Case Study/Memo Exercise #1 Hurricane Katrina & Federalism Note: The setup for all exercises will follow this basic template (which in law is usually referred to as a memo … or sometimes a brief). One quick note: A “CIVIL” Crime (or Lawsuit) is a legal case or controversy where one individual (or group of individuals) sues a person for monetary damages. Even if found guilty, the individual does not go to jail. A “Criminal” Crime involves the state charging an individual(s) with a crime with the potential of jail or prison time. I know most of you know that – but just as a heads up. Assignment Parameters and Setup Grade composition will be as follows: 10 points for Grammar, Spelling, Etc. 5 points for Formatting (double spaced, page #s, proper length, etc.) 5 points for Following Instructions and on time completion. 30 points for content, discussion, and analysis. 50 points total Assignment Criteria Length: Approximately 4 pages double spaced Do not double space your name, class title, etc. Format: Standard margins, font, double spaced, page numbers, etc. Citation: You should utilize quotes longer than a sentence or two. However, if you use outside material it needs to be documented. There’s no requirement for how you cite – just that you do it if applicable. Due by 11:59pm on 9/18 Late Penalty: Exercises not completed on time will receive a 10 pt deduction per day late Step 1 – Context & History Background Hurricane Katrina was one of the deadliest hurricanes ever to hit the United States. An estimated 1,833 people died in the hurricane and the flooding that followed in late August 2005, and millions of others were left homeless along the Gulf Coast and in New Orleans. Katrina was the most destructive storm to strike the United States and the costliest storm in U.S. history, causing $108 billion in damage, according to the National Oceanic and Atmospheric Administration (NOAA). It ranks sixth overall in strength of recorded Atlantic hurricanes. It was also a very large storm; at its peak, maximum winds stretched 25 to 30 nautical miles (46 to 55 kilometers) and its extremely wide swath of hurricane force winds extended at least 75 nautical miles (138 km) to the east from the center. Federalism & Accountability The major flaw in the response to Hurricane Katrina stems from the complexity of emergency management within a Federalist System. The Major Criticisms Include: ϖ Failure to Evacuate Residents o Particularly, the elderly, poor, and sick ϖ Failure to provide adequate food, shelter, and water to displaced individuals ϖ Failure to utilize existing resources o Busses, Roads, etc. ϖ Failure to adopt a plan for assisting individuals impacted by the hurricane ϖ Failure to provide sufficient help in rescuing distressed individuals ϖ Failure to maintain law and order throughout the crisis While every level of government involved admits to the problems in the response to Hurricane Katrina, there is no consensus over who(m) should receive blame for these issues and who(m) is at fault for the loss of life and failures of the response to the hurricane. Those blaming the Bush administration and more specifically, FEMA officials frequently point out several problems in the response to Katrina, including: ϖ Bush had appointed an incompetent head of FEMA (Michael Brown) who was not up to the job ϖ FEMA failed to prepare adequately for the threat of natural disaster (as they were focused on other things, like the War(s) on Terror, Afghanistan, and Iraq) ϖ FEMA failed to respond quickly because the individuals were disproportionately poor, African American, and decidedly Democratic in their political affiliation ϖ Bush had failed to intervene personally and instead flew over New Orleans from an airplane rather than investigate in person on the ground Writing on the seventh anniversary of the storm the New York Times speculated that “A big storm requires big government” and that the Bush administration ineffectively harnessed the power of the national government to help Katrina victims and the consequence was that individuals needlessly lost their lives. For its part, the Bush administration and FEMA officials largely blamed officials from New Orleans and the state of Louisiana for the failed response. Specifically: ¬ State and Local Government are best prepared to handle natural disaster relief, a policy that dates back to Bill Clinton and in this case the Mayor of New Orleans and Governor of Louisiana were not up to the job ¬ When the Mayor and Governor made decisions, they were slow and frequently too late ¬ The City and State failed to use existing resources to help displaced individuals (i.e. the busses in the flooded parking lot) ¬ Individuals failed to act