but the systems continued to work. We worked with consumers to try to access not only their cash but information about their accounts.

Another thing that happened was – and these *(Continued, Page 10)*

**“In some cases, we would call people. They'd say, ‘I am who I am but you can call this person to verify.’ And we would trust that verification. So, we tried to work with people.”**

*(Cont. from Page 9)* are the things, really, lessons that didn't work so well. We've always known about our interdependency on telecommunications and power. Both were out. If they're out, our customers can't reach us.



And in some cases, institutions that were under water or other systems weren't working, couldn't communicate with each other. We have advocated the telecommunications industry having diversity and redundancy.

That means separate lines going through separate routes so that you can make sure if one is down the other works. We also advocate having a satellite system for first responders, and as we know, that wasn't necessarily in effect in New Orleans.

There are tax incentives. There are things that we can do as a government to encourage that to occur, and that's one of the things we think is very important.

This has actually created best practices, things that you as a financial institution, should ask of your telecom provider. And those are on our website.

We have a lot of things that we do that are free to the public. And that's at BITSINFO, WWW.BITSINFO.ORG, telecommunications best practices, what we need from the telecom industry. But there needs to be cross-sector coordination and we think that's a government role.

I really want to commend BellSouth and Verizon, too, because they have been partners in helping the financial sector to understand the diversity and redundancy areas. So, BellSouth did a good job on that.

Another thing is the communications between local and federal government did not work well. There are models of regional coalitions. Treasury helped develop one in Chicago called ChicagoFirst. New York has had an excellent model for some time. Miami has just instituted one.

Again, they're on our website, a model of how *(Continued, Page 11)*

**“And I close with three things, three questions in a way. How do we have better communications between the public and private sector? ... (H)ow can we address the interdependency concerns? ... And then lastly, how do we treat our citizens with dignity and support them?”**

*(Cont. from Page 10)* you create this public and private sector regional coalition to work together. And again, it's existed for the financial sector with all of the others, but there's no reason it wouldn't work for other sectors as well.

There were no standards for credentialing. A lot of the employees that tried to get into the affected area and volunteers from other regions couldn't get in because they wouldn't allow them in. There need to be standards for credentialing, saying who you are and that you're allowed into affected areas.

DHS should have had that done. We knew that. That lesson was – going back to someone's question about lessons learned, these are not new lessons. We learned them in 9/11 and we learned them in the power outage and...

**SESNO:** But here you sent them over a vastly larger area for a vastly longer period of time.

**ALLEN:** Exactly. But it can be done – this is not brain surgery.

We learned some new things. What happens when you have contaminated cash or safety deposit boxes because the water brought toxins into the areas, how to handle that. Fortunately our regulators worked with us and very quickly we came up with procedures for that. And we'll use those going forward.

I mentioned the identification issue. And then one last issue that arose, U.S. Postal Service didn't deliver checks, didn't deliver mail. And in many cases, we found some small businesses that had gone bankrupt because their accounts receivable, they were living on the edge.

And never mind that the financial institutions were getting all kinds of leeways and didn't report delinquencies. It still impacted them. So, we have, on the large end is how to work with the post office to get deliveries when we need them.

And I close with three things, three questions in a way. How do we have better communications between the public and private sector? I do think that the role for government is to provide the incentives or the structure for that, and the private sector will do and is doing a lot. But we need to have some overarching organization for that. And there are models out there.

Secondly, how can we address the interdependency concerns? I will tell you, this administration and *(Continued, Page 12)*



Washington, DC, Sept. 13, 2005, Secretary Chertoff discusses Hurricane Katrina with the media in front of FEMA headquarters. Bill Koplitz/FEMA

(Cont. from Page 11) DHS are not paying attention to the interdependencies. The cascading effect of telecom power, financial services, IT, the operating systems, what happens when they're down and how it impacts the critical infrastructure.

And then lastly, how do we treat our citizens with dignity and support them? And I think Katrina was a watershed for all of us to say there is a critically important role for government in treating our citizens with dignity, and it didn't happen the way it should have this time.

