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I. INTRODUCTION

A. Preface

All of us who took part in this project, and especially those who visited New Orleans, were deeply moved by the experience, and feel a great empathy for the City and its people in their struggle to recover and rebuild. The people we met were uniformly helpful, indeed eager for us to tell their story; there is a definite sense in New Orleans that they have fallen "off the radar" nationally. We hope that this Report, as part of the overall Appleseed project, will bring needed attention back to New Orleans and add some value to that City's continuing efforts.

B. Background

New Orleans lies in an area between the Mississippi River and Lake Ponchartrain to the north, much of which is reclaimed from swamp and marshlands and lies below sea level. A system of pumps has been installed starting in the 19th century to drain rain or storm water from the lower-lying parts of the City. Following extensive flooding from Hurricane Betsy in 1965, a system of levees was expanded and supposedly improved by the Army Corps of Engineers alongside Lake Ponchartrain and several canals leading from the Lake into the center of the City, which were used for drainage from the pump system. When Hurricane Katrina struck the Gulf Coast on August 29, 2005, the eye of the storm went to the east of New Orleans, but the storm surge coming in first from the east, and then from the north across Lake Ponchartrain, overtopped and caused breaches of several levees. The City, essentially a "bowl" with no natural outlet, inevitably filled with water until it equaled the Lake level.

New Orleans suffered the greatest physical damage to a major urban American center in the nation's history, with total damage estimated in excess of \$100 billion.

Virtually the entire City population of more than 450,000 people was evacuated; most left before (and the balance after) the hurricane hit. More than 1,200 individuals lost their lives as a result of the hurricane and flooding in New Orleans. Over 80% of the city was flooded for close to three weeks. In addition to including a toxic mix of wastewater, rotting food, oil and dead bodies, the flood waters also contained a large amount of salt water, which can be particularly corrosive. It is estimated the flood waters moderately to severely damaged or destroyed more than 200,000 housing units, a calamity that proved to be the single greatest disaster and also the root of the city's current challenges.¹

The physical destruction and damage is virtually inconceivable without seeing it. Entire neighborhoods – block after block, mile upon mile – remain virtual ghost towns ten months after the hurricane. Some houses have been restored or are in the process of "gutting." Many others sit untouched with the spray-painted symbols still visible from the original National Guard surveys to find survivors after the flood.

In concert with the damage to housing, thousands of businesses closed. Hospitals, schools and other public buildings, as well as office towers, were flooded, and the iconic New Orleans Superdome, televised so widely, was damaged. Utility and other public services – electricity, telephone, water, sewer, public transit, and mail – were virtually completely shut down for weeks and months in some areas, and, in others, they still have not been restored. The debris left behind immediately after the flood receded and by later clean-up or removal of housing totaled more than 15 times the volume of debris removed

¹ New Orleans interviewees consistently compared the magnitude of their City's long-term problems to the circumstances along the Gulf Coast in Mississippi and Alabama. In those states, while the storm surge certainly caused massive damage, the water immediately receded and allowed clean-up and rebuilding to start right away. In contrast, New Orleans had to suffer the corrosive effects of long immersion in stagnant water.

from the World Trade Center after September 11, 2001 – and the job is still not complete. It is against this backdrop that we visited New Orleans to assess its recovery.

C. Executive Summary

New Orleans in June 2006 is a city in the midst of major rebuilding, restructuring and transition, but without a clear vision yet of where the road will eventually lead. From many of our interviews, we gained a palpable sense of uncertainty about the future, but also a deep commitment by many people to make the journey a success. There is also a sense of conflicting imperatives. Many spoke of a process that would take five to 10 years and the need for careful planning. Yet, there is tremendous pressure for decisions to be made quickly so that people can make personal decisions about their own futures. There is much criticism of political leadership at many levels, but many matters are outside the control of the City or the State. Another theme which pervaded our visits was the interconnectedness of the challenges facing the City in rebuilding. Finally, it was clear that New Orleans had serious challenges even before Katrina, and that the pre-existing challenges made the task of rebuilding even more formidable.

Who, Where, When? -- It is estimated that somewhere between 180-200,000 residents (or less than half the pre-Katrina population) have returned to New Orleans. Many of these people are not living in their prior homes. Many prior City residents will not return at all, while many want to return but do not know when they can do so, given the lack of housing. No clear decisions have been made about what neighborhoods can realistically be rebuilt. Alternatives must be provided for those who lived in areas where rebuilding may not be feasible. It is uncertain what building requirements will apply, either from the City, the Federal Emergency Management Agency ("FEMA") or the

insurance industry, and, particularly in outlying areas, it is not yet clear whether or when municipal services will be restored.

These same considerations apply to many businesses, particularly smaller, neighborhood establishments and professionals, such as doctors. Without knowing where their customers or patients will live, or if they will even return, small businesses are impeded from reopening. Families are reluctant to move back without knowing where their children can attend school, but school administrators are hampered in planning for reopening schools without knowing how many students will return.