responsibly in seeking shelter and the national government cannot be held accountable for that ¬ The President could provide assistance when necessary but was never asked directly for help ¬ Outside of New Orleans (other parts of Louisiana and Mississippi) leaders handled Katrina competently and the results were far more positive Just as the New York Times had been critical of George W. Bush, the Wall Street Journal was equally critical of the Mayor of New Orleans and Governor of Louisiana citing the events as tangible proof that the City and State needed to reassess their local leadership and engage in some “soul searching” over the types of individuals that they elect to higher office. Third party evaluations of the response to Hurricane Katrina have generally been mixed on their assignment of blame for the crisis. Legal Argument While politicians cannot be sued for poor performance of their jobs, administrators and those who carry out their policies frequently retain some liability for their actions. The inability to sue the government dates back to something called sovereign immunity. In this case, sovereign relates back to “the sovereign” (i.e. the King or Queen). Immunity meaning the inability to sue them civilly or prosecute them criminally. The formal definition follows: The legal protection that prevents a sovereign state or person from being sued without consent. Sovereign immunity is a judicial doctrine that prevents the government or its political subdivisions, departments, and agencies from being sued without its consent. The doctrine stems from the ancient English principle that the monarch can do no wrong. And while politicians generally have maintained sovereign immunity for themselves, they have allowed for agencies and in some cases, individuals within agencies to be sued or prosecuted under multiple criteria. The criteria presented in this case study, involves the statute of negligence. Negligence is commonly one of the civil “crimes” government employees can be sued for (of course, only in extreme cases). Lawyers in favor of “going after” FEMA employees and administrators argue(d) that much of the disaster relating to Hurricane Katrina was avoidable. Human life and property damage was exacerbated not by simple mistakes, but catastrophic errors in judgment by those in charge of the emergency management apparatus. Those defenders of FEMA largely argue that the failure of Hurricane Katrina relief cannot be placed on one agency or one individual but is rather a systematic failure of government at all levels and shouldered by all politicians. While FEMA possibly could have done better – they were hindered by the system and by politicians. Given the distribution of error, there is no possible way that any FEMA employee or administrator could be liable for act(s) of civil negligence (i.e. negligence that would allow them to be sued by victims of that negligence). They also note that President Bush, New Orleans Mayor, and Louisiana Governor are all protected from civil lawsuits in relation to their job performance. Step 2 – Assigned Materials Watch PBS Frontline: The Storm http://www.pbs.org/video/1555897742/ Read [WTClass] Brown, Michael. 2015. “Stop Blaming me for Hurricane Katrina.” Politico. Additional Sources A Failure of Initiative: Bipartisan Report on Katrina (Link on WTClass… you don’t really need to utilize this – but it’s there for reference) [Note] There are a ton of Hurricane Katrina sources. Feel free to browse them as needed and as you see fit. WIKIPEDIA should not be used as a source, under any circumstances. Step 3 – Questions/Prompts for Response Your job is to determine whether or not FEMA officials (presumably the higher-ranking ones – including the head) could be sued for “Administrative Negligence.” Incorporate the following analysis into your paper. 1) Utilizing the simplified statute for Administrative Negligence provided , should FEMA officials be concerned that individual victims of Hurricane Katrina could potentially seek damages for non-performance of their jobs and duties? And if they should be concerned – do you think there’s actually a case? If they shouldn’t make sure to elaborate the specific logic on your end. Analyze and discuss all 5 elements of Negligence in the context of the response to Hurricane Katrina. 2) As part of your analysis, critique the arguments presented here by lawyers advocating for negligence and those advocating for broader government accountability. 3) In your opinion (regardless of whether or not the statute of negligence could be satisfied), do you think that FEMA administrators should have been held either criminally or civilly accountable for the tragedy that ensued? Why or why not?