



NATIONAL DAY OF SOLIDARITY TEACH-IN MANUAL

The following document contains a short summary and/or bullet points from a Report to Mayor Nagin's Rebuilding Commission prepared by From the Lake to the River: The New Orleans Coalition for Legal Aid & Disaster Relief. This document, a condensed version of that Report, is designed as a teaching aid to help facilitate events being organized on the National Day of Solidarity. A full copy of the Report can be found at: www.fromthelaketotheriver.org

HOUSING: CREATING AN AFFORDABLE AND INCLUSIVE COMMUNITY

Explore the following recommendations offered by Prof. Stacy Seicshnaydre of Tulane Law School. Consider whether these recommendations offer a viable solution to the housing crisis in the Gulf Region.

- Design and facilitate a right of residents to return to their homes and neighborhoods and contribute to the rebuilding process, consistent with the United Nations Guiding Principles on Internal Displacement.
- Create an immediate supply of workforce housing. Consider how technology may be used to facilitate a centralized means of posting available housing opportunities.
- Support federal funding of emergency and long term housing needs consistent with the recommendations of the National Policy and Advocacy Council on Homelessness.
- Both temporary and permanent housing should be sited in a way so as to avoid concentration of trailers and/or other affordable units in few, isolated neighborhoods. This recommendation is almost universal among civil rights groups and planners.
- Work immediately with FEMA to create an anti-displacement policy ensuring that FEMA's efforts to create short-term housing do not result in evictions of other residents, resulting in the creation of new homeless populations.
- Support survivors in their efforts to require FEMA to make it easier to apply for temporary housing assistance and to provide immediately more transitional housing in the place of shelters, tents, and other makeshift arrangements.
- Residents who rent their homes should be able to return to those homes and resume their rental payments in accordance with their leases.
- Residents without leases, or those who are renewing their leases, should be protected from rental increases that exceed 15 percent of their previous rental amount. This is particularly critical also for those whose FEMA rental payments are insufficient to cover the prevailing rental rates in the post-Katrina housing market.
- Housing opportunity must be equal for all, and patterns of discrimination and segregation that pre-existed Katrina will only exacerbate the scarcity of housing for working class New Orleanians if left unaddressed. There must be zero tolerance for discrimination and strong support for aggressive fair housing enforcement to ensure a level housing playing field.
- Fair housing laws protect people from discrimination on the basis of national origin. Oppose any efforts or actions that restrict or deny the housing opportunities of temporary workers on the basis of national origin.
- Make use of existing housing units in the private market before relying on mobile homes.
- Create an inventory of blighted properties located in neighborhoods that were not affected by flooding. Considering that non-flooded neighborhoods already have utilities and other infrastructure not yet available in flooded areas, plan and implement incentives for currently blighted properties to be placed in commerce.

- Look at strategies for acquisition of blighted properties to be renovated for workforce housing, affordable rental housing, and homeownership.
- Use the rebuilding effort as a means of creating wealth and building the assets of New Orleans residents through home ownership opportunities, training in the building trades, and small business development.¹

Inclusionary Zoning

- Adopt an inclusionary zoning ordinance that requires any development of over 5 units to restrict occupancy in 20% of the total units to low or very low income households. In developments between 6 and 20 units, require that 20 % of the total units be set aside for households under 60% of the median income for metropolitan New Orleans. For developments of over 20 units, require that 5% of the total units be set aside for households under 30% of the median income, and 15% of the total units be set aside for households under 60% of the median income.

Public and Federally Assisted Housing: “Where will Public Housing Residents Call Home?”

- HANO should immediately establish the right of every former HANO-assisted public housing or voucher resident to return to New Orleans to a unit that is affordable, and inform every displaced HANO-assisted tenant of this right.
- Displaced tenants should be provided with any necessary transportation assistance to enable their return.
- The physical condition of all public housing units should be determined: habitable, needs minor rehabilitation, needs more substantial rehabilitation, or must be demolished. This information must be made public by January 15, 2006.
- Honor existing leases held by tenants on any units that were not totally destroyed. Tenants should be permitted to have temporary guests and to temporarily overcrowd without penalty, especially for those guests without affordable housing who are disabled or seeking work.
- Every tenant holding a lease to a unit that is currently habitable must be allowed to return to that unit within 30 days. This includes the former St. Thomas residents who were about to be leased units at River Gardens. River Gardens, a model of mixed income housing development, has reportedly rented a number of its affordable units to HANO employees in place of former public housing residents. Do not demolish any structurally sound buildings in any publicly subsidized developments just for the purpose of facilitating redevelopment.
- If units were partially destroyed, allow tenants to decide whether to terminate the lease or to accept a transfer to another HANO property while the unit is being repaired. Make all repairs to public housing units that were only partially destroyed within 90 days.

