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## **COMMUNITY RECOVERY LAWYERING: HARD-LEARNED LESSONS FROM POST-KATRINA MISSISSIPPI**

BY BONNIE ALLEN, BARBARA BEZDEK AND  
JOHN JOPLING<sup>1</sup>

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Hurricane Katrina struck the Gulf Coast on August 29, 2005, as this country's most destructive natural disaster. Category Four hurricane force winds, 55-foot sea waves, and a 30-foot wall of water crashed into the Mississippi Gulf Coast, raced inland for over ten miles, then swept up swirling rivers and bayous in a final surge back to the Gulf of Mexico. The national narrative remembers the flooding of New Orleans, but forgets that Katrina dashed lives and property for a distance equal to that from Boston to Baltimore. Hundreds of thousands of homes were crushed in Katrina's wake, along with neighborhoods and generations of a way of life. Decimating every mile of the Mississippi coastline, the combined initial assault and the storm surge took hundreds of lives, rendered homeless tens of thousands of survivors, and left well over \$1 billion in property damage in the state. While the 400,000 residents of the three coastal counties were most directly impacted, the hurricane eventually soared hundreds of miles north, crossing the Tennessee state line and generating massive destruction in its path.

During the next several days, the eyes of the nation watched in horror as a deadly second round of disaster unfolded in New Orleans: the perfect storm of broken levees and thousands of

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poor, elderly, disabled, and mostly African-American residents blatantly left behind to suffer in the drowning of a grand, historic city. Round the clock television coverage captured it all, and web-based social media created a global classroom. The world bore witness in shock and disbelief to the rapid unraveling of a civil society, which shattered the myth of America as an invincible democracy. The glaring reality of America's racist, classist and oblivious underside – still alive and well in the 21st century – came to light in the face of the frightening, unthinkable failure of governments at every level to respond to a natural and human disaster in a region already mired in a long history of physical and social engineering that tilted dangerously in favor of a white, privileged ruling class.

This essay is our reflection on the ways in which this unparalleled catastrophe raised law students' consciousness of life beyond their campuses and created rich learning and teaching opportunities for them and all those involved in their education. Over 1,500 law students have come to work and volunteer on the Mississippi Coast since Katrina.

We begin with a brief description of Katrina's impacts on the Mississippi Gulf Coast, presented as social, legal and policy issues requiring community-based organizing and advocacy strategies. These created an environment for practicing a mode of lawyering built around a framework of law, community recovery, and democracy building. As part of this discussion, the authors share our insights from forging intersections between legal education and disaster recovery practice. We found this to be a potent point of study and reflection on the power and need for "community lawyering."

Community lawyering augments traditional lawyering models with an approach that features building and sustaining relationships with clients, over time and in conjunction with their communities. Community lawyering is based on a collaborative strategic vision of building community by developing client communities' ability to advocate for themselves. It requires lawyers

and law students to confront the legitimate fear in many communities that attorneys will dominate the representation, replicating systems of subordination with which they already struggle, and derail community efforts to change those systems and gain greater social, economic and political equality.

Next, we discuss how we used post-Katrina Mississippi as a teaching focus in the classroom and on the ground; how we sought to integrate theory and practice; and how this pedagogical pairing can be applied in other settings. We also identify the unique contributions that law students have made in advancing the social justice goals of the communities that Katrina left in its wake. Finally, we highlight some of the insights gleaned from cross-cultural comparative clinical education in shaping law students' understanding of the role of law and legal policy in democracy-building.

We cannot help but narrate the events and lessons of Katrina out of our own experiences. John Jopling is a Katrina survivor: a long-time Mississippian and a legal first-responder who began assisting other survivors within days of the storm – then went on to become the Managing Attorney of the Mississippi Center for Justice's (MCJ) Gulf Coast Office in Biloxi. Bonnie Allen was a Katrina legal volunteer who arrived in Mississippi one week after the disaster, then traveled back and forth to Mississippi from her home and job in Michigan for two years before moving to Mississippi to join MCJ's staff. Barbara Bezdek is a Professor of Law at the University of Maryland School of Law who first visited the Mississippi Gulf Coast two years after the storm, and then became part of the team that developed the law school's Mississippi Summer Clinic as a partnership with MCJ.

These combined experiences have prompted this initial attempt to assess Katrina as a learning laboratory for lawyers – both in real time for those who were on the ground and in the midst of it – and for those who can look back and reflect on what it revealed about race, poverty, law, and democracy in the context of disaster. Activist Van Jones describes Katrina as the

“story of a rare political circumstance, a genuine teaching moment. We owe it to the dead not to waste it. We cannot allow a messy stew of shame, pain, and racial disdain to prevent us from looking deeply into the heart of this disaster.”<sup>2</sup> We agree that, as a nation, we must sear the moral of this catastrophe – and its lessons – into our memory. Only then can we be assured that the mind-set that permitted it will never again be allowed to lead this country.<sup>3</sup> As the legal system braces for future disasters, both natural and human-made, including the full force winds of the current economic disaster, understanding how these factors intersect is a critical lesson for legal educators, practitioners and students participating in the education of lawyers.

### **BEFORE HURRICANE KATRINA: A HISTORY OF DISPARITY, NEGLECT, AND OPPRESSION**

Following the initial settlement of the American colonies, opportunistic planters and merchants moved westward to Louisiana and Mississippi. In *The Most Southern Place on Earth: The Mississippi Delta and the Roots of Regional Identity*, author and Professor James Cobb recounts this history, when pioneers took African slaves with them to the Mississippi Delta, established plantations with the harshest conditions, and plundered native peoples and the land to capitalize on Black Gold, the richest soil on earth.<sup>4</sup> Cobb describes early 19th century Mississippi as a harsh wilderness of untamed land and thick with brush, swamps, dangerous animals, and hostile native peoples.<sup>5</sup> Early plantations in the region were often owned by absentee planters, leaving the day-to-day management and “slave-handling” to

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<sup>2</sup> VAN JONES, *THE GREEN COLLAR ECONOMY: HOW ONE SOLUTION CAN FIX OUR TWO BIGGEST PROBLEMS* 23-4 (2008).

<sup>3</sup> *Id.* at 33.

<sup>4</sup> See JAMES COBB, *THE MOST SOUTHERN PLACE ON EARTH: THE MISSISSIPPI DELTA AND THE ROOTS OF REGIONAL IDENTITY* (1992).

<sup>5</sup> See *id.*

overseers who created the cruelest working conditions for slaves anywhere in the American South.<sup>6</sup>

Although allegedly abolished in the 19th century, many vestiges of the institutions and systems of Mississippi's plantation era have survived into the 21st century, and these result in dismal prospects for many Mississippians today. Mississippi remains the nation's poorest state.<sup>7</sup> Mississippi also has the highest percentage of African-Americans (38%) in the country.<sup>8</sup> As indicated in *A Portrait of Mississippi: Mississippi Human Development Report 2009*, commissioned by the Mississippi State Conference NAACP and Oxfam America, Mississippi has the lowest life expectancy rate and the highest rate of adults 25 and older who did not complete high school in the nation.<sup>9</sup>

Moreover, Hurricane Katrina is not the first catastrophic natural disaster to strike the region. John Barry's *Rising Tide* describes the 1929 Great Mississippi Flood as a "struggle of man against nature, and man against man."<sup>10</sup> The flood "brought with it also a human storm. Honor and money collided. White and black collided. Regional and national power structures collided. The collision shook America."<sup>11</sup> Seven and a half decades later, Katrina resurrected the same colliding forces.

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<sup>6</sup> *Id.* at 22.

<sup>7</sup> Les Christie, *America's Wealthiest (and Poorest) States*, CNN (Sep. 16, 2010, 5:52 PM), [http://money.cnn.com/2010/09/16/news/economy/Americas\\_wealthiest\\_states/index.htm](http://money.cnn.com/2010/09/16/news/economy/Americas_wealthiest_states/index.htm).

