

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DR. IVOR van HEERDEN

CIVIL ACTION NO. 10-155

VERSUS

JUDGE: BRADY

BOARD OF SUPERVISORS, ET AL.

MAGISTRATE-JUDGE: NOLAND

AFFIDAVIT OF IRREPARABLE HARM

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public personally came and appeared:

Dr. Ivor van Heerden

a resident of the full age of majority of Livingston Parish, Louisiana, who upon being duly sworn did depose and state that:

-I began employment at LSU on August 18, 1992. I am an Associate Professor in the LSU Department of Civil and Environmental Engineering.

-I am a disaster science specialist and hurricane researcher. In 1998, following my affiliation with Dr. Marc Levitan, we worked diligently to establish the LSU Hurricane Center. I became Deputy Director of the LSU Hurricane Center with Dr. Levitan serving as Director.

-Since 1995, my position at LSU has been fully paid from state funds and starting in 2003, on an academic year basis.

-Until October, 2006, I conducted research and bore substantial teaching responsibilities. In October, 2006, Chairman Vyiadjis removed me from the classroom in retaliation for my speech regarding the causes of the post-Katrina flooding.

-Following Hurricane Katrina, I analyzed and researched the disaster in an attempt to determine the causes of the massive flooding in the Greater New Orleans area.

-I concluded, based on the evidence, the cause of the massive flooding was the catastrophic structural failure of barriers, including the levee system, that should have handled Hurricane Katrina with relative ease. I rejected the conclusion of the Corps of Engineers which attempted to blame the massive flooding on storm surge from Katrina. The Corps' conclusion was clearly erroneous.

-On September 21, 2005, an article appeared in the *Washington Post*, in which my public comments regarding the cause of the massive flooding was attributable to the Corps of Engineers.

-In October, 2005, I was appointed to head "Team Louisiana" whose mission was to investigate the causes of the extensive flooding and ensuing death and devastation post-Katrina. On October 12, 2005, I was quoted in the *Times-Picayune* questioning the Corps' conclusion that the levee failure was a result of storm surge.

-Indeed, in October, 2005, and repeatedly thereafter, I spoke publicly and often in local and national media criticizing the Corps for its levee and flood wall construction policies and designs and their responsibility for the massive flooding.

-On November 2, 2005, I testified before the United States Senate Committee on Homeland Security and Governmental Affairs. I testified that preliminary findings by the State of Louisiana Forensic Data Gathering Team are that in the case of the 17th Street Canal, London Avenue Canal, and Industrial Canal, levee collapse and flood breaching reflected unstable soil conditions and a lack of foundation support and water percolation seals, given the soft, porous, and highly organic nature of the soils.

-I also testified publicly that the failure of the levees was due to defective design which I characterized as "a geotechnical engineering failure" by the Corps. I also publicly testified that for the Corps "not to have given the residents the security of proper levees is inexcusable."

-On December 1, 2005, I was quoted in the *New York Times* with my conclusion that the "devastation of New Orleans was a disaster waiting to happen because of a significant flaw in levee design by the Army Corps of Engineers".

-On March 22, 2007, I was also quoted blaming the Corps in the *Washington Post*.

-Following my repeated public criticisms of the Corps, the Corps contacted LSU and insisted that I be silenced. Indeed, in October, 2005, Dr. Roy Dokka of the LSU Department of Civil and Environmental Engineering sent an angry email message to LSU administrators confirming that Corps officials had complained to him. In the Dokka email, he stated he was "greatly concerned" about "the deluge of irresponsible reports to the media being spewed by a small number of mainly non-tenure track faculty regarding what may or may not have caused flooding in New Orleans" and stated that I needed to be reined in. Thereafter, LSU Vice Chancellor Harold Silverman and Robert Twilley contacted the Louisiana Governor's office to prevent the Team Louisiana study from going forward under my leadership.

-Additionally, Silverman and LSU Vice Chancellor Michael Ruffner called me to a meeting at LSU and sternly admonished me for my public criticisms of the Corps. They directly told me my criticisms of the Corps jeopardized LSU's prospects for federal funding and accused me of lacking the expertise needed to comment on the Corps' engineering of the levees. They also warned me that LSU did not want to be associated with "placing blame" on the Corps.

-I was threatened and I memorialized this conversation with Silverman and Ruffner in an email on November 15, 2005.

-In May, 2006, my book entitled *The Storm* was released for publication. In my book, I wrote about the failed response by FEMA, other state agencies, and federal agencies. I also wrote that the Corps of Engineers made serious engineering mistakes which caused multiple breaches in the New Orleans levee system resulting in some 90% of the post-Katrina flooding in New Orleans.

-After several newspapers began writing about LSU's attempts to silence my speech, Ruffner wrote a letter to the *New York Times* in which he accused me of having "no professional credentials or training" to even discuss the engineering of the levees.

-Following Ruffner's letter, many people, members of the media, and LSU faculty were outraged. Dr. Levitan met with Ruffner regarding his letter and during that meeting, Ruffner again threatened me and accused me of causing problems with the LSU Hurricane Center and further, that if I were not longer part of the Center, things would be better for the Hurricane Center on campus.