This could have happened to anyone, any community, any time. The next thing we're facing is the Avian Flu pandemic. That's going to be something that's going to move in faster and, perhaps, be less predictable than what we have seen. And the question is, are we prepared?

**SESNO:** And the answer?

**ALLEN:** I don't think so.



New Orleans, LA, August 31, 2005 – FEMA USAR member assists residents displaced by Hurricane Katrina. New Orleans was evacuated following hurricane Katrina and rising flood waters. Photo by Jocelyn Augustino/FEMA



Houston, TX, September 2, 2005 – Residents of Louisiana, who had to flee their homes because of Hurricane Katrina, inside the Houston Astrodome. The residents of Texas mobilized a massive relief effort to help the those of Louisiana. Volunteers from a number of agencies were on hand to help. Photo by Ed Edahl/FEMA

**Panelist Michael Hickey,  
Vice President,  
Government Affairs,  
Verizon**

J. Michael Hickey joined the Verizon Government Affairs office in Washington, DC, in July, 2004. He has overall responsibility for



Verizon policy development and advocacy in the homeland security/law enforcement arena. He serves as chair of the US Telecom Association National Security Committee. Prior to this position Hickey served as State President, Verizon-NH, with responsibility for oversight of the company's operations, external affairs, regulatory and financial matters, a position he held since 1997. Hickey joined New England Telephone in 1986 as director, government affairs, in Concord, New Hampshire. From 1989 to his return to New Hampshire in 1997, he held assignments with NYNEX, Bell Atlantic and Verizon in Washington, DC, White Plains, NY, and New York City. His education includes a BA in sociology from the University of New Hampshire, 1973, and special programs including the urban studies program at St. Anselm College, the Brookings Congressional Fellowship Program, the U.S. House Ways and Means Trade Subcommittee Staff, and the Gallup Leadership Institute.

**HICKEY:** Catherine's touched on a number of issues that I'd like to come back to, but the cross-sector piece is especially important.

But at the outset, let me say that network readiness, network resiliency, is a key priority for Verizon. We're a company that serves our wireline customers in 28 states. We have nearly 50 million wireless subscribers, and network reliability for all of those individuals on the wireline and wireless side, is really critical.

We're first and foremost a service company. We depend -- our customers depend -- on reliable voice and data services, especially during emergencies. So, it's not surprising that we place a high priority on making sure that we are prepared as a company before we rely on the federal, state, local government or other sectors.

We have to be prepared first to make sure that we can respond quickly to service disruptions, whether manmade or natural in scope. And where disruptions certainly vary, our approach is consistent, and that's preparedness first and business continuity is really a key.

There are three ways in which we ground our work in emergency preparedness. One is through policy. We have a policy that requires all of our business units to really focus on business continuity as a top priority.

And from a governance standpoint, we have a structure in place that allows business units to identify on an early warning basis issues that are out there. And there's a very direct conduit that our business units have to the top leadership within the company.

**SESNO:** So, take us down into New Orleans and examine the situation there where the mayor is literally -- the mayor's office, is literally helping themselves to a Home Depot or wherever to get phones and routers and servers so they can communicate.

What do you see, what does your company see, as ways to prevent that kind of thing. How, from your perspective, do you repair the damage from these storms?

**HICKEY:** I guess my original point is that preparedness is key. We take that very seriously. And these storms affected primarily our wireless company. And our wireless company took a number of very dramatic steps to make sure that *(Continued, Page 14)*

**“I think a top priority for the Department of Homeland Security should be to try to do a better job in connecting private with local and state government, not just on an introductory basis but for real training.”**

*(Cont. from Page 13)* equipment and materials and supplies and human resources were pre-staged in advance of these storms.

**SESNO:** But they lost, they lost their communications because the storm was huge and towers went down, right?

**HICKEY:** It varies based on geographic region. And certainly commercial providers were challenged, not just because of the storm impact on our physical facilities, but also on the storm impact on other sectors, of power, and other providers, for instance, T1 providers that would connect our cell sites to switches over a given a territory.