¹ Policylink, Ten Points to Guide Rebuilding in the Gulf Coast Region
www.policylink.org/EquitableRenewal.html.

- Assist public housing residents in locating alternative temporary housing during the interim period while their units are being repaired.
- Implement a tracking system to ensure that HANO continues to communicate with public housing and voucher residents about the housing and moving resources available to them both in the short term and after any redevelopment activities are completed. Few residents will be able to take advantage of redevelopment if HANO has no way to contact them. This could include providing a means for HANO residents to ask questions of an ombudsperson, as well as to update their contact information and check their waiting list status, etc.
- Once buildings or developments are identified as uninhabitable, make non-negotiable the participation of former public housing residents in the planning and implementation of any redevelopment plans. Make training and employment of former public housing residents in redevelopment activities a condition of funding and contracting.
- Support the increase of voucher payments up to 150% of fair market rents or higher when necessary to assist lower income households to compete for scarce, more expensive housing. Residents on fixed incomes would have to spend nearly all of their income on rent to pay the difference between their voucher payments and the actual rental costs in the post-Katrina rental environment. Currently residents participating in the Katrina housing voucher program (KDHAP) are reportedly capped at 100% of the fair market rents set prior to Katrina. Even residents using vouchers prior to Katrina were able to request payments of 110% of fair market rents.
- Provide housing counseling assistance for families with vouchers who need help finding affordable housing near jobs, schools, and services.
- Oppose efforts to siphon off existing voucher funds to pay for redevelopment of public housing. Vouchers may be one of the few means to provide housing to public housing residents waiting for public housing units to be redeveloped.
- Provide incentives to suburban jurisdictions that accept former New Orleans public housing residents using vouchers. Support the portability of voucher use between parishes.
- Prevent the exodus of landlords from the Section 8 programs by paying fair rental amounts to landlords whose properties are currently habitable.
- Create an inventory of low income tax credit properties, which are unable to deny housing to families on the basis of their use of a housing voucher.
- Facilitate the right to return of New Orleans residents by prohibiting discrimination on the basis of the use of a housing subsidy or voucher. Many families seeking to return may be forced to rely on housing vouchers to be able to afford housing in the private market. Policies that excluded renters with housing subsidies were pervasive in the New Orleans housing market before Katrina and will inhibit the return of residents if allowed to continue.

Landlords, Tenants, and Evictions

- Assist the right to return of the City's workforce by supporting proper notice with regard to eviction proceedings. Proper notice will consist of a minimum of notice by mail.
- Assist the return of the City's workforce by supporting proper notice with regard to the removal, disposal, and preservation of tenant property. Tacking notice should be the notice of last resort.

Property Rights

- Consider the creation of a landowners' compensation fund, which has been proposed by a number of sources. Tulane Law School Professor M. David Gelfand, in an article he wrote shortly before he died, suggested that such a fund would involve the setting of "fair (that is, pre-Hurricane) levels of compensation that landowners in the redevelopment area could receive quickly without expensive, time-consuming litigation. . . . Funds for tenants to relocate within New Orleans should also be part of the overall package."² This may be similar to the Crescent City Rebuilding Corporation recently proposed by the Urban Land Institute.
- Adopt the Urban Land Institute's suggestions regarding extension of the mortgage forbearance period, provision of design and technical assistance to homeowners, and provision of financial assistance to homeowners to facilitate their right to return.

² M. David Gelfand, The Need for Caution, Creativity, and Cooperation in Rebuilding New Orleans after the Flood Waters Recede, http://writ.news.findlaw.com/commentary/20050919_gelfand.html (September 19, 2005).

HOUSING RECOMMENDATIONS FOR THE HOMELESS AND INDIGENT POPULATION,
FOLLOWING HURRICANE KATRINA

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A city ordinance that requires homeowners selling property at \$500,000 or higher to donate 5% of each sale to the City of New Orleans.

Implement emergency legislation to prevent taxpaying residents from being unlawfully and unethically evicted from their homes. To date, numerous residents have not yet been able to return to New Orleans to assess damage and livability of their homes; reasons include a lack of access to transportation, limited funding, or poor communication access. Yet many landlords have already begun eviction processes. Individuals and families that have lived their entire lives in New Orleans, or had made lives in New Orleans, will find themselves forced out of their homes with no ability to legally and rightfully defend themselves.

Work with Governor Blanco to establish a moratorium on evictions until further notice. The city—as well as its residents—is still in a state of disarray and confusion, and several neighborhoods have not yet reopened for residents to return home permanently. It is too soon to decide on which date is appropriate and has offered a sufficient amount of time for renting residents to re-establish contact with their landlords and/or return home to their apartments to examine Katrina's impact on the dwelling.

