Feature

As Puerto Rico Recovers, Courts Heed Lessons Of Disaster

By **Sindhu Sundar and Carolina Bolado** | February 3, 2019, 8:41 PM EST

U.S. Army Corps of Engineers inspectors check post-hurricane repairs to the roof of the courthouse in Aguadilla on Puerto Rico's northwest coast. The building reopened in November, becoming the last courthouse on the island to go back into service. (Army Corps of Engineers)

One of the toughest phone calls then-Chief U.S. District Judge Aida Delgado-Colón would field in the days after Hurricane Maria flooded her courthouse and wreaked havoc across Puerto Rico was from her counterpart at the U.S. Marshals Service.

In short order, he informed her that the 1,800 prisoners housed in the Metropolitan Detention Center in the San Juan suburb of Guaynabo would need to be relocated because the loss of electric power from Maria's 155 mph winds imperiled their safety. One of the building's two generators had collapsed, and the other was about to give out.

The detainees — mostly defendants awaiting trial or inmates serving short sentences — had to be moved to prisons on the mainland. They had to be bused in separate groups and placed on flights bound for Florida, Mississippi and Georgia, their families and attorneys had to be notified, and it was the federal court's job to oversee the process.

Now, those detainees are starting to get their day in court just when judges are bracing for a wave of foreclosure litigation paused during the storm and fortifying their emergency response plans to heed the lessons of Maria.

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More than a year since the Category 4 storm devastated homes, bridges and roads across the island, the courthouses themselves show few visible scars. All but part of the historic headquarters of the Puerto Rico Supreme Court have reopened.

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the type of devastation that we had.
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In a video interview with Law360 in October, Judge Aida Delgado-Colón describes the first time she returned to the federal courthouse in San Juan after Hurricane Maria and how she oversaw the relocation of 1,800 prisoners in the days that followed. (Annie Pancak | Law360)

But court officials are still taking stock of the destruction.

“We are counting on [two] things,” Judge Delgado told Law360. “That we are better prepared in case this happens again, and that it doesn’t happen again.”

Managing the Caseload

Even before the hurricane, the federal court system in Puerto Rico, which includes two other courthouses — a bankruptcy court in Old San Juan and a satellite bankruptcy court in the southern city of Ponce — faced a relatively high caseload in recent years.

The number of annual filings has declined from nearly 4,200 in June 2016 to slightly over 2,300 filings in June 2018, according to the latest judicial caseload profile for Puerto Rico, but the court’s post-hurricane docket is daunting.

One factor is that the court oversees a considerable docket of foreclosure cases. The hurricane resulted in a moratorium that stayed more than 1,000 foreclosure cases until late last summer, and the court is bracing for more hectic months ahead as those cases start to be reactivated.

Another issue is that the federal district court in Puerto Rico has two vacancies among its seven judgeships. One empty seat, left by Judge Jose Antonio Fuste when he retired in 2016, is considered a judicial emergency, a designation the U.S. Courts system applies to vacancies that impose a strain on the court.

The second vacancy opened in October when U.S. District Judge Jay Garcia-Gregory took senior status. Judge Fuste’s vacancy now has a nominee, Raúl Manuel Arias-Marxuach, a litigation partner at McConnell Valdés LLC, Puerto Rico’s largest corporate law firm. But the other vacancy doesn’t.

“If we’re lucky, that might take another two years,” Judge Delgado said. “That has been the trend. It has taken, usually, a significant time to fill the vacancy. It’s hard, more so because of the heavy criminal workload that we have.”

From left, Judge Delgado, Chief Deputy Clerk Maria Antongiorgi and Clerk of the Court Frances Rios de Morán discuss the aftermath of Hurricane Maria during an interview with Law360 at the federal courthouse in San Juan. (Annie Pancak | Law360)

When Law360 met with Judge Delgado in October, she was preparing for nearly a dozen trials — mostly criminal — each scheduled to run up to a month or longer. Her docket for the six months ending in April also included two shorter civil trials. Judge Delgado said all five active federal judges in the district have had to take on a hefty load this winter, partly because of delays from the hurricane.