On the whole, as an outcome of the storm, I think we were able to respond, put our cell sites up, back up, very quickly. Again, it had so much to do with the pre-staging of activity and our work with key providers like BellSouth.

BellSouth invited wireless providers into their command center and worked hour by hour to make sure that priority circuits were restored.

**SESNO:** And if you have an opportunity to rebuild in parts of the afflicted area, almost literally from the ground up, what gets done differently?

**HICKEY:** What gets done differently? We need to make sure that we focus on the basics, making sure that we have generators in place for cell sites, certainly backup generators and mobile generators for locations that are more difficult to get to.

We need to make sure that, from a supply standpoint, fuel is always accessible to cell sites. And I think so much of what needs to take place going forward is a stronger and more clear definition of roles and responsibilities at the state, local, and federal level that would enable private industry, for instance, to access sites and to access sites securely and with fuel necessary to get our facilities up and running.



*(Continued, Page 15)*

**“And I think so much of what needs to take place going forward is a stronger and more clear definition of roles and responsibilities at the state, local, and federal level that would enable private industry, for instance, to access sites and to access sites securely and with fuel necessary to get our facilities up and running.”**

*(Cont. from Page 14)*

**SESNO:** So, that's what you would like to see from the public sector, from government?

**HICKEY:** From the public sector, and certainly from a private sector standpoint, continued strong investment. But again, to the public sector point, we have a very strong ally within the Department of Homeland Security, within the National Communication System, the NCS.

And we have a cluster of companies that work as residents at the NCS, the National Coordinating Center, that, on a day-to-day basis monitor and respond to events regardless of scale. So, our go-to agency is NCS, and despite challenges that we had, given the scope and scale of the storms, we were able to continue to work very closely with individuals there to get the job done.

**HICKEY:** I think a top priority for the Department of Homeland Security should be to try to do a better job in connecting private with local and state government, not just on an introductory basis but for real training. We have a number of exercises that we've participated in over the last 18 months. They have to become even more real in terms of...

**SESNO:** But there's still not the connectedness between state, local government and private sector? That's what you're saying?

**HICKEY:** I think DHS has a structure in place. They're using it to better advantage. There's a pandemic exercise in New York hosted by the Federal Reserve Board, encouraged by the Department of Homeland Security, where power and telecom and financial got together to begin thinking about and planning for the implications of a potential pandemic.

*CIP Program Director John McCarthy making his introductory remarks at the November 29<sup>th</sup> event.*



## *Critical Conversation Full Panel Discussion and Closing Remarks Excerpt*

**BARBOUR:** I believe that the mayor, especially in small communities, and even in a town as big as New Orleans, is the focal point in a disaster such as this. My motto is communicate regularly, communicate accurately, and communicate calmly. And that's what I try to do in every situation we have.

**SESNO:** Was that done in New Orleans?

**BARBOUR:** I don't think so.

**AUDIENCE PARTICIPANT:** I wanted to know what role the insurance industry can play in all this.

**ALLEN:** I would say that about 20 board members (of BITS) are insurance companies. They play a huge role in everything from helping customers be able to file claims and to get money up front to help them just in their relocation. There's a number of compa-

nies that have really done an outstanding job, first in education in the Gulf area, and then secondly in trying to help people realize their claims.

I think there's more to do. Just as James was talking about the incentives, I think there's a role that the insurance companies could play in saying here's best practices that we want you to implement. And if you do this, then you get a deduction or a lower premium or whatever in your insurance. So, I think as an incentive tool, the insurance industry is looking at ways that they can incent people to perform best practices.

**WITT:** I totally agree. If you think about it, even if they didn't lower the premium, if they just lowered the deductible, that would make a huge difference for somebody to give them an incentive to do this.

**HICKEY:** I've seen the insurance industry play a very positive role in organizations such as the Internet Security Alliance. And, again, going back to Catherine's points, it's to incent appropriate behavior, adherence to sound practice coming out of organizations like the Network Reliability Interoperability Council. So, the insurance industry is there, I think strategically located in associations and encouraging a private and individual solution ...