Adopt legislation that requires landlords to document how they have attempted to contact their residents before obtaining a right to lawfully evict their tenants. Landlords should be required to utilize all communication means available to them, and should be required to attempt contact with their tenants for a minimum of 10 times, and permit tenants a minimum of 10 days to respond after contact is made. Additionally, landlords should be required put all communication with their tenants in writing, and send it to them via certified or traceable mail.

Implement a city income tax for the next three years, after which time, the tax can be placed to city residents for a vote. This can help absorb some of the extravagant tax base sustained by the City of New Orleans due to Katrina. A city income tax should be specifically slated for rebuilding efforts only.

COMMUNITY VOLUNTEERS: THE FRONT LINE OF DISASTER RESPONSE

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An organized community and volunteer response could have helped in a number of ways before, during, and immediately after the recent disasters. They may have been able to:

- coordinate a more successful evacuation and transportation effort, where instead, thousands were unable or chose not to evacuate;
- provide some structure and order in places like the Superdome and New Orleans Convention Center, where instead chaos reigned;
- aide in organizing resources for distribution before and after the hurricane, where instead basic needs were left unmet for days; and,
- decrease some of the isolation and sense of abandonment that quickly engulfed victims in the affected areas.

ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT

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A. Hurricane Protection and the Coastal Zone

Recommendations:

1. Stop the bleeding. Protecting the remaining coastal wetlands is job one. The current approach of permitting marsh destruction, to be offset by subsequent mitigation, has failed: the costs of marsh creation are high, and the results are low. Louisiana continues to experience net wetland loss by its own hand. Pending the adoption of a new master plan for coastal Louisiana (see below), there should be a moratorium on new development in the coastal zone that adversely affects wetlands and natural flood barrier systems. Non destructive technologies such as elevated roads, directional drilling and over-marsh vehicles should be required.
2. A new coastal plan. Katrina and Rita raised the ante. Current plans are restricted to terms of decades or less which, by their very nature, focus on short-term outputs and avoid altogether the hard questions of what we can and cannot protect with the resources foreseeable available. We need a 100-year view that embraces natural systems, man-made structures, region-wide zoning, development corridor and retreat scenarios, and a game plan to get there.
3. A new planning entity. No agency has a monopoly on ideas, and all agencies tend to know what they have always known. Many countries, most notably the Netherlands and Japan, have developed considerable experience in hurricane protection, some good, some bad, all instructive. State agencies, private consultants and academics have done the same. We need a Coastal Commission with a broader mission, authority, and composition than any current entity, assisted by boards of experts both domestic and foreign. We need to think beyond the box.
4. Timing. There is an immediate need to shore up existing levee systems, until more complete solutions are found. But there is no immediate need to rush judgment on integrated protection systems costing tens of billions of dollars and determining the fate and future of south Louisiana. . A hasty plan is likely to repeat the mistakes of the past. A good plan will take time.

5. The public and the law. An endeavor of this magnitude calls for the fullest consideration of alternative approaches, economic, social and environmental impact assessment, and public participation. This consideration is required by the National Environmental Policy Act, the Freedom of Information Act, and other laws that play vital roles in public decision-making. Fullest advantage should be taken of these laws and processes. They should not be eliminated or abridged.
6. Planning elements:
 - a. Flood control first. The rest can wait. All pending coastal projects not directed to flood control and hurricane protection should take a second seat.
 - b. Flood impact review. Pending projects should, further, be carefully re-evaluated for their impacts on flood control and human safety, before being re-started at a later time. All existing projects should receive the same scrutiny, and those of low economic value and high risk should be closed as soon as possible.
 - c. Defense in depth. Wetlands and natural barriers are the first lines of defense, and often fully sufficient ones. Manmade levees have the disadvantages of high costs, high maintenance requirements, human error, unanticipated failure, and the false appearance of security. Man-made levees will not endure without wetland buffers to support them, nor can wetlands endure if levees are constructed across them or between them and the sea. New authorizations should make the use and restoration of natural systems a first priority, and should authorize them concurrently with other project features.
 - d. Levee systems for existing development. With reasonable growth potential. But not linear levees across undeveloped areas that will lead to the destruction of natural systems behind them and the loss of those same systems outside the walls.
 - e. Sediment transport. Current restoration relies on fresh water diversions, which serve to preserve existing marshes. Following Katrina and Rita, defense is no longer sufficient. New and existing projects would make full use of the Mississippi and other coastal rivers for sediment transport, including pipelines and other conveyances to restoration areas away from these sediment sources. Open river disposal should be terminated.