<sup>8</sup> *African Americans by the Numbers*, INFOPLEASE.COM, <http://www.infoplease.com/spot/bhmcensus1.html> (last visited Nov. 14, 2010).

<sup>9</sup> SARAH BURD-SHARPS, KRISTEN LEWIS & EDUARDO BORGES MARTINS, AMERICAN HUMAN DEVELOPMENT PROJECT, *A PORTRAIT OF MISSISSIPPI: EXECUTIVE SUMMARY 1* (2009), available at [http://www.measureofamerica.org/wp-content/uploads/2009/01/msreport\\_execsummaryfinal.pdf](http://www.measureofamerica.org/wp-content/uploads/2009/01/msreport_execsummaryfinal.pdf).

<sup>10</sup> JOHN M. BARRY, *RIISING TIDE: THE GREAT MISSISSIPPI FLOOD OF 1927 AND HOW IT CHANGED AMERICA* 17 (1997).

<sup>11</sup> *Id.*

## AFTER HURRICANE KATRINA: THE LEGACY LIVES ON

### *a. Economic Pressures and Inequitable Public Policy Hit Those Least Able to Withstand the Turbulence*

Mississippi's cultural and political legacy mightily emerged in the wake of Katrina. The disaster exacerbated pre-existing racial and economic injustices as policy after policy decision favored white and higher-income survivors and communities. For those working to repair and renew affected communities, the reconstruction process has offered many additional lessons on how poverty, race and inadequate public policy management continues to negatively affect the poorest Katrina survivors the most. For the poor and many people of color, Katrina remains an ongoing human crisis.

Katrina destroyed or rendered uninhabitable over 50% of the low-income housing stock on the Mississippi Gulf Coast.<sup>12</sup> In the apartments that remained livable, rent costs rose by as much as 30%.<sup>13</sup> Seventy-five percent of the federal recovery funds designated for lower-income survivors were redirected to other pur-

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<sup>12</sup> See Priscilla Frulla, *Apartment Losses Near 50%, 10,000 Units Fell Victim to Katrina*, SUN HERALD, Oct. 31, 2006, at B8 (citing Mississippi Center for Justice Rental Unit Survey). Mississippians were already suffering an affordable housing crisis before the hurricane hit. See e.g., Deborah H. Bell, *The University of Mississippi Housing Law Clinic: A Local Law Office and Regional Law Center*, 61 MISS. L.J. 501 (1991) (long-standing dearth of affordable housing in the nation's poorest state); KEVIN F. MCCARTHY & MARK HANSON, RAND GULF STATES POLICY INSTITUTE, *POST-KATRINA RECOVERY OF THE HOUSING MARKET ALONG THE MISSISSIPPI GULF COAST* 19-20 (2007), available at [http://www.rand.org/pubs/technical\\_reports/2007/RAND\\_TR511.pdf](http://www.rand.org/pubs/technical_reports/2007/RAND_TR511.pdf) (discussing that immediately prior to Katrina, over 40% of renters in the storm-hit coastal counties had high housing costs, paying more than a third of their income in rent).

<sup>13</sup> OXFAM AMERICA, *FORGOTTEN COMMUNITIES, UNMET PROMISES: AN UNFOLDING TRAGEDY ON THE GULF COAST* 17 (2006), available at <http://www.oxfamamerica.org/files/forgotten-communities-unmet-promises.pdf>.

poses.<sup>14</sup> With the diminishing media spotlight on the devastating legacy of Katrina, what is vanishing from the public eye is the dramatic racial and economic injustice that continues to unfold for thousands of Mississippians in the wake of the storm. Through an obstreperous absence of government stewardship and accountability, combined with consistent policy decisions that promote unbridled market forces, thousands of low-income individuals and people of color remain displaced.

Five-plus years after the disaster, many displaced individuals face permanent displacement due to the misdirection of federal recovery funds, inflated rents, housing prices and insurance costs, no-bid contracts that produced thousands of faulty FEMA trailers plagued by toxic levels of formaldehyde, and developer-driven zoning decisions that are resulting in the permanent loss of affordable housing and historic neighborhoods of color. Casinos and high-end condominiums increasingly fill the Mississippi coastal landscape where vibrant, close-knit African-American and Vietnamese communities once stood. From environmental policy, to “NIMBYism” and local government decisions about placement of Katrina cottages, to failure to remediate mold in public housing projects, racism was – and continues to be – profoundly present in the recovery.

***b. The Mississippi Center for Justice and its Volunteers  
Launch a Community Lawyering Response***

In the wake of these tragic events that continue today, the truly inspiring upside is the unprecedented outpouring of generosity from all corners of the country and the world. Hundreds of thousands of volunteers from faith communities, civic associa-

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<sup>14</sup> Congress gave the state \$5.5 billion in hurricane recovery grants, with the proviso that half of it should be used to help low-income families, but critics repeatedly reported that much less than a quarter of the money is being used as Congress directed. See Leslie Eaton, *In Mississippi, Poor Lag in Recovery*, N.Y. TIMES, Nov. 14, 2007, at A22, available at [http://www.nytimes.com/2007/11/16/us/16mississippi.html?\\_r=1](http://www.nytimes.com/2007/11/16/us/16mississippi.html?_r=1).



tions, businesses, philanthropic institutions, universities, and every profession descended upon New Orleans and the Mississippi Gulf Coast, and they still are coming. Foundations, corporations, law firms, non-profit organizations, religious institutions, and individuals opened their coffers and wallets, rendering billions of dollars in private aid. Among the volunteers were thousands of law students who flocked to the Gulf Coast in the largest assemblage of young people to descend upon the American South since Freedom Summer during the Civil Rights Movement.<sup>15</sup>

“Every few decades, the outside world breaks into Mississippi,” acknowledged Derrick Evans to a group of Katrina legal volunteers from the North who showed up in his neighborhood the first week after the storm. Derrick, a native of the Turkey Creek community in North Gulfport and leader of Turkey Creek Community Initiatives,<sup>16</sup> added: “It happened during Reconstruction, the Civil Rights era, and now, in the aftermath of Katrina.” For volunteers from other parts of the country, and especially for those studying law, Katrina provided a unique looking glass into a steamy, paradoxical part of the world both cursed and charmed by a history of unthinkable suffering, violence and hatred, alongside extraordinary resilience, courage, hospitality, and generosity. Out-of-state law students were awestruck by the wide-open arms welcome they received from Mis-

<sup>15</sup> During the summer of 1964, it is estimated that 1000 young people came from outside the South to join with thousands of Mississippians in voter-registration drives, impromptu schools and community outreach. See DOUG MCADAM, *FREEDOM SUMMER* 287 (1990).

<sup>16</sup> See TURKEY CREEK INITIATIVES, [www.turkey-creek.org](http://www.turkey-creek.org) (last visited August 11, 2009). Turkey Creek was established in 1866 by a small group of recently emancipated African-Americans exercising their newly gained property rights. Inhabitants passed land down from one generation to the next, creating a strong sense of economic sustainability and cultural identity. Turkey Creek was severely damaged by Katrina, and Derrick Evans and other community leaders have been at the forefront of disaster relief efforts and the fight for an equitable recovery for low-income survivors and communities of color. *Id.*

Mississippians of all races and classes. They also experienced firsthand the vast richness of Mississippi culture in music, literature, spirituality, and cuisine. In stark contrast, however, the students witnessed a pattern of governmental decisions that offered little hospitality to the most vulnerable Katrina survivors. Why private acts of generosity do not translate into public policy is a burning question in Mississippi and other parts of the Deep South.