The Elephant in the Room -- Underlying almost all individual decisions on whether to return to New Orleans is uncertainty about physical safety from another flood. Many people are waiting to see how the City manages through this year's hurricane season before committing to rebuild their homes or return. More than one civic leader expressed the view that "one more flood and the City is gone." The Corps of Engineers has repaired last August's levee breaches (at least temporarily in some cases) and has embarked on a process to bring the levee system up to the original design goal of protection against a "100-year" event. Prodded by outside studies, the Corps has acknowledged that the pre-existing designs were inadequate and their construction was faulty.

There is some (though far from universal) optimism that the Corps will succeed in its task because it now has significant resources and understands the proper engineering. However, even the Corps states that renovation of the levee system will not be completed until around 2010. Recently released FEMA maps showing required elevations in different parts of the City are based on the *assumption* that the Corps will bring the levee

protection up to the optimum design, but this step is several years off. So, the question remains: what to do in the meantime?

The second element of long-term hurricane protection is restoration of coastal wetlands. Ultimately, this has to be accomplished or the City can never be truly safe. Wetlands provide natural protection from storm surge, but vast areas south and east of the City have been lost. This, too, will be a long process, but the State has made it a priority and is fighting for a share of offshore oil revenues from federal leases to fund this effort.

Silver Linings -- One consequence of a disaster is that, if the slate is wiped clean, a new structure can be built. New Orleans was a city with a host of problems before Katrina, as will be noted in some of the sections of this report. A civic Committee for a Better New Orleans had released a report in 2000 urging specific steps to improve six areas deemed of highest importance: City Management; Education; Public Safety; Economic Development; Housing; and Transportation.² While it appears little had been done in response to that Report, some more fundamental changes are occurring in the aftermath of Katrina.

One area is a major restructuring of the City's public school system. As the Report will describe, the State has largely taken over responsibility, and the existing New Orleans Parish School Board, which had been widely criticized in the past, will have a small role in education in the near future. An improved school system will be a major asset to attract former and new residents to the City. A second area where fundamental restructuring is likely to occur is in the health care system. The destruction of or severe damage to several hospitals in New Orleans, including the Charity Hospital which

² See below at page 10.

provided care for all Medicaid and indigent patients, has provided the impetus for rethinking the whole health care system in the State.

Another area where new methods are being employed is within the nonprofit social services sector. Building on some initiatives which were under way before the hurricanes, a number of social service organizations are cooperating both across service areas and parish boundaries to provide "one-stop" intake and assessment for people in need, thereby increasing the efficiency and efficacy of the services they provide.

A number of interviewees expressed the hope that, in restoring its housing and employment base and possibly improving the school system, the City would attract more middle-class jobs to reduce the dependence on conventions and tourism which had made lower-paying service jobs predominant over the past several decades.

One interviewee noted that "out of great disasters you can rebuild great cities." This has occurred before – San Francisco after 1906, European cities after World War II – but the process is long and hard. Another interviewee, from the nonprofit world, opined that "if anything good comes from this disaster, I hope it is that we find new ways to do business."

What Kind of City? -- Several interviewees acknowledged that issues of race and equity had to be addressed in the planning for a future New Orleans. Before Katrina, New Orleans was a city with a large population of color and of poor residents. The combination of the mild climate, relatively low cost of living, and the large percentage of native-born residents who were not familiar with another way of life led, as one native put it, to a sense that "people may be poor, but they don't feel poor." This also attracted the artists and musicians who were so intimately part of the City's life.

One reality of a rebuilt New Orleans is that housing, and probably many other things, will cost more than before. It is also taken as a given that the population will not return to its prior level, given how many evacuees have already decided or will decide to stay elsewhere.³ There are already many conflicting views on how to balance rebuilding needs with a desire to retain the City's previous social character. The sharp debate over public housing in the City is one example. How these kinds of issues will be resolved is far from clear. The head of a local foundation called it "a complicated conversation." A number of interviewees predicted that the City would be different than it had been before.

The Chicken and the Egg -- A recurrent theme in our interviews was the question of priorities. So many of the City's needs are interlinked that it is hard to know what needs to be done first.

In every discussion we had with business or civic leaders about jobs and employment, the first response was that the biggest impediment to bringing more workers into the City was the lack of housing. There is, in fact, a shortage of workers in the City. Virtually every reopened business is short staffed and has had to raise wages or pay bonuses. Businesspeople all say that they could hire more workers but for the lack of any place for them to live (absent a long commute). The relative scarcity of public transportation also affects this condition.

As has been mentioned, rebuilding of housing has been slowed by the lack of clear guidance on rebuilding requirements, the late start of a comprehensive community-oriented planning process, and delay in providing funds. This last problem will be somewhat alleviated in the coming months, as several billion dollars of federal

³ In fact, New Orleans has been losing population steadily for decades, having reached a high of over 600,000 in the 1960 census.

Community Development Block Grant funds are set to be released in the late summer and fall. We have already mentioned the conundrum of reopening schools, community centers and neighborhood businesses without knowing who will use them.