- f. Backfilling and natural regeneration. The coastal zone has been decimated by more than 10,000 miles of access canals, many of which no longer serve their original purposes. These canals can be restored, in many cases by backfilling from their spoil banks. Low-cost techniques are available and should be fully employed.
 - g. Restore natural hydrology. Obstructions to natural surface and subsurface water flow such as highways, levees, and railroads should be mitigated with culverts, weirs, and other structures to restore historic hydrological patterns.
7. The polluter pays. The oil and gas and navigation industries – through the direct and indirect impacts of canals, wave-wash and subsurface extraction -- are responsible for more than half of all coastal land loss, and over 90% of land loss in certain areas. These impacts are well documented, and indeed relied upon by the State in its bid for federal coastal restoration funding. Nowhere, however, have these industries been asked to pay for their share of the damage. Energy companies are currently enjoying record years of profits. They should contribute their fair share for restoration.
8. Face strategic retreat. We should identify areas of high vulnerability and plan for limiting human investment in them. We should end federal and state subsidies to these areas, including flood insurance, transportation, sewage treatment and like programs. In many cases it will be cheaper in dollars and human lives to move development away from harm than to attempt to protect it. This element will be the most difficult part of any coastal strategy; to ignore it, however, makes future disasters inevitable.
9. Face global warming. Current projections have sea levels rising from 3 to 5 feet over the next century. It will be impossible for Louisiana coastal restoration projects to match these rates, placing both natural systems and man-made levees in jeopardy. To this day, Louisiana has been in denial about global warming and has strongly resisted even such modest measures as fuel efficiency standards that are necessary to reduce it. That posture needs to change to open advocacy, while there is still time to reduce the warming process. No state in the Union stands to lose more to global warming than Louisiana.

B. Public Health and Safety

1. Debris removal. Current plans call for the incineration of hurricane debris. The great volume of debris materials, however, are a resource

available for composting and other beneficial uses. The first priority should be their use for coastal restoration.

2. Testing and monitoring. Testing to date is inadequate to identify which properties are safe for reentry. Such testing should be the highest priority, followed by definitive summaries of the information collected and recommendations for individual actions.
3. Information...is not sufficient. Nor are warnings for residents to wear masks and latex gloves. The need is to remediate, long term, and to remediate again where indicated.
4. Responsibility. As stated above, remediation is a federal responsibility because the flooding was a federal responsibility. Remediation should also embrace all affected lands, public and private. Airborne toxins released from sediments do not respect lines of ownership. Waterborne sediments will move from lawns to public roads and sewers. It is necessary to do the full job.
5. Remediation. New Orleans has unhappy experience with inadequate remediation of contaminated sites. The new plan should include adequate soil removal and replacement for areas that will be reoccupied.
6. Disposal. Prioritize source separation and recycling. All toxic and hazardous materials should be removed from waste streams. No construction debris landfill should accept asbestos shingles, household wastes and similar contaminants. No disposal site of any type should be located in, on or adjacent to wetlands or water sources.
7. Strategic retreat. Some sites, perhaps entire neighborhoods, may not be feasibly reoccupied because of health risks, the degree of damage, or their vulnerability to flooding. These will be most difficult decisions of all. They should be made only in direct consultation with the residents involved, and through full compensation and relocation to other areas in the city.

C. The Urban Environment

Recommendations:

1. Don't tear it down. The great majority of city housing can be restored. We need to begin with a strong presumption against demolition, overcome on a case-by-case basis only through a showing of irreparable damage, continuing flood risk, contamination or the absence of architectural or social value.

2. The New Orleans Reconstruction Corps. All restoration contracting should require the employment of local residents. Centers should be created to train New Orleanians in restoration work, and to recruit and place skilled New Orleans workers with private employers. Task forces of a New Orleans Reconstruction Corps should be available to low-income, uninsured and other city residents on a reduced fee or no-fee basis to elevate and rehabilitate homes. The objective is to bring back our people and our houses at the same time.
3. A master plan. New Orleans planning and zoning decisions have been made on an ad-hoc basis short on standards and long on political influence. A sustainable city requires a detailed and binding master plan that informs developers of their rights and rules, levels the playing field, and is enforceable by the city and by neighborhood organizations which are the ultimate guarantors of sound planning decisions.
4. Elevate. Levees fail, pumps fail, and ordinary rainstorms overwhelm the drainage systems. All new and existing structures should be elevated, as once they were. Slab development should be prohibited.
5. Natural flood storage. New Orleans has lost much of its flood storage capacity to concrete and asphalt. More sewer hookups are not the answer. The existing system is hard pressed to keep up with existing tie-ins, and its discharges constitute the largest source of pollution to Lake Pontchartrain as well. Low lying areas should be set aside for passive uses, including natural water retention and drainage. New construction should be required to use pervious materials and other measures to offset the loss of land area.
6. Rail and trolley systems. New Orleans once held the most convenient public transit system in America. The restoration of these systems will enhance property values, attract tourist revenues, and protect human health and air and environmental quality. New and expanded roads will do the opposite. We are informed that Skoda, the largest manufacturer in the Czech republic, has offered to build a new trolley car plant in New Orleans. Such offers should be pursued.
7. Pedestrian and bicycle transit. A city of neighborhoods does not need automobiles for every expedition. The flat terrain and neighborhood layout of New Orleans is conducive to walking and to commuter bicycling. The economic and public health benefits of these activities are consequential, as well. Safe and convenient pedestrian and bike ways are the key.