Mississippi and the “outside world” have always had an uneasy relationship. In their new book, *The Devil’s Sanctuary: An Eyewitness Account of Mississippi Hate Crimes*, Alex A. Alston, Jr. and James L. Dickerson observe that:

“Mississippians have a long history of being against whatever the rest of the nation is for. It’s been that way from the beginning, and it’s not likely to change any time soon . . . Mississippi has its own moral code, frequently referred to as ‘Mississippi Values.’ On the surface, the code provides a positive approach to life, with references to God, patriotism, and family. But beneath the surface is a dark, brooding some would say even destructive way of thinking that supports a belief that the ends justify the means when it comes to preserving the Mississippi Values that provide a sense of worth to the state’s white residents.”<sup>17</sup>

To this day, enduring patterns of state laws and administrative regulations and practices create obstacles for poor people’s ac-

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<sup>17</sup> ALEX A. ALSTON, JR. & JAMES L. DICKERSON, *DEVIL’S SANCTUARY: AN EYEWITNESS HISTORY OF MISSISSIPPI HATE CRIMES 2* (2009) (tracing Mississippi’s history of policies and practices enacted to preserve the state’s role as a safe haven for violent racists, starting from 1956, when state lawmakers installed the Mississippi State Sovereignty Commission to preserve segregation and “Mississippi Values” by declaring the state outside the jurisdiction of the federal government, through to the elections of 2007 and 2008, when candidates “boldly advertised their support of Mississippi Values over traditional American values of justice and equal rights,” *Id.* at 324).

cess to federally funded health care, quality education, child-care, affordable housing, and fair credit. This pattern repeated itself in Post-Katrina when Governor Haley Barbour diverted millions of dollars of federal recovery dollars away from the most vulnerable survivors that the federal funds were intended to reach.<sup>18</sup> When federal stimulus funds began to flow into Mississippi, state agency actions limited access to these funds by eligible recipients to Medicaid, food stamps, and subsidized childcare.<sup>19</sup> Most notably, Governor Barbour rejected federal unemployment benefits for hardworking Mississippians living in America's poorest state.<sup>20</sup>

Amassing armies of *pro bono* attorneys, law students and policy advocates to plan and fortify the battle for an equitable recovery, MCJ became the hub of policy and legal action to challenge these historic patterns of culture and policy. In particular, MCJ became the central gathering point for the thousands of law students who flocked to the Mississippi Gulf Coast to provide Katrina legal assistance.<sup>21</sup> MCJ was founded in 2003 in Jackson, Mississippi by local civil rights veterans to restore a capacity for statewide systemic advocacy that had not existed since the 1980s. MCJ is a non-profit, public interest, legal, and policy organization that advances racial and economic justice through systemic change.<sup>22</sup> From the beginning, MCJ carried out its mis-

<sup>18</sup> See *Poor Lag in Recovery*, *supra* note 14.

<sup>19</sup> See, e.g., MISS. CTR. FOR JUSTICE & MISS. HEALTH ADVOCACY PROGRAM, *LOSING GROUND: DECLINES IN HEALTH COVERAGE FOR CHILDREN AND FAMILIES IN MISSISSIPPI* (2007), available at [http://www.mscenterforjustice.org/glomer/upload\\_repo/docs/MSMedicaidReport.pdf](http://www.mscenterforjustice.org/glomer/upload_repo/docs/MSMedicaidReport.pdf).

<sup>20</sup> Robert Pear & J. David Goodman, *Governors' Fight Over Stimulus May Define G.O.P.*, N.Y. TIMES (Feb. 22, 2009), <http://www.nytimes.com/2009/02/23/us/politics/23governors.html?partner=rss&emc=rss>.

<sup>21</sup> The self-organized Student Hurricane Network and Karen Lash, former Associate Dean at the University of Southern California Law School and Senior Program Counsel at Equal Justice Works at the time of the storm, recruited most of the students.

<sup>22</sup> *About Us*, MSCENTERFORJUSTICE.ORG, <http://www.mscenterforjustice.org/aboutus.php> (last visited Nov. 6, 2010).

sion through a community lawyering approach that combines traditional legal strategies with policy advocacy, grass roots community organizing and education, convening of stakeholders, coalition-building, and media advocacy.

MCJ's work encompasses a broad range of advocacy campaigns. Prior to Katrina, MCJ launched campaigns to create better futures for low-income Mississippians and communities of color in the areas of health, education, economic justice, and childcare. Its early policy wins included passage of the Juvenile Justice Reform Act of 2005, the result of an advocacy campaign by the Mississippi Coalition for the Prevention of Schoolhouse to Jailhouse, which MCJ helped form. This legislation required that the state dramatically reduce its reliance on training school incarceration in favor of community-based alternatives for all nonviolent youth.<sup>23</sup> The Columbia Training School – one of Mississippi's two training schools known for egregiously abusive practices – was eventually shut down as a result of the Coalition's advocacy. MCJ's early advocacy also produced the reinstatement of Medicaid benefits for 50,000 elderly or disabled Mississippians whose eligibility category "Poverty Level Aged and Disabled" had been eliminated at the instance of the governor. After MCJ's successful lawsuit in federal court in 2004, the legislature passed – and the governor signed – a bill reinstating those essential benefits.<sup>24</sup>

When Hurricane Katrina devastated the Mississippi Gulf Coast in 2005, MCJ went into action immediately by opening a Katrina Recovery Office in Biloxi to respond to the overwhelming legal needs of individual survivors, as well as to influence recovery-related policy decisions. Despite the destruction, early hopes were high that Katrina would provide an opportunity for Mississippi to overcome its notoriously racist past by fostering

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<sup>23</sup> See S.B. 2894, 2005 Leg., Reg. Sess. (Miss. 2005).

<sup>24</sup> *Medicaid Benefits Maintained by Federal Court Orders*, CALL TO ACTION (Miss. Ctr. for Justice, Jackson, MS), Spring 2005, at 1 (discussing the legal action taken by the MCJ).

an equitable recovery in the rebuilding process. For example, the Governor's Commission Report on Recovery, Rebuilding and Renewal released in December 2005 acknowledged the disproportionate impact of Katrina upon low-income and minority communities and declared the development of affordable housing to be the "cornerstone" of a successful recovery.<sup>25</sup> Sadly, as described above, Mississippi's legacy of race and class discrimination became a defining feature of the recovery, with policy makers directing most of the recovery funds to homeowners and higher-income survivors and businesses.

During the first year after Katrina, MCJ built an innovative delivery system that featured a broad mix of advocacy strategies, engaged numerous national and regional partner organizations, and featured a strong collaboration between on-the-ground legal advocates and *pro bono* lawyers from around the country. With a small legal staff (made possible by the infusion of disaster recovery funding from the Ford Foundation, JEHT Foundation, and other funders), MCJ turned to its national partners, including the Lawyers' Committee for Civil Rights Under Law (MCJ is the Lawyers' Committee's Deep South affiliate), to respond to survivors' housing related legal needs. Chief among the partnerships were some of the nation's largest law firms. Karen Lash recruited many of these firms, first as a volunteer, and later as a consultant working closely with Katrina Equal Justice Fellow Crystal Utley (who later became MCJ's *Pro Bono* Counsel) and the Lawyers' Committee's Pro Bono Coordinator, Nancy Anderson, to develop one of the premier *pro bono* delivery systems in the country.<sup>26</sup>

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<sup>25</sup> JAMES A. BARKSDALE, CHAIRMAN, GOVERNOR'S COMMISSION ON RECOVERY, REBUILDING, AND RENEWAL, AFTER KATRINA: BUILDING BACK BETTER THAN EVER 51 (2005), available at [http://www.mississippirenewal.com/documents/Governors\\_Commission\\_Report.pdf](http://www.mississippirenewal.com/documents/Governors_Commission_Report.pdf).