To conclude, I have two points. The interoperability issue needs to be addressed. I think that needs to become a top priority. House and Senate are addressing it in a number of different ways. There needs to be funding and there needs to be a stake in the ground in terms of sound practice.

**SESNO:** OK.

**HICKEY:** Second, I think the intersector work that Catherine spoke of is critical. These sector coordinating councils are up and running, but sectors need to work more closely together, I think, especially financial, power and telecom.

**ALLEN:** To conclude, I think we need a sense of urgency. I think we still do not have a sense of urgency about the next disaster that may come. And, again, it may be a pandemic. It may be a terrorist attack. It may be some other natural disaster. But I think we're complacent and not reacting.

*(Continued, Page 22)*





## More than Devastation, 2005 Record Hurricane Season Provides Lessons Our Government, the Private Industry, and the Public Need to Know

Bryan L. Day, Faculty Research Associate, School of Public Policy, GMU

In the aftermath of the devastating 2005 Hurricane season, and with an eye toward rebuilding the City of New Orleans and the Gulf Coast, the Critical Infrastructure Protection (CIP) Program convened a panel of experts to candidly discuss the nation's preparedness and response capabilities in crisis situations. The panel, titled "After the Storms: Repairing the Damage," included former FEMA director James Lee Witt; Mayor Dennis Barbour of Carolina Beach, N.C.; J. Michael Hickey, Verizon Vice President of Government Affairs for National Security Policy; and Catherine A. Allen, CEO, BITS/Financial Service Roundtable.

CIP Program Senior Fellow and veteran TV journalist Frank Sesno moderated the November 29 program at the National Press Club in Washington. Director Witt, speaking one-on-one with Sesno, described the New Orleans disaster as "the worst I have ever seen in the United States." Witt, who is currently CEO and Chairman of James Lee Witt Associates, a public safety and crisis management firm, has been contracted to advise and assist Louisiana Governor Kathleen Blanco with state recovery efforts. Already the Louisiana government has begun to react as a direct result of some early lessons. In late November 2005, the Louisiana legislators in both state houses

advanced legislation to include minimum statewide residential, international businesses, and commercial building codes aimed at strengthening structures to withstand future hurricanes.

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**For all 'lessons learned,' plenty of challenges remain. One such lesson without a clear answer is what to do after a mid-sized city is emptied of its residents for three-months. When and how, if ever, will they return?**

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Addressing the recent criticism directed at FEMA, Sesno asked Witt if he "blamed FEMA exclusively for" the response to Katrina. "No, I don't." Witt responded, pointing to culpability at the local, state, and national levels. He also illustrated to the audience that FEMA's current place under the Department of Homeland Security (DHS) was also a cause of its poor response. "You cannot maintain and build capability and capacity when you do not have the expertise, the leaders, or the funding and people within that agency," said Witt. Additionally he remarked that while former FEMA

director Michael Brown may have been inexperienced, removing the position of FEMA director from the President's cabinet (as FEMA director, Witt was a member of President Clinton's cabinet) may have contributed to the initial slow response pace. As a cabinet member, Witt said he had almost immediate access to requested resources, which was imperative following the 1995 Northridge Earthquake. Sesno queried whether Witt believed FEMA should again be a stand-alone agency and be removed from the bureaucracy of DHS. Without hesitation Witt responded, "Yes!"

Most Americans are unaware that 85% of our critical infrastructures are owned by the private sector including telephone and wireless lines, water supply, banking and finance systems, and electrical generation. As such, according to panelist Michael Hickey of Verizon, only through a public-private partnership can any emergency response planning be most effective. "What needs to take place is a stronger and clearer definition of roles and responsibilities [between the public and private sectors] at the local, state, and federal levels that would enable private industry to access sites" where equipment is in need of repair," said Hickey. Many Verizon wireless (*Continued, Page 21*)

## Key Players Discuss Continuity of the Supreme Court

Trevor M. Broad, ABA Standing Committee on Law and National Security Intern

The Critical Infrastructure Protection Program, in cooperation with the American Bar Association's Standing Committee on Law and National Security, held a panel discussion on November 30<sup>th</sup>, 2005 on the continuity of the Supreme Court. The panelists included: John Cooke, Deputy Director, Federal Judicial Center; James C. Duff, Managing Partner, Baker Donelson; Norman J. Ornstein, Resident Scholar, American Enterprise Institute for Public Policy Research; and moderator Ross E. Davies, Associate Professor, George Mason University School of Law. The co-sponsors wish to thank all four panel members for their time and participation.