8. Trees and green space. The affluence of New Orleans neighborhoods can be correlated directly to their amount of trees and green space. These amenities should be commonplace, not luxuries. Trees, urban gardens and green space cost very little, reduce the heat index of the city considerably in the summer, and make important contributions to life quality. They encourage people outdoors. They help bind the neighborhood.
9. Recycling. New Orleans had initiated a modest program of recycling. The potential for expanded recycling is high. The costs of not recycling will increase with the decrease of available landfill space, already stressed by the volume of Katrina and Rita debris.
10. The river. The longest and most historic river in America is largely hidden behind walls and warehouses. The port is important, but it can share. We should open the river to mixed public and private use through low-rise commercial and public space. The success of similar renovations in other cities and countries is impressive. The river should not be committed to high-rise and other development that excludes others. It is the defining public asset of New Orleans.

CREATING EMPLOYMENT OPPORTUNITIES AND ECONOMIC STIMULI

By Tina Boudreaux
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1. Local Employment

Substantial numbers of the cleanup and rebuilding jobs should be reserved for residents of low-income communities affected by the disaster. This can be accomplished by including local hiring requirements in rebuilding contracts, and by giving preference to businesses that already employ significant numbers of residents from these communities.

2. Job Training

All hurricane victims should have immediate access to training programs so that they will have the skills to join in the economic activity to come. Especially important will be the creation of pre-apprenticeship programs to prepare residents for construction jobs.

3. Local Contracting

In order to revitalize the region's economy, we must ensure that local and minority-owned businesses receive a fair share of federally-funded rebuilding contracts. With vast sums now being spent in the region, oversight is needed in reviewing who gets contracts and why.

4. Land Use and Redevelopment

Upcoming land use decisions and redevelopment efforts at every level of government will shape New Orleans for decades to come. Low-income residents need to participate in these decisions to ensure that redevelopment efforts benefit all New Orleans residents, rather than just the powerful interests that often control these processes.

B. Recommendations

- 1. Resolve immediate housing issues, and coordinate economic and sustainable housing planning to benefit all residents**
- 2. Focus on targeted, sustainable infrastructure improvements that bolster productivity**
- 3. Continue to press for immediate grants / low-cost loans for small businesses**
- 4. Give local businesses and workers preference in reconstruction efforts**

5. **Encourage local expertise in disaster recovery and sustainable building strategies**
6. **Seek clarification from the federal government with respect to a federal financial commitment**
7. **Develop a research-based strategy and oversight mechanisms for the creation of a robust, sustainable economy that provides opportunities for all residents**

**PUBLIC PARTICIPATION & POLITICAL COMMUNITY IN NEW ORLEANS:
A PRAGMATIC WAY FORWARD**

By: Peter Prows*

Introduction

Never before have decisions about New Orleans and its future been more important or the need for public involvement and accountability more urgent. The majority of New Orleanians remain scattered far from their proud but battered city in an uncertain diaspora. This paper attempts to present a realistic approach for New Orleans to ensure broad and meaningful public participation in the important decisions ahead.

The mechanics of holding elections and the fundamental importance in our democracy of the equal right to vote—all the more important through such difficult circumstances—are not the focus of this paper because primary authority for all Louisiana elections rests at the state level. Worth repeating here, however, are Chief Justice Warren's words from the seminal 1964 voting rights case *Reynolds v. Sims* that voting "in a free and unimpaired manner" is "the essence of a democratic society" and is "preservative of other basic civil and political rights." Rebuilding New Orleans will not be complete, and indeed may not even truly begin, without free, fair, and effective elections and the right to vote for all New Orleanians. Although Katrina left no part or person of New Orleans untouched, there can be no denying the serious racial, economic, and social disparities that remain in her wake. Without affirmative, rigorous, and multifaceted efforts to ensure the political rights and participation of those most affected, rebuilding New Orleans will only calcify disparities, reinforce injustice, and perpetuate a racial and social divide. Government at all levels has the responsibility to ensure that New Orleanians who are registered or eligible to vote may do so.

Though it cannot restructure elections, the city can undertake creative ways to actively reengage its citizens in the important decisions about their city that will be made in upcoming months and years. It is critical that these decisions be made together by all New Orleanians. This requires outreach that could and should include continued town halls, a grand convention for New Orleans (perhaps, for symbolic and practical reasons, to be held during Mardi Gras and/or at the Morial Convention Center), and renewed measures to ensure transparency and accountability in city governance.