<sup>26</sup> See Karen A. Lash & Reilly Morse, *Mitigating Disasters: Lessons From Mississippi*, 77 Miss. L.J. 895 (2008) (describing MCJ's Katrina pro bono operation). See also, Karen A. Lash, *Pitching Pro Bono: Getting to First Base with the "Big Firm"*, 2 DEPAUL J. SOC. JUST. 141 (2008).

Key to this system is a community legal clinic model through which MCJ has provided direct legal assistance to Katrina survivors in housing-related matters by leveraging the pro bono talent of over 400 lawyers in 60-plus national and regional law firms, generating over 60,000 *pro bono* hours between 2006 and 2009 (equaling approximately \$16 million of in-kind contributions). *Pro bono* attorneys helped staff community legal clinics focused on FEMA appeals, insurance disputes, state grant programs, title clearance, contractor fraud, and other matters. Following the clinics, MCJ referred appropriate cases to national and local law firms for extended representation. *Pro bono* attorneys also provided significant policy advocacy and impact litigation support for MCJ's advocacy efforts. MCJ is now replicating the community legal clinic model in Jackson and the Mississippi Delta, continuing to partner with national and regional *pro bono* law firms.

Based on the needs identified through community legal clinics and grass roots organizing and outreach, MCJ also quickly became the chief policy advocate for an equitable recovery on the Mississippi Gulf Coast regarding the interests of low-income survivors and communities of color. MCJ generated national media attention and provided critical testimony at Congressional hearings on the policy failures to direct sufficient recovery funds for rebuilding affordable housing.<sup>27</sup> MCJ achieved policy victories by persuading HUD and the state to increase funding to address the needs of low-income homeowners and renters, and negotiated an agreement with HUD to guarantee one-to-one replacement of public housing on the Mississippi Gulf Coast and no displacement of current residents.

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<sup>27</sup> MCJ's policy leadership was widely reported in the media, including the *Washington Post*, *New York Times*, *Los Angeles Times*, *USA Today*, National Public Radio, Dan Rather Reports, and Bill Moyers Journal.

In fall 2007, MCJ helped the Steps Coalition<sup>28</sup> and other national and local partners to launch a *People Before Ports Campaign* to challenge the Governor's misdirection of \$600 million in recovery-related Community Development Block Grant funds (intended under federal law to target low-and moderate-income families) to expand the Port of Gulfport.<sup>29</sup> Although HUD ultimately granted the state's request for a waiver to proceed with its plan<sup>30</sup>, then-Secretary Jackson used his waiver letter to highlight grave concerns about the unaddressed restoration of affordable housing on the Gulf Coast following Katrina.<sup>31</sup> In December 2008, MCJ, one of its *pro bono* law firm

<sup>28</sup> See STEPS COALITION: FOR COMMUNITIES WORTH CALLING HOME, <http://www.stepscoalition.org/> (last visited Nov. 3, 2010). The Steps Coalition is made up of over 35 non-profit organizations on the Mississippi Gulf Coast. Founded in the aftermath of Katrina, Steps' mission is to advance a fair, equitable and healthy recovery. The Coalition supports grass roots leadership in advancing five pillars: affordable housing, economic justice, environmental justice, human rights, and preservation of historic communities. *Id.*

<sup>29</sup> In the fall of 2007, Governor Barbour requested that HUD waive CDBG requirements in order to use \$600 million of Katrina relief money to dramatically expand the state port at Gulfport – rather than for the low-moderate income housing recover for which Congress had appropriated the funds. Subsequently, without hearing from the affected community members, the State released plans detailing the development of an “inland port” in an African-American community in North Gulfport. See e.g. *More Housing Woes in Mississippi*, N.Y. TIMES, Sept. 27, 2007, at A32, available at [http://www.nytimes.com/2007/09/27/opinion/27thur2.html?\\_r=1](http://www.nytimes.com/2007/09/27/opinion/27thur2.html?_r=1).

<sup>30</sup> See Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees, 71 Fed. Reg. 7666 (Feb.13, 2006); Waivers Granted to and Alternative Requirements for the State of Mississippi's CDBG Disaster Recovery Grant, 71 Fed. Reg. 34457 (June 14, 2006); Additional Waivers Granted to and Alternative Requirements for the State of Mississippi, 71 Fed. Reg. 62372 (Oct. 24, 2006); Allocations and Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees, 71 Fed. Reg. 63337 (Oct. 30, 2006). See also *HUD Issues Waivers on Use of CDBG for Hurricane Recovery, Including Income Targeting in Mississippi*, MEMO TO MEMBERS (National Low Income Housing Coalition, Washington, DC), June 16, 2006, at 8.

<sup>31</sup> *Feds Ok Mississippi's Katrina Grant Diversion*, NEWSVINE (Jan 25, 2008 3:44 PM), [http://www.newsvine.com/\\_news/2008/01/25/1264726-feds-ok-missis-sippis-katrina-grant-diversion](http://www.newsvine.com/_news/2008/01/25/1264726-feds-ok-missis-sippis-katrina-grant-diversion) (discussing Secretary Jackson's reservations).

partners, Mintz Levin, and the Lawyers' Committee for Civil Rights Under Law filed suit on behalf of the Mississippi NAACP, Gulf Coast Fair Housing Center and several individual plaintiffs for declaratory and injunctive relief against HUD in federal court in Washington, D.C. to reverse this blatant misuse of recovery funds. MCJ and the other partners currently are in settlement negotiations with Obama Administration HUD officials to secure additional funds that will help "finish the job" of Katrina housing recovery.

### *c. Students Fuel the Ground Game*

The law students who traveled to the Mississippi Gulf Coast became key players on MCJ's community lawyering team assembled in Katrina recovery efforts. They joined *pro bono* attorneys to provide hands on legal assistance to individual survivors, participating in 22 community legal clinics by performing client intake and coordinating outreach, conducting legal and policy research, and canvassing neighborhoods on a variety of recovery issues. As a result of these clinics, MCJ and its *pro bono* partners have assisted over one thousand individuals with Katrina-related legal problems. The clinics also enabled MCJ to identify legal issues of broad impact as they emerged such as the lack of available handicap-accessible FEMA trailers, procedurally deficient efforts to recoup FEMA benefits, local community barriers to participation in the MEMA cottage purchase program, and contractor fraud.

Law students who traveled to the Mississippi Gulf Coast supported a broad array of "community lawyering" projects with MCJ. In several cases, faculty came to Mississippi along with their students. The students came with their hearts and minds open to serve as boots on the ground in one of the great social justice movements of our time. Many returned to their law schools with stories of personal and professional transformation, most having never previously traveled to the Deep South or ex-



perienced post-disaster situations. They came for winter and spring breaks, as summer interns, or they provided legal research remotely from institutions on the west coast, east coast and every region in between.

Student engagement played a formative role in shaping the institutional culture of MCJ's Katrina Recovery Office. From the beginning, the entire staff was involved in organizing and coordinating student efforts. Senior Attorney Reilly Morse joined Managing Attorney John Jopling in providing legal supervision and orienting each wave of students on the political, legal, and cultural context. Equal Justice Works AmeriCorps Attorney Crystal Utley took the lead on the clinics. Office Manager Denise Antoine provided introductory materials to students before their visit and coordinated important details during their stay. Sheer volume makes it impossible to describe all of the student projects in this article. Here, we highlight a few examples to provide a sense of the myriad ways in which students made a difference in the recovery effort.