Mr. Duff offered four options for dealing with Supreme Court continuity. First, the country could maintain the status quo, meaning that the President could nominate as many people necessary to fill the vacancies on the Court created by a disaster, and if the Senate were incapacitated, the President could use recess appointments to achieve this end. Mr. Duff stated that this option was advantageous because there was no need for a constitutional amendment and relies on the lower courts to maintain consistency until normalcy is achieved. The disadvantage of the status quo is that there is potential delay in achiev-

ing finality, a public perception of instability, and concerns about one President nominating an entire Supreme Court.

The second option Mr. Duff proposed was for an emergency appointment process with checks on the recess appointment power. He suggested that there might be a mandate on the number of justices selected from each party such that only five of the justices come from the majority party. The advantage of this system is that it can prevent court packing, but the disadvantage is that it overemphasizes partisanship on the Court. He also pointed out that entire Supreme Courts have previously been appointed by one President and been very successful. He added that this option would also require a constitutional amendment.

The third method that Mr. Duff offered was to designate a body of judges to serve as a temporary Supreme Court. For example, have the thirteen chief judges of the federal Circuit Courts of Appeals serve as a Supreme Court for a period until normalcy returns. The advantages are that the country could deal with legal matters quickly; there would be a degree of stability; and the diversity of the members of the Court would be built-in. The disadvantages would be that it is a narrower pool of appointees than

usual; questions would arise as to the finality of the temporary Court's decisions; and this method would drain judicial resources by taking judges away from their other commitments.

The final method that Mr. Duff proposed was to appoint a "junior varsity" body of nine individuals to serve in the case of an emergency, who would have to go through the Senate confirmation process. The advantages are that there is a Court in place and that there would be stability. The disadvantages would be that a constitutional amendment would be needed; the decisions of the Court might not be final; there could be a weakened public perception of the Court; and the confirmation process for the emergency individuals would not engender the same feelings within the Senate as it would in a traditional vacancy on the Supreme Court.

Mr. Duff articulated that his preference was to maintain the status quo. His belief was that the country would rally in an emergency and other branches of government would respond in kind. He cited the incidents of 9/11 as an example of this unity. However, he said that there were a number of administrative concerns that deserve further consideration if the country does stay with the status quo. *(Continued, Page 19)*

**Supreme Court** *(Cont. from Page 18)*

Dr. Ornstein stated that in times of disaster, people want government that is quick, competent, and able to respond fully. He explained that the possibility that a significant portion of the federal government could be incapacitated is not necessarily a remote contingency. He argued that a catastrophic disaster at a Presidential inauguration could provide such a situation, and that few people would feel comfortable in having one President select all nine members of the Supreme Court. His preference was for an emergency panel to be set up that would act as a temporary Supreme Court, dealing with the most urgent matters before the Court. Finally, as food for thought, Dr. Ornstein suggested that the members of the Supreme Court should be limited to one eighteen year term, allowing a two-term President to appoint two new members to the Court, as opposed to the present system in which one president may have four appointments while another has zero.

Mr. Cooke maintained that judicial business will continue to role

along during a time of disaster even if the Supreme Court is incapacitated for a period of time. Very few cases are reviewed by the Court each year, explained Mr. Cooke, and the cases that are reviewed do not necessarily need to be decided immediately. He argued that any mechanism that is put into place needs to be clear and well understood. He suggested that those designing the mechanisms should ask: "Are the mechanisms in place to protect ourselves or to do otherwise?" "What is the public acceptance of all of this?" Dr. Ornstein added that if Americans know the rules, they will accept the outcome; problems arise from decisions made on the fly.