* The author received invaluable assistance in planning this article from the work of Kristen Clarke-Avery and the late M. David Gelfand, and in researching and writing this article from Bryan Mauldin, Megan Goddard, Mark Laramie, Jonah Goldman, and Morgan Williams. Thank you all. The author can be reached by email at peter.prows@nyu.edu.

PRESERVING MINORITY VOTING RIGHTS POST-KATRINA

By: Kristen Clarke-Avery
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Introduction

How can we address the impact that Hurricane Katrina has had on voting rights and the election process generally while still preserving the voice and influence of citizens in the rebuilding and reconstruction process? How do we contend with these difficult questions in a context that has become increasingly concerned about vote fraud and ballot integrity. Moreover, what impact will Hurricane Katrina likely have on minority voters in the City of New Orleans, where African Americans represent 67 percent of the pre-Katrina population and where its African American elected officials represent the majority of the state's minority political base?

States Impacted by Hurricane Katrina Could Choose to Postpone Elections Until Voters have Resettled in the Region

Cities and States Impacted by Hurricane Katrina Need to Adopt and Revise Election Laws to Facilitate the Absentee Voting Process for Displaced Residents by Relaxing Voter Identification Requirements

Protective Measures Should Remain in Place for Voters Unless Voters Express a Clear Intent to Establish Permanent Residency Elsewhere

Conclusion

Should citizens lose the right to cast ballots and choose their representatives, they will also lose any influence over the reconstruction process. For those concerned about participatory democracy, preserving the voting rights of displaced citizens must become a top priority. For those who are concerned that the reconstructed New Orleans fairly and adequately represents the interests, influence and contributions of African Americans, preserving minority voting strength must be a crucial component of the process.

³ Note that the views, positions and policies outlined in this chapter are those of the author alone. This chapter does not purport to represent the views of the U.S. Department of Justice. This piece was adapted to a shorter article that was co-authored with the late M. David Gelfand of Tulane Law School. That article can be found at http://writ.news.findlaw.com/commentary/20051011_gelfand.html. The author can be contacted at Kristen_clarke@yahoo.com

INSURANCE ISSUES

By: Adam F. Scales
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A. Preventing Systematic Undercompensation

What can the Government of the City of New Orleans do to assist residents in dealing with their insurance companies?

I have identified several steps that can be implemented quickly. The biggest problem that I have identified is the unprecedented difficulty of matching the claims process to the reconstruction. As you know, the insurance claims process consists of many, time-consuming steps leading to what is frequently an unsatisfying negotiation between a homeowner and the insurance company.

The dynamic is a familiar one to students of negotiation strategy. The insurance company, acting through an adjuster, is a “Repeat Player”. The insurer knows far more about the price of roofing and construction costs than the individual homeowner, because insurers track this information continuously. Individuals are “One Shot” participants. Because the average person does not buy home reconstruction materials and services the way he buys groceries, he simply has no idea what the proper valuation of a loss should be.

Moreover, people are systematically overconfident of their abilities to negotiate and assess value without professional assistance. I suspect that the overwhelming majority of homeowners in New Orleans will rely on the adjuster’s initial valuation as a baseline, using little more than intuition – crippled by their immediate need to see progress in restoring their lives – to guide them. This is a terrible combination, and I predict it will lead to systematic undercompensation.

Despite the undeniable public interest involved, insurance contracts are private; at this time, I would counsel against any direct legal action by New Orleans under the doctrine of “*parens patriae*” (the government may speak for the private citizen).⁴ Instead, there are two models by which the City can support homeowners (and small businesses) to level the playing field.

Creating Information Outlets for the Public

The City should begin collecting and posting via the internet in real-time (no less often than weekly) data on claims patterns and construction costs. Imagine a policyholder presented with a damaged roof. During the brief window of opportunity

⁴ Of course, where insurance and adjusting practices are at odds with City and State law, I would encourage a robust and highly publicized commitment to law enforcement.

during which he can actually get his adjuster's attention, an offer is made. The policyholder is unable to get firm pricing commitments from a reliable builder, but is reluctant to wait. If the policyholder could go online and compare offers made for similar types of damage in his neighborhood, he would be much better equipped to evaluate the offer.

Centralized Negotiation/Arbitration as a Tool for Resolving Insurance Compensation Disputes

A more ambitious variation would be for the City to intervene lightly, making available a central claims negotiating facility where City experts armed with the data above can bring policyholders and adjusters together to fairly settle claims.