*Fighting Mass Evictions.* In the early aftermath of the storm rents went up as much as 30%.<sup>32</sup> As a result, private landlords were filing eviction actions against existing tenants at an alarming rate in an effort to avoid the continuance of leases with rent provisions established at pre-Katrina market rates. Tenants returning from evacuation were shocked to learn that they faced court proceedings demanding their immediate removal. Normally, Legal Services attorneys are the first line providers of assistance in landlord-tenant matters. After Katrina, these attorneys were incapable of responding to the need: the local office was destroyed, telephone lines were down and thus no intake could be conducted. Two of the three attorneys staffing the office lost their own homes in the storm. Throughout the fall of 2005 and spring of 2006, the Mississippi State Bar Young Lawyers Division was overwhelmed by calls from tenants facing

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<sup>32</sup> OXFAM AMERICA, *supra* note 13, at 17.

eviction actions. MCJ undertook the representation of hundreds of these individuals and in many instances eviction was postponed or avoided entirely. However, MCJ lawyers were shocked to observe dozens of unrepresented tenants appearing *pro se* who were invariably evicted following their hearings. Given the size of the storm-affected area—six Mississippi counties were seriously impacted—and the fact that housing courts in the various counties frequently had overlapping days for hearings, it was obvious that a legal and humanitarian disaster was unfolding on a daily basis with direct and irreparable impacts upon those without access to a legal defense in an eviction proceeding. In theory and according to its design, the law provided tenants with substantive and procedural defenses to a summary eviction. In post-disaster reality, no existing legal institution had the capacity to provide the lawyers necessary to assert these defenses in the courtroom.

As the first law student volunteers began to arrive in Biloxi, MCJ attorneys described to them the wholesale evictions occurring across the Gulf Coast. These students were determined to address the problem. They accompanied MCJ attorneys to Justice Courts and interviewed individuals facing eviction to determine if a defense was available. Once a defense was identified, the MCJ attorney offered to provide representation on the spot. As a result of this rapid intake system, many more people were able to present legal defenses to their eviction and avoid the loss of shelter.

In December 2005, Rick Glassman, a Managing Attorney for the Harvard Legal Aid Bureau, came to MCJ as a volunteer attorney and added a new layer to this student project. The students and MCJ attorneys designed a survey instrument which asked tenants facing eviction in Justice Court basic questions regarding their circumstances, including: the alleged basis of the eviction action, any available substantive defenses, whether they received the statutorily required notice, and when they received their summons to court. Additionally, the survey asked why the

tenant was appearing without a lawyer and explored the interviewee's awareness regarding the local Legal Services program, whether they contacted the program and, if so, whether they were denied legal services, the interviewee's reaction to the court decision, and immediate plans for obtaining housing. The data gathered in this fashion by law students from fall 2005 through 2006 revealed that 96% of tenants who appeared in court without representation were evicted, while 95% of those who had the benefit of attorney representation were able to avoid or postpone eviction. The data also revealed a wide disparity among judges regarding the deadlines imposed upon tenants, with some judges allowing the tenant up to three weeks to vacate, some judges allowing 48 hours and one judge ordering tenants who were evicted to vacate by five o'clock the same day. The results of the study furnished the basis for MCJ's continuing campaigns for Access to Justice and for Justice Court reform.

*Quantifying Rental Housing Loss:* Another early law student project was created in reaction to the official estimates of damage to Coast housing stock that included only single family homes, and thus masked entirely the obvious loss of rental housing. Twenty-nine percent of coast households were rental properties when Katrina struck.<sup>33</sup> MCJ attorneys feared that recovery programs would be fashioned without regard to those who rented at the time of the storm. Fortunately, in 2003, the Gulf Coast Realtors Association completed a comprehensive survey of all multi-family housing in the three southernmost Coast counties (Loper Survey).<sup>34</sup> The Loper Survey listed each multi-family complex by street address, catalogued the number of available one, two, three, and four-bedroom units and classified each complex, e.g. fair market rental, public housing authority, senior citizen, etc.<sup>35</sup> Using the Loper Survey, MCJ

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<sup>33</sup> RECOVERY OF THE HOUSING MARKET, *supra* note 12, at 13.

<sup>34</sup> See W.S. LOPER AND ASSOCIATES, MISSISSIPPI GULF COAST APARTMENT SURVEY (2005), available at <http://www.grpc.com/apartmentSurvey2004.pdf>.

<sup>35</sup> *Id.* at 20-43.

attorneys and Dita McCarthy from the Gulf Coast Fair Housing Center created a three-page instrument to objectively assess the post-Katrina condition of the rental complex, number of remaining units and number of inhabited units. The MCJ rental survey instrument also included questions designed to elicit the subjective views of residents regarding storm-related structural problems, habitability issues with their units, and whether management was present on site, etc. Over the course of the 2005 winter break, 2006 spring break, and throughout the 2006 summer, an army of law student volunteers assessed every multi-family rental structure listed in the Loper Survey.

As a result, by the first anniversary of Katrina, MCJ released the only study undertaken of rental housing loss. The results of the study were staggering. Katrina destroyed 75% of all multi-family rental housing stock in Hancock County, 50% in Harrison County, and 37% in Jackson County. The findings of the study, which were made possible only by the volunteer efforts of law students, drove MCJ to challenge the State of Mississippi's recovery programs. These recovery programs were directed solely towards homeowners. As a result of MCJ advocacy, the state directed some of the Community Development Block Grant (CDBG) Katrina relief money toward creating a program to promote the reconstruction of rental property.

*Giving the Community a Voice: The Proposed Inland Port Survey:* In fall 2007, Governor Barbour requested that HUD waive CDBG requirements in order to use \$600 million of Katrina relief money to dramatically expand the state port at Gulfport.<sup>36</sup> Subsequently, without hearing from the affected community members, the State released plans detailing the development of an "inland port" in an African-American community in North Gulfport. The development would involve the creation of large storage facilities with accompanying cargo truck traffic, raising environmental concerns on the part of the North Gulfport Com-

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<sup>36</sup> *More Housing Woes*, *supra* note 29.

munity Land Trust. In March 2008, law students from Duke, University of Idaho, Roger Williams University, University of Chicago, and University of California-Davis conducted extensive block-by-block surveys of residents in those neighborhoods likely to be affected by the proposed development.

The survey sought residents' views on a range of issues, including the potential drawbacks and benefits of the proposed project. Residents were asked to share their thoughts on potential noise and air pollution from the increased traffic in the area, to render opinions regarding the funding of the project with CDBG funds appropriated by Congress for Katrina housing relief, and to highlight the potential effects of the project in the event of a storm or other natural disaster. Residents also were asked to comment on the potential creation of jobs through the project and the potential increased tax revenue. Over the course of three weeks, law students surveyed a total of 306 households. Such an extensive on-the-ground investigation of community sentiment would have been an impossible undertaking without the law student volunteers.

The results of the Port Survey Project were released at a town hall meeting on March 27, 2007. Two-thirds of community members surveyed were concerned about noise pollution from the presence of additional trucks and rail yards, three-fourths of the community members surveyed were concerned about increased air pollution from diesel exhaust, three-fourths of residents were concerned about the filling of 70 acres of wetlands and the potential for increased flooding, and two-thirds of community members surveyed did not feel that a 100 foot buffer between the port and residential homes was sufficient to protect them from future flooding. As a result of the overwhelming community opposition, the State in September 2008 revised the port proposal to eliminate the development of an inland port in North Gulfport.<sup>37</sup>

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<sup>37</sup> In May 2009, MCJ sued on behalf of organizations and residents, to challenge HUD's acceptance of Mississippi's plan to spend up to \$570 million of

Just as Katrina motivated law students to organize large groups of volunteers to come to the Gulf Coast during semester breaks, it also created interest among law students serving as summer interns in the region. From the summer of 2006 through the summer of 2010, seventeen law students have worked as summer interns at the MCJ's Gulf Coast office. Typically, an internship lasts six to eight weeks and involves both direct client service and policy research. Each intern is supervised by a licensed attorney who works closely with the student to develop his or her summer work plan, establish timelines and goals, and review work product.