Prof. Davies wound up the session with discussion of key points in his recent paper, "A Certain Mongrel Court: Congress's Past Power and Present Potential to Reinforce the Supreme Court" (forthcoming, *Minnesota Law Review*). He explained that Congress can add requirements to any constitutional office without needing a constitutional amendment. He proposed that the Congress create additional seats on the Court with the

requirement that the persons nominated to those positions not be able to serve unless the Court falls below a quorum. He also suggested that retiring justices might offer to permanently recuse themselves from the Court instead of officially retiring with the caveat that if the Court falls below a quorum, their recusal can be lifted.

The potentiality of teleconferencing was also briefly touched upon. Dr. Ornstein explained that in a dire situation this could be possible, but was not desirable in his opinion because the personal interchange between people face-to-face is a crucial component of how decisions are made at the Court.

*The CIP Program wishes to offer special thanks to the ABA Standing Committee on Law and National Security, Suzanne Spaulding, Immediate Past Chair and current Advisory Board Member for their support in making possible this event. The CIP Program further wishes to offer a special thanks to the ABA Headquarters and Ms. Holly McMahon for providing logistical support and providing the venue. ❖*

## I3P hosts discussion of cyber security investment in the private sector

On Thursday, December 8, the CIP Program, in cooperation with the Institute for Information Infrastructure Protection (I3P) hosted a day-long gathering of private and public sector leaders in the field of cyber security. Participants were asked to share their views on what drives decision making in the private sector as regards cyber security investment.

Keynote speeches were offered by Mr. Andy Purdy, Acting Director of the National Cyber Security Division of DHS; Mr. John McCarthy, Director and PI of the CIP Program; and Ms. Emily Frye, Esq., of Touchstone Consulting Group.

In addition to discussion, participants took part in a simulation implemented by Dr. Barry Horowitz of UVA. The simulation gave participants a set of parameters and asked them to make hypothetical cyber security investment decisions weighing security threats against potential investment in sales activities.

The event was part of a two-year project being undertaken by a sub-committee of the I3P that is looking at the economic costs of cyber security and cyber security investment.

The I3P is a consortium that includes academic institutions, federally-funded labs and non-



*Andy Purdy addresses participants at the I3P event.*

profit organizations. The I3P's webpage is located at <http://www.thei3p.org/>.

## USA PATRIOT Act provisions set to expire

Colleen Hardy, Staff Writer

The United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) was enacted after the horrific terrorist attacks on September 11, 2001. Some of the provisions are set to expire in December 2005. The USA PATRIOT ACT has sparked several debates about important issues, such as law enforcement capabilities and resources.

One of the key sections set to expire is section 203 (b) and (d), which permits information from criminal investigations to be

shared with intelligence agencies and other parts of the government. Supporters for this section argue that it has improved information sharing within the intelligence community. However, opponents of this section claim that the unrestricted distribution has the potential to create extensive databases about citizens who are not targets of criminal investigations.

Other sections set to expire include section 206, which allows one wiretap authorization to cover multiple devices, such as cell phones, computers and a

Blackberry. Advocates of this section argue that this provision is imperative due to terrorists' astute technological capabilities. Those who challenge this section purport that the language may implicate a citizen's privacy rights if they come into contact with the suspect.

Additionally, there are provisions set to expire that involve roving wiretaps, access to records, foreign intelligence wiretaps and searches, sneak and peak warrants, and material support.