-On October 15, 2006, Voyiadjis told me that there was a "new" personnel policy which would now govern my employment with LSU, that I would no longer be allowed to teach, I was only on a one-year appointment, and that I would be judged only on my research. I considered these actions a direct threat to me on account of my continued speech regarding the Corps' responsibility for the post-Katrina flooding.

-In late 2006, LSU Chancellor O'Keefe retaliated against me by refusing to support my nomination for the prestigious National Wetlands Award. Indeed, in emails circulated by O'Keefe, Keel, and Twilley, they agreed my nomination should not be supported as it might "justify" my "potentially misguided view of service/science" and that I had generated "negative reactions" which they should not give a "stamp of approval" to.

-In March, 2007, Twilley directly excluded me from the state's Science and Engineering Review Team ("SERT"). Also, on May 23, 2007, Twilley penned an email where he referred to taking a cyanide pill if he had been confused with me. Keel replied that "we need to be sure they know the difference between Ivor and the rest of LSU" and then inquired of Twilley whether he wanted the cyanide pill for me.

-In April, 2007, I was asked to serve as an expert witness in litigation against the Corps relating to MR-GO. I had previously publicly spoken about the Corps' defective design and maintenance of MR-GO which had produced a funnel effect exposing New Orleans to the brunt of a storm surge from Lake Borgne.

-In response, O'Keefe told the plaintiffs' lawyer that I would be fired if I testified against the Corps and that "they" didn't want "their people front and center in such politically charged conflicts, especially in a capacity that opposes the current Republican regime". Thereafter, LSU prohibited me from testifying as an expert witness which directly affected my reputation and standing in the community.

-I did, however, assist in the litigation as a non-testifying expert in the MR-Go litigation. On November 18, 2009, the United States District Court for the Eastern District of Louisiana determined

that the Corps was legally responsible for the catastrophic loss of human life and property in unprecedented proportions and that the Corps was negligent.

-In the summer, 2007, the approach of the hurricane season, LSU placed Twilley in charge of storm surge modeling for CERA to the exclusion of myself. When asked, Twilley advised Dr. Levitan that if I were associated with CERA, he would have been fired by LSU. On August 2, 2007, I requested of LSU access to computer resources for the Hurricane Center, which were effectively denied.

-I was again excluded from CERA in 2008 for no legitimate reason.

-Also in 2008, Twilley stated that I would be fired if I spoke to the media regarding surge modeling. Twilley further stated that he wanted nothing to do with me and stated that I was one of the "crazies".

-In September, 2008, Twilley ordered me to remove my independent data from the Hurricane Health Center webpage.

-On April, 9, 2009, Interim Dean David Constant presented me with a letter stating that my appointment at LSU would not be renewed. Constant told me that my non-reappointment had nothing to do with my performance. Constant further stated that my discussions with the media were considered by LSU as speech by me as a private citizen.

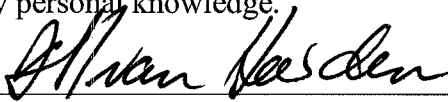
-In terminating my employment, LSU did not follow its own policy and made the decision to terminate my employment without review and recommendation by the faculty as required by PS-36.

-I have been proposed for termination as a direct result of my speech about the Corps' responsibility for the post-Katrina flooding and devastation, my protesting and opposing the illegal stifling of my speech and academic freedom, and my testimony before public bodies regarding the Corps' illegal negligent conduct causing the post-Katrina devastation.

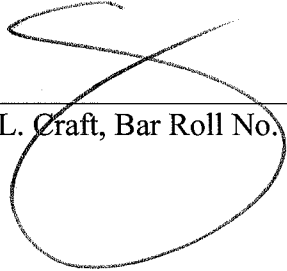
-Unless restrained, my employment with LSU will be terminated effective May 21, 2010.

-Unless a temporary restraining order and, thereafter, injunctive relief is issued barring my termination effective May 21, 2010, I have suffered and will suffer immediate and irreparable harm. Specifically, my termination effective May 21, 2010, removes me from all access to hurricane computer modeling, even though I am one of only a handful of scientists in the State of Louisiana with the requisite skill, experience, and knowledge to produce accurate models and accurately predict the paths of impacting hurricanes, removes me from any ability to continue my vital research in this area, removes me from any ability to serve as an expert in my field, directly impacts my ability to obtain any replacement employment, unquestionably and directly impacts my reputation and standing as an international hurricane expert, has a chilling effect on my academic freedoms and the academic freedoms of others at LSU, and defendant LSU's actions serve to chill and restrict my free speech rights and the rights of others similarly situated to me, including the right to report, complain about, and protest unlawful activities by the government and its officials, and irreparably harms my reputation, including both my personal and professional reputation.

-This Affidavit is made upon my personal knowledge.



SWORN TO AND SUBSCRIBED before me, Notary Public, this 9 day of April, 2010.



Jill L. Craft, Bar Roll No. 20922