Examples of a few summer intern projects demonstrate how law students working over longer periods of time make deep and lasting contributions to MCJ campaigns for community recovery. One of the earliest Katrina recovery projects in the summer of 2006 required a national literature search for affordable housing strategies, and contacting affordable housing advocates

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the CDBG disaster relief funds appropriated by Congress. See *Mississippi State Conference NAACP v. U.S. Dep't. HUD*, 677 F. Supp. 2d 311 (D.D.C. 2010). Seeking declaratory and injunctive relief, plaintiffs characterized the state's proposed use as a diversion from critical housing to the financing, instead, of the expansion and redevelopment of a commercial port in Gulfport (the "Port Project"). *Id.* at 312. On January 8, 2010, the District Court granted HUD's motion to dismiss for lack of standing, ruling that the plaintiffs' claim of injury is not of injury to themselves, but rather, that Mississippi has not addressed "the unmet housing needs of Hurricane Katrina's poorest and neediest victims." *Id.* at 313. Illustrating the persistent need for communities to advocate in many extra-judicial fora, the court observed further, "[p]laintiffs' principled objection to the diversion of \$570 million to a Port Expansion Project when post-Katrina housing needs in Mississippi are still unmet may indeed be well-founded as a policy matter." *Id.* at 313. The Court went on to find, however that "[plaintiff's] lack of standing. . .deprives the court of subject matter jurisdiction." *Id.* Five years after Hurricane Katrina, Gulf Coast states still haven't spent billions in federal aid on housing and other recovery projects. See Deborah Barfield Berry, *Billions in Katrina Recovery Money Still Unspent*, MISSISSIPPI CENTER FOR JUSTICE (Aug. 29, 2010), [http://www.mscenterforjustice.org/news-article.php?article\\_id=207](http://www.mscenterforjustice.org/news-article.php?article_id=207). Thus the need for community-recovery advocacy — in every forum for contest, by citizens and their lawyer allies — continues.

across the nation to identify the most effective mechanisms for promoting the development of affordable housing in the aftermath of Katrina's devastation of Mississippi's housing supply. This effort to expand the advocates' tool kit to redress the housing recovery needs of so many, introduced MCJ to the work of Mary Brooks at the Center for Community Change. Ms. Brooks then came to Mississippi to meet with Gulf Coast housing advocates. She now advises the coalition that grew out of that meeting in its campaign to get the Mississippi Legislature to adopt a state-wide affordable housing Trust Fund.

Another summer intern project in 2007 involved direct administrative advocacy on behalf of clients whose requests for FEMA housing assistance had been denied or discontinued. Law students working under the supervision of a licensed MCJ attorney wrote letters appealing adverse determinations and gathered documentation in support of the clients' position. As a result of the direct service provided by the interns, dozens of additional clients were assisted and thousands of dollars in FEMA benefits that otherwise would have been denied or discontinued flowed into Katrina-survivor households.

Summer clinic students labored in 2009 and 2010 to assist the Mississippi Cottage Coalition, using a mix of representation, legal clinics, document review, and teach-ins, to stave off imminent homelessness as the Mississippi Emergency Management Agency sought to remove tenants from Katrina Cottages – a federally-funded pilot program that produced 2000 sturdier and healthier alternatives to the FEMA cottage. This work augmented that of MCJ staff attorneys who battled local zoning hurdles.<sup>38</sup>

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<sup>38</sup> See e.g., *Gambrell v. Waveland Board of Aldermen*, No. 09-0089 (Circuit Court, Hancock County). Group site developments of Mississippi cottages have been blocked by local zoning decisions. See *Habitat for Humanity Gulf Coast v. Jackson County Board of Supervisors*, No 2008-00542 (Circuit Court, Jackson County).

### **THE CLASSROOM COMPONENT – LINKING THEORY TO PRACTICE**

By 2007, it was apparent that post-Katrina Mississippi was an opportune laboratory for clinical law school programs to link theory and practice, and to engage in a broader evaluation of the role of law in community recovery and democracy building. Bonnie Allen, a Katrina legal volunteer and then-President of the Center for Law & Renewal at the Fetzer Institute, began to develop a conceptual framework of “law, community recovery and democracy-building” based on her on-the-ground experience in Mississippi. Allen observed that the Katrina recovery context provided American lawyers and law students with unique opportunities to examine the critical role of law and lawyers in advancing an equitable recovery – both by mending broken lives of individual survivors – and by systemically holding government accountable. Katrina gave lawyers “new eyes” to see injustice more clearly in this country, and that the rule of law, democracy and civil society could no longer be assumed in America. Allen also posited the idea that the Katrina learning laboratory should be placed in an international context as part of a cross-cultural clinical experience that compares the role of law and lawyers in different cultural settings.

This conceptual framework became the basis of a “Recovering Communities” initiative – one aspect of a partnership between the University of Maryland School of Law (“Maryland”) and the Fetzer Institute. In 2008, the Institute funded a Leadership, Ethics and Democracy-Building (LEAD) initiative at Maryland. Directed by Professor Michael Millemann, LEAD promotes the moral formation of the lawyer through curricular and non-curricular programs that explore the deeper values of the profession and the demands of practicing law, leadership development, and democracy building, which includes the “Recovering Communities” project. This component of LEAD examines the theory and practice of the role of law in communi-



ties recovering from natural disaster (post-Katrina Mississippi), chronic disaster resulting from decades of disinvestment (Baltimore) and disaster resulting from war, disease, displacement or disinvestment due to emerging new markets in other countries. Maryland now operates an international comparative clinical law program in Namibia, China, and Mexico. In addition to these cross-cultural clinical settings, Maryland Law Professor Barbara Bezdek developed a Law, Policy and Community Recovery framework and curriculum that she teaches as a seminar and practicum.

The Recovering Communities project includes collaboration between Maryland and MCJ that placed five law students and several faculty members at MCJ's Biloxi office each summer in 2008, 2009 and 2010 for a Mississippi Summer Clinic. Taught by Maryland Law Professors Millemann and Bezdek, in partnership with MCJ attorneys John Jopling and Bonnie Allen, these clinical students had the opportunity to gain hands-on experience with a broad range of legal issues and tools. They took on dozens of contractor fraud cases, helped residents of a public housing complex organize in order to fight mold problems, and prevented evictions from MEMA cottages and trailers. They also participated in community group and coalition meetings, exposing the students to the complexity of group legal representation. In summer 2009, the students witnessed a meeting of the Mississippi Client Council. As part of the cross-cultural aspects of the Recovering Communities project, the Mississippi Council subsequently met by video conferencing with a counterpart Client Council in Baltimore to identify common challenges and offer resources to each other.

In addition to hands-on legal work, the students participated in weekly seminar discussions on topics that included the civil rights history of the Mississippi Gulf Coast, the history of immigrant groups, book and article discussions, and a spirited discussion and writing assignment reflecting on the legal ethical questions posited in Professor Susan Bennett's provocative arti-

cle, *Creating a Client Consortium: Building Social Capital, Bridging Structural Holes*.<sup>39</sup> Finally, the students journaled daily about their experiences, providing an invaluable opportunity for reflection on their legal work, the cultural context, and how their experiences were shaping their understanding of the complex and shifting roles of lawyers.

### THE KATRINA WINDOW

The Recovering Communities component has taken shape as a response to Hurricane Katrina, in two important respects. First, because intensive media coverage and immediate volunteer response exposed the human hand in “natural” disasters and second, in the immediate aftermath, because the nationwide shock at the patterns of abandonment and of compounded distress during “recovery” created wider openings to view the roles of law in producing and reducing inequality.

As lawyers we took personally the observation that, every day, policy makers, institutions, and private citizens alike make decisions *through the structures of law* that determine the effects of disasters. Lawyers are key designers and defenders of the rules, policies, and institutions that failed the people of the Gulf Coast. Disasters occur at the intersections of hazards and vulnerabilities.