This would not be a formal legal proceeding, and need not even rise to the level of arbitration. Instead, it would be a "structured negotiation" which has been designed to eliminate as much as possible the bargaining limitations and disparities that currently affect the adjusting process. The advantage of a central location is the ability to provide real-time guidance and data to claimants, with helpful oversight from consumer advocates. A policyholder could meet with an adjuster who would be very aware that "hardball" tactics would be quickly discovered. Because both sides would have access to the most current data, the likelihood of reaching a fair and correct value for a claim is improved. Moreover, the very presence of advocates will reassure the policyholder that he is not matching his wits against his insurance company's; at any time he can call upon "Repeat Players" from the policyholder perspective. This, too, is a way of bringing transparency to what is a very difficult process for consumers.

DISABILITY AND AGING SPECIFIC ISSUES
FOR REBUILDING NEW ORLEANS

By: Ann Maclaine
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Rebuilding the Infrastructure of the City

Our goal should be to rebuild the city in a way that maximizes the physical accessibility of all new buildings, including private homes. Services needed by senior citizens and persons with disabilities should be available in the community so that these individuals remain fully integrated into the life of the city.

- Transitional Housing should be accessible to persons with mobility impairments. Many of the people remaining in shelters have disabilities, because accessible transitional housing has not been made available. Given the shortages that already existed in this area before Katrina, all transitional housing to be built in New Orleans should comply with ADAAG (Americans with Disabilities Act Architectural Guidelines) standards.
- Permanent Housing should also be built with universal design elements for accessibility. The cost of making buildings and homes accessible at the construction phase is a fraction of the costs to retrofit later. Resources are available to provide technical expertise and tax credits to make all new construction and renovations compliant with ADAAG and universal design. City building codes for post-Katrina construction should require accessibility.
- Public and private buildings should also be built or renovated to meet the most stringent of ADAAG and universal design standards. This is an opportunity to finally make our city buildings and services welcoming to people with disabilities.
- Transportation is a critical service for people with disabilities. As public transit services are restored to the city, accessible fixed route and paratransit services must be restored to meet or exceed pre-Katrina levels and standards, and to fully comply with the ADA (Americans with Disabilities Act).
- Sidewalks, curb cuts, and public right of ways are all part of the infrastructure that must be made accessible and whose accessibility must be maintained. Construction crews must be required to consider accessibility when posting barricades for any length of time. Accessible housing or buildings are useless if the paths of travel to those buildings are not clear.
- Polling places should all be built/re-built with accessibility in mind, as required by the Help America Vote Act.

Wrestling with Race and Class in Post-Katrina New Orleans

By: Paulette M. Bethel

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Alisha Johnson

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After seeing who escaped the flood and who remained behind, it's impossible to ignore the shocking breadth of the gap between rich and poor. It's as if we don't even see poor people in this country anymore, as if we don't even try to imagine what their lives are like...To be poor in America was to be invisible, but not after this week.

Eugene Robinson, *No Longer Invisible*, *The Washington Post*, September 9, 2005.

This disjuncture in how the issues of race and class are viewed was evident in the differences between white and black attitudes on the issue of the role of race in the response and what it tells us about the way race was viewed in individuals' experiences of and the government's response to the hurricane. In a scathing commentary, Jean Hardisty, senior scholar at the Wellesley Center for Women decries the ravages of policies that have supported the continuance of structural racism in our society – “Wealthy Whites were on the high ground; people of color and poor Whites were on the low ground: a perfect metaphor for structural racism.” She further asserts:

Why were so many White Americans shocked to see the reality of New Orleans? I believe that, in large part, the message put out by the "New Republicans" - that a colorblind approach to public policy is moral and just - is powerful because so many White people want to hear and believe it, not because it can't be easily refuted. Until those of us who benefit from White privilege have to confront the consequences of that privilege, it is possible for us to believe the White supremacist line that people of color are victims of their own moral failings, not of government and private policies...Hurricane Katrina has opened the door for White people to have a more vivid understanding of structural racism. For Black people, it was an entirely different experience. An intellectual analysis doesn't touch the anguish, anger, and demoralization that African Americans have experienced during this travesty.⁵

⁵ Jean Hardisty, *Hurricane Katrina and Structural Racism: A Letter to White People*, <http://www.wcwonline.org/p-comm-katrina.html>, (last visited on November 8, 2005).