Both the *(Continued, Page 21)*

**USA PATRIOT Act** (Cont. from Page 20) House and the Senate have proposed amendments and a conference committee has been established to come to an agreement over the proposed bills. On December 8, 2005, the House and Senate negotiators arrived at an agreement to extend the Act. Two of

the most controversial provisions, allowing roving wiretaps and permitting secret warrants for books, records and other items from businesses, have been extended for four years. Additionally, standards for monitoring "lone wolf" terrorists who may be operating independent of a foreign agent or

power has also been extended for four years. However, Senator Patrick Leahy (D-Vt) opposes the extension because he believes that the Act violates citizens' privacy rights without sufficient checks and balances. One Democratic senator has threatened a filibuster to block the agreement. ❖

### Critical Conversation Recap

(Cont. from Page 16) cell-site generators ran out of fuel rendering them inoperable because government officials prohibited their refueling technicians from reaching the sites because the generators were located in "hazardous areas." Going forward, Verizon plans additional backup and mobile generators for hard-to-reach cell sites and others that could be off-limits in an emergency situation. Carolina Beach Mayor Dennis Barbour, who has governed during eight hurricanes, also stressed the importance of backup mobile phone generators. Carolina Beach recently switched its cellular provider for essential employees and first responders to a company that equipped its cell sites with emergency generators limiting the chance for communications disruptions in the event of a future emergency.

Catherine Allen of BITS opined that the financial services industry fared pretty well. She credits the constant lines of communications between the industry executives and their regulators. Allen also noted that "There were

websites set up to let [industry representatives] know which financial institutions were down" allowing resources to focus on immediate problems and forecast any potential future threats.

Communication with regulators is also credited for the quick removal of the daily cash limit restrictions which are commonplace at ATMs. Like Hickey of Verizon, Allen also stressed the need for better communications between the industry and government and suggested implementing regional plans for private-public sector coordination. Mayor Barbour agreed and would like to see the federal government adopt a system of "best practices" or rather an amalgamation of the various models across the country to develop a single, all encompassing, "National Model."

For all 'lessons learned,' plenty of challenges remain. One such lesson without a clear answer is what to do after a mid-sized city is emptied of its residents for three-months. When and how, if ever, will they return? Today,

three out of four New Orleans residents live elsewhere. The Statehouse has already passed tax incentives providing some relief that officials hope will help bring people back to the hardest hit areas of Katrina. It will be some time before the effect is known and if the measure has any real impact.

The November 29<sup>th</sup> Critical Conversation offered an invaluable list of lessons. Each panelist agreed that interoperability between governments and the private sector needs immediate attention, and that cross-sector exercises would undoubtedly identify deficiencies and shortcomings in emergency preparedness and response plans. While no one can say for certain if national standards or best practices will ever become commonplace, the 2005 hurricane season taught us, among other things, responsible preparedness must include a partnership between public-private sectors and strong up-front investments that appropriately manage risk. ❖

**Full Panel Discussion** (*Cont. from Page 16*) Two, there needs to be federal coordination. I look back at DHS, or, if it's not DHS, somebody else, who's got to step up and say, "Here's best practices. Here's regional models. Here's state models. Implement them. Here's money to do that." We could have that done in six months if there was coordination.

Third, is the interdependency issue. Somebody has got to pay attention to this other than the private sector each trying to work together. I think we really have to have a coordinated effort in the federal government.

**SESNO:** Mayor Barbour, your final thoughts?

**BARBOUR:** Well, it may be reiterating what I said earlier, but I think we really have to concentrate on educating people better for category three and above hurricanes. One and two hurricanes are now considered fairly minor along coastlines.

**SESNO:** By extension it'd be earthquakes, it'd be windstorms ... you name the disaster, people need to be better educated?

**BARBOUR:** Education is key.

This may seem radical, but for category three and above hurricanes, I think the government should have rapid response, airlift teams set up to come into these local communities to help with coordination and resource and recovery...

**SESNO:** Not to open a can of worms now, but military?

**BARBOUR:** National Guard and FEMA could work together on that. I think that would really be helpful because that initial response is what needs to be picked up.

**SESNO:** Thirdly?

**BARBOUR:** Interoperability of public safety, communications, best practices and national standards. ❖

The CIP Program is directed by John A. McCarthy, a member of the faculty at George Mason University School of Law. The CIP Program works in conjunction with James Madison University and seeks to fully integrate the disciplines of law, policy, and technology for enhancing the security of cyber-networks, physical systems and economic processes supporting the nation's critical infrastructure. The CIP Program is funded by a grant from The National Institute of Standards and Technology (NIST).

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