One pane of the Katrina Window that Maryland faculty found gripping was this convergence between acute disasters such as the 2005 Gulf hurricanes, which rip the veneer off of the ordered lives of storm-ravaged towns and cities and their people and the sub-acute, decades-long decline of disinvestment and economic exclusion that similarly consign so many Americans to conditions – of insufficient education, employment, earnings, shelter or health – that also cry out for recovery. Consequently, Maryland augmented its long-standing community development

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<sup>39</sup> See Susan Bennett, *Creating a Client Consortium: Building Social Capital, Building Structural Holes*, 13 Clin. L. Rev. 45 (2006).

clinic to focus on community recovery in Baltimore, as well as by establishing the new legal clinic in Biloxi jointly operated with MCJ. Professor Bezdek also led a new Community Recovery Seminar to examine ways that the law alters or allocates the human and economic costs of disasters. Students in the seminar examined the disaster response structure that was on display after the hurricanes of 2005, in comparison to the legal structures of urban communities' disinvestment and physical, social and economic degradation. Like the national framework for response to natural disasters, the legal structure of *chronic* "disasters" also has federal, state, local and sub-local governmental dimensions for the allocation – and renewed conceptualization— of relief, recovery, and equitable participation in the benefits of reconstruction.<sup>40</sup>

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<sup>40</sup> The seminar materials and discussions proceeded as follows:

I. INTRODUCTION

A. Introduction to Disasters, & the U.S. Legal Framework For Response. B. Emergency Disaster Response: An extension of the legal framework, to examine federal emergency response plans, state and regional authority, implementation and critiques; and a preliminary inquiry into the relationships between poverty and disaster preparedness and relief.

II. RISK, CHOICES AND ACCOUNTABILITY: These classes examine the analytical framework for managing disaster-related risk, the range of options available to avoid or minimize the risk from disasters, and insurance, as a risk-spreading mechanism.

III. LAW, JUSTICE & VULNERABILITY: These classes examine the capacity of vulnerable populations to meet their needs at different stages in a disaster, social responsibility to help those populations, and preliminary survey of mechanisms to do so.

IV. REBUILDING AND RECOVERY — Classes 8-12:

A. The Rebuild Decision: powers, opportunities, impediments, equity issues and mechanisms.

B. The Community Economic Development Movement; government, NGOs, community-based organizations.

C. Through Katrina's Window: Lessons for the Rest of Us in Recognizing and Redressing Concentrated and Persistent Poverty across the U.S.

D. Accountability and the Prospects for Democracy-Building in Community Recovery.

## 1. Poverty in this Land of Plenty

As discussed above, one deep lesson delivered by the hurricanes was that many of the people left behind by government plans for escape and recovery already lived in conditions that were a tragedy long before Katrina arrived.<sup>41</sup> The nation and the legal profession witnessed hour by hour the numerous ways that poverty is still a problem in the United States. We saw desperate people, out of options, begging for help. We saw that neither our public policies nor our economy have generated escape routes out of crushing poverty through self-help.

We saw what happens when we push poor people off the national agenda.

The Seminar considered, from the vantage points of New Orleans, Biloxi, and Baltimore, the city-specific features of:

- Living a life trapped by poverty, despair, and crime is a tragedy.
- Sending your children to schools that do not or cannot teach them to reach their full potential in life is a tragedy.<sup>42</sup>

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### E. Federalism and Localism in Community Recovery.

<sup>41</sup> See MATT FELLOWES, AMY LIU & MIA MABANTA, *KATRINA INDEX MONTHLY SUMMARY OF FINDINGS: JUNE 7, 2006* (2006), available at [http://www.brookings.edu/~media/Files/rc/reports/2007/08neworleansindex/200606\\_KatrinaIndexes.pdf](http://www.brookings.edu/~media/Files/rc/reports/2007/08neworleansindex/200606_KatrinaIndexes.pdf); ALAN BERUBE & BRUCE KATZ, *THE BROOKINGS INSTITUTION METROPOLITAN POLICY PROGRAM, KATRINA'S WINDOW: CONFRONTING CONCENTRATED POVERTY ACROSS AMERICA* (2005), available at [http://www.brookings.edu/~media/Files/rc/reports/2005/10poverty\\_berube/20051012\\_Concentratedpoverty.pdf](http://www.brookings.edu/~media/Files/rc/reports/2005/10poverty_berube/20051012_Concentratedpoverty.pdf).

<sup>42</sup> Michael Casserly, *Double Jeopardy*, in *THERE IS NO SUCH THING AS A NATURAL DISASTER* 197, 198-200 (Chester Hartman & Gregory D. Squires eds., 2006) (describing the New Orleans public school system before Katrina, including that 93.4% of the school district's students were African American, and 75% of the city's schools were in academic warning status. The New Orleans public school system enrollment was more than twice as poor and nearly five times as black as that of the average school system in the rest of the country. Most high school students scored at or below 15 on the national

- A city in the United States reporting a 40% illiteracy rate and graduating low numbers of Black ninth graders is a tragedy.<sup>43</sup>

Furthermore,

- In New Orleans, as in several other U.S. cities in 2005, the extreme-poverty rate is *triple* the national average, hovering at nearly 37%.<sup>44</sup> The poverty rate for children is significantly higher.<sup>45</sup>
- The Census Bureau recently reported that the number of people living in poverty in the United States increased 17% between 2001 and 2005.<sup>46</sup>

As Northeastern University School of Law's former Dean, David Hall, observed "These are conditions that neither you nor I would ever accept for ourselves, yet millions of people in this country experience it everyday. For them, justice is not a fleeting illusion; it is a total mirage on the deserts they inhabit."<sup>47</sup> And, as we all know, many communities in our country and around

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ACT exam, which was too low to gain admittance to a competitive college or university).

<sup>43</sup> Ron Marr, *The Facts About Katrina*, ACCESS NEWS (Sep. 16, 2005, 1:25 PM), <http://www.accessnews.com/modules/wfsection/article.php?articleid=5645>.

<sup>44</sup> KATRINA'S WINDOW, *supra* note 41, at 3.

<sup>45</sup> Throughout the US, the percentage of children living in low-income families (both poor and near poor) has been *on the rise* – increasing from 37 percent in 2000 to 42 percent in 2009. MICHELLE CHAU, KALYANI THAMPI, & VANESSA R. WIGHT, NATIONAL CENTER FOR CHILDREN IN POVERTY, BASIC FACTS ABOUT LOW-INCOME CHILDREN, 2009: CHILDREN UNDER AGE 18 2 (2010), available at [http://nccp.org/publications/pdf/text\\_975.pdf](http://nccp.org/publications/pdf/text_975.pdf). Child poverty is somewhat higher in the South and West than in the North and East, but not by much. *Id.* at 6. Fifty-one percent of children in urban settings live in low-income families, but poverty also constrains the families of forty two percent of rural children, and thirty four percent of suburban children, in the U.S. today. *Id.*

<sup>46</sup> Nicholas D. Kristof, *The Larger Shame*, N.Y. TIMES, Sept. 6, 2005, at A27.

<sup>47</sup> David Hall, *Katrina: Spiritual Medicine for Political Complacency And For Social Activists Who Are Sleepwalking*, 23 HARV. BLACKLETTER L.J. 1, 4 (2007).

the world are struggling with staggering poverty, racism and declining infrastructures for providing basic education, safety, and economic opportunity.<sup>48</sup>

We also saw that Americans are touched when they see the human beings behind the abstractions: billions of dollars in material aid and hands-on assistance was rushed to the victims of the hurricanes by individuals, non-profits and businesses. But this effort came after the fact, when the harms of our national willful ignorance were already inflicted on poor Americans throughout the Gulf.