For instance, the MDC inmates who had to be evacuated from the island after the hurricane did not return until February, preventing the court from trying their cases during that time.

“The [defendants] we could have tried during those four months are here now, on top of the new ones,” Judge Delgado said. “And we have lengthy trials in this district.”

The Call Of Duty

Court officials’ concerns immediately after the hurricane were more existential. Hurricane Maria blocked communications, cut power across the entire island and left many of its then-3.3 million people without access to potable water.

Before the hurricane hit, the court had a communications protocol outlining basic measures, including the use of an emergency public address system for announcements. Two days before the hurricane, Judge Delgado issued a memo advising staff and attorneys that the court would close for the predicted storm and then assess whether to reopen that Friday as planned.

"In hindsight, looking back at that memo, actually I was shocked by the fact that really denotes, and shows you, that we were not really expecting to have [such] consequences ... that the consequences of Hurricane Maria were to be as devastating as they were," she said.

For Judge Delgado and her right-hand woman, Clerk of Court Frances Rios de Morán, along with Chief Probation Officer Eustaquio Babilonia, the first priority in September 2017 was to account for the roughly 300 court system clerks, staffers, probation officers and other federal employees. All survived, although some lost family members.

Next was to resume operations as soon as possible. During a meeting at the courthouse after the hurricane, the judges decided to toll the Speedy Trial Act, which governs the criminal docket, and extend deadlines for civil cases until about two weeks after whenever the court reopened.

For many criminal defense attorneys, the slowdown in work meant a lack of income during an especially difficult time. So Judge Delgado took the decisive step of allowing defense lawyers appointed by the court to get paid for cases they had worked on for at least six months.

From October 2017 through March 2018, members of the Criminal Justice Act Panel, who are attorneys eligible to represent financially strapped defendants, filed 650 vouchers that the court's CJA staff processed for $3.4 million in payments, according to the court.

Judge Delgado and her colleagues rallied employees to get the court back up and running as soon as possible. Courthouse employees, including clerks and staff, were mostly in by Oct. 3, and the court officially reopened on Oct. 16, just three and a half weeks after the storm.

A jury qualification room quickly became an ad hoc day care center and court employees suddenly had access to scarce diesel fuel, cash and even generators. All thanks to Judge Delgado, who sought and received roughly $106,400 in authorizations from the Administrative Office of the U.S. Courts to pay for it all.

For Judge Delgado and her colleagues, the effort was herculean, but essential to fulfilling the court's role as guardian of public safety and bringing a sense of normalcy back to a devastated island.

"Literally, I walked to the Caribe Federal [Credit] Union, talked to the manager and asked him to make sure that he would activate the ATM machine within the building, so that that would be accessible to our employees," Judge Delgado said. "We went to the gas station that is nearby, and another one in Old San Juan, and talked to the owner to see if he could prioritize and create a different line for federal employees, because we needed to be reactivated."

"And I think they recognized the role of the court and the importance of having an active presence, and they did," she said.

A Prescient Plan

In the local court system, which operates independently of the mainland, a similar series of events was playing out. By a stroke of luck, commonwealth court administrators had laid out an emergency plan just a few weeks before as they braced for a different hurricane — Irma.

It was still early September 2017 when one employee suggested what seemed to everyone an unlikely hypothetical situation: What happens if they can't communicate with each other?

"It was an idea shot out there that we thought, 'What a crazy idea,'" said Sigfrido Steidel Figueroa, the administrator of La Rama Judicial, or the Judicial Branch. "How is it possible that we wouldn't be able to communicate with each other? The satellites are above the hurricanes. There won't be a problem."