Further, Dr. Beverly Wright, Director of the Deep South Center on Environmental Justice at Dillard University, described in her September 29 congressional testimony before the House Energy and Commerce Subcommittee “pre existing” socio-economic vulnerabilities and political structures based upon race and class differentials in a region that is “disproportionately African American and poor.”⁶

*We see in the tragedy of Hurricane Katrina, Hurricane Rita and the aftermath a unique opportunity to shape the conversation and dialogue about rebuilding of New Orleans and the Gulf Coast region with the goals of environmental and economic justice for everyone.*⁷

Areas like the French Quarter and Uptown, both predominately white communities where more than 50% of its residents hold a bachelor’s degree or higher, were built on higher ground, according to the 1878 New Orleans map, and were therefore in the 20% of the City that experienced minimal storm damage.⁸ Of the prominently damaged neighborhoods, the Lakeview area, a 94%-white neighborhood which boasts of million-dollar homes due to its situation near the Lake suffered proportionate to its percentage of New Orleans demographics.⁹ The majority of affected areas, however, were predominately black - from the diverse Gentilly Terrace and Broadmoor areas where nearly 70% of the residents are black, 25-30% are white and 25% of residents have bachelor’s degree or higher - to the highly concentrated African-American Pontchartrain Park, where 97% are black with 28% holding bachelor’s degree or higher.¹⁰ Hollygrove statistics reveal that 95% are black residents; 10% holding a bachelor’s degree or higher. The Lower 9th Ward, one of the city’s poorest areas, revealed that 98% of its residents are black; significantly 45% are single-parent homes, and 6% of the residents have a bachelor’s or higher. Eastern New Orleans, “the other” Ninth Ward encompassing several different neighborhoods, are more diverse than the Lower 9 with 86% in the Little Woods neighborhood being black, 10% white and 21% bachelor’s or higher. Village de L’est, holding the City’s highest concentration of Asians at 37%, is 55% black and 4% white, and 13% of its residents hold a bachelor’s or higher.¹¹

The Ninth Ward, including eastern New Orleans, was among the last of the city’s neighborhoods to be developed. Originally a cypress swamp, area was built to accommodate poor African Americans and immigrant laborers from Ireland, Germany and Italy who desired homes but were unable to afford housing in other areas of the

⁶ Environmental Effect of Hurricane Katrina: Beverly Wright, Congressional Testimony; 9/29/2005, <http://www.highbeam.com/library/doc3> (last visited on November 10, 2005).

⁷ Id.

⁸ French Quarter and Uptown People & Household Characteristics, <http://www.Gnocdc.org> (last visited November 13, 2005).

⁹ Lakeview Neighborhood: People & Household Characteristics, Greater New Orleans Community Data Center, <http://www.gnocdc.org/orleans/5/37/people.html> (last visited November 13, 2005).

¹⁰ Pontchartrain Park Neighborhood People & Household Characteristics, Greater New Orleans Community Data Center, <http://www.gnocdc.org/orleans/5/37/people.html> (last visited November 13, 2005).

¹¹ Village de l’Est Neighborhood People & Household Characteristics, Greater New Orleans Community Data Center, <http://www.gnocdc.org/orleans/5/37/people.html> (last visited November 13, 2005).

City.¹² Early families were aware of the risk of flooding and disease but inhabited there as a mixture of cultures until African-American activism for school desegregation nudged white Ninth Warders eastward into St. Bernard Parish. Struck in 1965 by Hurricane Betsy, the Lower 9 never truly recovered from the devastation that took 81 lives and inundated 80% of the district.¹³ Inadequate public assistance in 1966 through the Demonstration Cities and Metropolitan Development Act attempted to improve the general welfare of the neighborhood, which before Katrina retained such initiatives as the Lower 9th Ward Neighborhood Council, Total Community Action Head Start, the Housing Development Corporation, and a Health Clinic.¹⁴ As the city leadership wrestles with the aftermath of Katrina and Rita, many questions remain about what the future holds – especially for the poor and African American community. New Orleans has been broken down under the weight of the enormous losses – one million evacuees, 150,000 homes damaged or destroyed, the loss of jobs in an already struggling economy, and the loss of the tourism industry.

The events surrounding Katrina, most especially around issues of race and class underscores the need for a participative grass-roots partnership which includes stakeholders at every level – federal, state, and local government, community activists and civic leadership, the legal community, preservationists, business leaders, and a diversity concerned citizens from every walk of life. Skilled facilitators with multicultural competence familiar with the history of a “cultural gumbo” and the nuances of New Orleans must be part of the strategy for rebuilding the city. Crucial conversations are only one aspect of solving the political and legal problems regarding race and class issues in post-Katrina New Orleans. Incorporation through recruitment and development of a cross section of concerned stakeholders – the original citizens from the original population of New Orleans – would ensure the effectiveness of “right action” in the reconstruction of the society.¹⁵

¹² Ninth Ward Neighborhood People & Household Characteristics, Greater New Orleans Community Data Center, <http://www.gnocdc.org/orleans/5/37/people.html> (last visited November 13, 2005).

¹³ Id.

¹⁴ Id.

¹⁵ Mike Jay, Right Action, <http://leadershipuniversity.com/documents/Mod%201%20-%20RightAction.pdf> (last visited on November 18, 2005).