## 2. Government is Us?

The second lesson we explore in the Community Recovery seminar and clinic is the relationships between law, democracy, and politics, to be drawn from the governmental responses to the hurricanes of 2005. We saw in stark relief the principles *believed* to be guiding our government:

“We are a nation that teaches our children that ‘all [people] are created equal’ and that it is precisely because we sought to ‘secure the blessings of liberty to ourselves and our posterity’ that we did ‘ordain and establish [the] Constitution for the United States of America.’”<sup>49</sup>

The seminar students recalled the phrase enshrined for Americans at a prior time of deadly division: Abraham Lincoln sought

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<sup>48</sup> Students in the seminar and in the experiential course examine the disaster response structure that was on display after the hurricanes of 2005, in comparison to the legal structures of urban communities’ disinvestment and physical, social and economic degradation. Like the national framework for response to natural disasters, the legal structure of chronic “disasters” also has federal, state, local and sub-local governmental dimensions for the allocation – and renewed conceptualization— of relief, recovery, and equitable participation in the benefits of reconstruction.

<sup>49</sup> Joseph William Singer, *After the Flood: Equality and Humanity in Property Regimes*, 52 *LOY. L. REV.* 243, 251-52 (2006).

to knit together the possibilities of government “of the people, by the people, for the people” – government constituted by the people to accomplish the benefits required by the populace, whom elected officials are sworn to serve.

Yet in the seminar, students were startled by the unfamiliarity of the inquiry *in law school*. Much more familiar were the partisan conversations in the United States about the roles of government, which argue about the government’s potential to do harm or at best be ineffective. Seeing the inept governmental responses to Katrina exposed to scrutiny the fractured norms of inequality and unaccountability, which we as Americans had come to accept and legitimize.

The final unit of the seminar turned on an extended role-play in which the participants represented a full gamut of citizen interests in rebuilding a devastated Gulf Coast city. We sought to reimagine government with the *purpose* to “secure the blessings of liberty.” Through an extended role-play, students considered anew the possibilities of citizen engagement so that government *can* be an essential form for solving an array of collective action problems.

### 3. Lessons for Lawyers from the Juxtaposition of Acute and Chronic Economic Disasters

Both the classroom and experiential courses shared this inquiry: to investigate the similarities and dissimilarities in the recovery efforts of communities devastated instantly in natural disasters, with those of communities whose devastation accumulated over decades of disinvestment and decay. Mississippi’s suffering is both acute *and* chronic. How does law work to structure available responses by government and private actors? How do local residents participate in and benefit from laws, advocacy, and the policies and actions of government and non-governmental organizations, to restore and revitalize essential services, social infrastructure, economic opportunity and partici-

pation? The seminar used data from Gulf Coast hurricane recovery and from conventional community redevelopment efforts, primarily but not entirely in the United States. The work in the Baltimore clinic concentrated on Baltimore communities. Baltimore is a city whose demographic dynamics, neighborhoods, non-profit organizations, high-profile redevelopment efforts, and intergovernmental framework, exemplify many of the most instructive issues in community development law and practice.

The juxtaposition underscored these as systemic injustices, with local iterations but not peculiar to local institutions. It is this characteristic of American life that poses a challenge that lies at the doorstep of the legal profession. The challenge for lawyers is steeper than to provide a few pro bono hours of service to those who are facing a catastrophic loss. The legal profession must ensure that the policies, laws, and social structures that allow poverty and other injustices to remain are reformed and transformed; or else its members remain complicit in the perpetuation of these conditions. When systemic injustices exist like these in cities across the nation, then lawyers are “no longer the caretakers of a system of justice—they become legal merchants, selling justice to the highest bidder.”<sup>50</sup>

#### 4. Biloxi-Baltimore Connections

When first formulating the comparative component of the Recovering Communities project, we anticipated that understanding how different communities marshal resources of law, vision, land use, federal/state/local and private funding streams, political will, and the strengths and weaknesses of those different approaches – would yield insights for advocates aiding the recovery strategies of either an acute or chronic recovering community.

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<sup>50</sup> David Hall, *supra* note 47, at 4.



A principal goal for the seminar was to illuminate these decisions, including their anti-democratic consequences, so that they are made more deliberatively and accountably. Seminar and practicum students examined a range of available legal tools, including private incentives, public resources and infrastructure, and institutional accountability, and invited comparison of their uses via ‘natural disasters’ and their scant availability for responding to concentrations of poverty.

In disaster studies, it is commonly observed that society has three tasks surrounding any disaster: (1) *prevention*, including choices about mitigation and adaptation; (2) *emergency response*, including preparation and execution of rescue and relief; and (3) *recovery*, including the decisions of whether and how to rebuild.<sup>51</sup>

Juxtaposing Baltimore – a city with ‘chronic disaster’ zones of disinvestment and despair – with Biloxi on the Gulf Coast, a region familiar with acute natural disasters –illuminates several crosscutting questions of policy and law around those tasks.

- What are the responsibilities of individuals and communities to prepare to protect themselves from disaster-related harm?
- What are the appropriate roles and responsibilities for the private sector and the public sector to prepare and preserve the people’s livelihoods – as well as those of the larger economic actors and public infrastructure?
- How should public sector responsibility be divided among the federal government and state and local governments?
- What are the hallmarks and engines of community *recovery*? How may constitutional requirements and democratic ideals that government serve ‘the general welfare’ be embodied robustly in the post-disaster legal environment?

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<sup>51</sup> See DANIEL A. FARBER & JIM CHEN, *DISASTERS AND THE LAW* 54-5 (2006) (applying the three step framework).

- How might the natural-disaster practices of mitigation offer models for effective and equitable reconstitution of the human community when the winds and waters recede?

### LOOKING AHEAD

As of this writing, law students from all corners of the country continue to make MCJ their destination point for summer, winter and spring breaks. In addition, more law schools are developing curricular components through which they can provide longer-term research and remote, classroom-based advocacy to support MCJ's work on the ground. This model first took hold as a NYU Wagner School of Public Service Capstone partnership project with MCJ in 2007 that has engaged several groups of students and produced critical products for MCJ attorneys and clients. Following a spring break trip to Biloxi in 2009, a group of Northwestern University Law School students proposed a winter semester course in 2010 that will support MCJ's work in the areas of small business development and special education.

Because of the tremendous law student response to Katrina, MCJ devoted significant staff resources early on to manage this precious commodity. Students – as the next-generation of American lawyers – play a vital role in “re-imagining” Mississippi as the Social Justice State, the vision of the Mississippi Center for Justice. To that end, MCJ has incorporated a teaching component into the core of its advocacy. Increasingly, MCJ has become a dynamic learning community as well as a high-powered legal shop. As law schools develop more sophisticated and protracted vehicles for partnering with MCJ, the leadership of MCJ stands ready and willing to work with these partners to craft projects that both fit the advocacy needs of the organization, as well as provide creative and practical learning opportunities for students.

The University of Maryland Law School continues to be a unique partner because of its ongoing Recovering Communities Clinic, operating each summer in Mississippi, as well as in Baltimore and through new clinics in developing nations. Building on the University of Maryland's international programs, the Law School's LEAD initiative has begun a related clinical course working with a recovering community overseas, in spring 2010. Widening the Recovering Communities clinical work to a third international site will enable law students and the client communities with whom they work, to articulate more explicitly the connections between community-building and democracy, multicultural competence and democracy-building, and the fundamental skill sets necessary to do this work. It will enable them to use a unique set of skills to work with communities worldwide to build conflict resolution capacity for preventing, resolving, and healing after conflict.

Communities in each of these locales struggle in particular ways with common problems: staggering poverty, racism, and inadequate or declining infrastructures that fail to provide basic access to health, education, safety, and economic opportunity. Nonresponsive local governments compound these communities' distress. Clinical work in all of these settings provide students a learning laboratory in the practices of community lawyering necessary to assist client communities with their concerns. Community *recovery* entails longterm, comprehensive, community-driven processes by which poor and under-represented people strive to improve the quality of their lives, restoring the order and equity that are necessary underpinnings to functional democracy. Engaging in this work, students experience the importance of their legal support to recovering communities to build their own leadership as agents for the positive social change envisioned by the community in each place.