Just two weeks later, when Hurricane Maria cut almost all communications, local court officials realized just how prescient they were. The plan they had come up with — setting a time and a place to meet 48 hours after the storm — was crucial after Maria, Steidel said.

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and we had to figure out how
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In a video interview with Law360, Judicial Branch Administrator Sigfrido Steidel Figueroa recounts how Puerto Rico's local court system responded to a lost sense of certainty in the community after Hurricane Maria. (Annie Pancak | Law360)

Within 72 hours of Maria passing over the court system's main office building in San Juan, operations began at the courthouse in Caguas, about 20 miles south of the capital, which was in better shape than most judicial centers, Steidel said. Within a week and a half, limited judicial services were being offered in each of the island's 13 judicial regions.

The buildings themselves all suffered varying degrees of damage from the storm, with two structures left unusable for months. Maria's winds broke 70 windows in the courthouse in Bayamón and destroyed both a large secretaries' area and the civil wing of that building .

"There wasn't enough glass in Puerto Rico to repair it," Steidel said.

The basement of the courthouse in Aguadilla, which sits less than two blocks from the ocean on the northwest coast, was flooded by Maria's storm surge. The building was shut for more than a year and in November became the final courthouse to reopen — now with a new electrical substation placed on an elevated floor.

At the Puerto Rico Supreme Court headquarters in San Juan, only the courtroom itself is still shuttered after suffering collapsed doors and flooding. The building, which is on the National Register of Historic Places, is more than 60 years old and requires careful restoration because of its iconic status. But because the justices' offices did not suffer much damage, they have been able to continue their work at the building mostly uninterrupted, Steidel said.

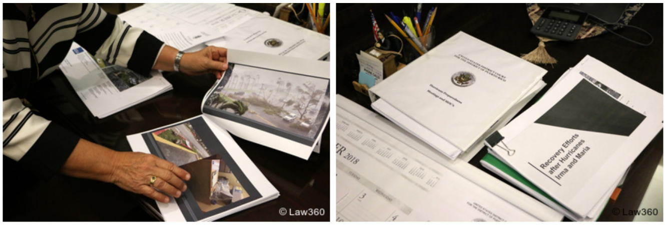
Now, court administrators are building on that first lesson from Maria — not only how to communicate if the power goes out, but how to build contingencies on top of contingencies so that the courts can operate after a disaster.

"We learned a lot," Steidel said. "We learned that it's impossible to predict the magnitude of damages. We didn't think the electrical substation in Aguadilla was going to be damaged, or that the secretaries' section of Bayamón was going to suffer so much damage. So all of the contingency plans need to anticipate the probable, but also the possible, to take adequate measures."

Preparing for the Next Storm

In Judge Delgado's chambers, a large binder titled Hurricane Preparedness sits on a long table, a mark of her ongoing leadership on disaster logistics.

Although her tenure as chief judge ended in April, she is still working with the administrative office of the federal court and various local agencies to devise new emergency response protocols and obtain updated equipment to support the court's disaster recovery efforts in future storms.



At left, Judge Delgado flips through photos of Hurricane Maria and the damage it caused to the federal courthouse in San Juan. At right, hurricane recovery documents sit on a conference table in Judge Delgado's office. (Annie Pancak | Law360)

The court is receiving two larger generators capable of operating 24/7, and the General Services Administration, which owns the courthouse building, has locked down an agreement with a fuel supplier to keep the generators running, she said. The GSA, which is pouring millions into preparation projects, is also building a cistern to prevent future water shortages at the courthouse in the event of another storm. Satellite phones similar to the ones used by the Federal Emergency Management Agency are on their way.

The work is ongoing, but the first hurdle is behind them.

"I think that everyone, from probation [officers] and court personnel, remained firm in satisfying what was the objective of the court's mission," Judge Delgado said. "We were very clear [we wanted] to give the sense of normalcy and steady life, if we could use that term. Everyone was facing very difficult circumstances at the personal and family levels, and still they showed up. They were present and they remained committed."

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