Many interviewees stated, in one manner or another, the belief that successful rebuilding will require a combination of restoring housing, economic development, and reconstitution of the school system. However, it is not likely that any single master plan will emerge to resolve this problem of priorities, and that is why the rebuilding will be slower than some would like.

Role of the Private Sector -- While government must play a major role in the rebuilding process, and federal funds in the billions of dollars will be needed, the private sector has been critical in the response to the hurricane over the last 10 months, and will be going forward. In this case, the private sector includes for-profit businesses, the City's major educational institutions, and nonprofit social services organizations.

The City's higher education institutions were among the first to take concrete steps to respond to the crisis caused by the evacuations. Although they had to cut staff to cope with reduced revenues, they took these steps early and positioned themselves to ride out what is hoped will be a short-term reduction in student population. Most tried to reopen for the spring semester. Tulane University is the largest employer in the City, so its ability to succeed in its recovery plan is highly symbolic.

Large businesses were usually best positioned to respond and recover. Most were able and willing to continue to pay their employees for months after the hurricane and often provided temporary housing and other services. Some brought employees from other parts of the country to Southern Louisiana to fill in for local employees who had to

cope with personal problems. Many companies have also made charitable donations to help the City and the State, and did such things as prepay their property taxes to help the City's cash flow needs.

National nonprofit service organizations have played a large role as well, as can be expected after major disasters. National charities have provided significant funding for local needs, and there has been an outpouring of volunteers who have traveled to New Orleans in the past months to assist, especially to clean up damaged housing. Charitable institutions were viewed as more flexible and able to respond to specific needs than government, which is hampered by bureaucratic rules.

Psychological Issues -- One other underlying theme from many interviews was the mental toll this disaster exacted on the people of New Orleans. Virtually no part of life in New Orleans has been easy since the hurricane. People have been worried about, for example, housing, transportation, their children's education, caring for elderly parents, obtaining health care, and dealing with insurance companies or government programs. There is no "down time." The constant state of anxiety, of the "fight or flight" reaction to a stressful environment, inevitably causes adverse psychological reactions, similar to post-traumatic stress syndrome. One psychologist described New Orleans as a city of "the wounded taking care of the wounded." Health professionals have seen increased alcoholism, drug use, spousal abuse, divorce, and suicide. Against this increased need, the number of available professionals is vastly reduced; by one report, only 22 of a previous 169 psychiatrists had returned to the City by April, 2006.

The Will to Succeed -- New Orleans certainly is making a comeback. Mardi Gras and Jazz Fest were held. The Convention Center opened in late June for its first

major national convention. The Superdome is scheduled to open in September. Despite the hardships and obstacles, the vast majority of people we met were committed to seeing New Orleans rebuilt better than it was before the hurricane. Living in New Orleans, one of our interviewees said, is a choice, so those who have returned and the many more who still seek to return want the rebuilding process to succeed.

II. CITY GOVERNMENT

A. Background

Five years before Katrina, the Committee for a Better New Orleans was formed. The committee was comprised of civic, business and religious leaders representing virtually every constituency in the city. According to an early version of the committee's publication, "A Blueprint for a Better New Orleans", ". . . city government is widely seen by its citizens as a major contributor to the city's problems. Despite a declining population, a shrinking revenue base and rising costs, which have left City government chronically underfunded, voters have regularly rejected efforts to raise taxes."⁴ The committee recommended as goals, among other things, that the city needed to build citizens' trust in the city government and to "[p]rovide an equitable, growing tax structure that is equitably administered and is capable of generating adequate revenue to fund necessary City services."⁵

B. Electric Service

With respect to electric service, on September 23, 2005, Entergy New Orleans (Entergy NO), the electric supplier for the New Orleans area, filed a voluntary petition

⁴ Committee for a Better New Orleans, *A Blueprint for a Better New Orleans* at 77 (Oct. 2001) (unpublished report at 5).

⁵ *Id.* at 13.

seeking reorganization under the provisions of Chapter 11 of the United States Bankruptcy Code. Entergy NO is continuing to operate its business as a debtor-in-possession under the jurisdiction of the bankruptcy court. It recently has been estimated that electric service has been restored to all of New Orleans except 92% of the lower Ninth Ward.⁶ In its 2005 Annual Report, Entergy NO reported that total restoration costs for the repair and/or replacement of Entergy NO's electric and gas facilities damaged by Hurricane Katrina and business continuity costs are estimated to be \$275 million.⁷ Not included in the estimated storm restoration costs is the longer-term accelerated replacement of the gas distribution system in New Orleans that Entergy NO expects will be necessary due to the massive salt water intrusion into the system caused by the flooding in New Orleans. The salt water intrusion is expected to shorten the life of the gas distribution system, making it necessary to replace that system over time. Entergy NO reported that the cost of the gas system replacement is expected to be \$355 million, with the project beginning in 2008 and extending for many years thereafter.⁸

In its annual report, Entergy NO reported that it is seeking to recover costs related to storm damage from insurance, federal legislation and new or existing rate mechanisms regulated by the Federal Energy Regulatory Commission and local regulatory bodies (state and city).⁹ Entergy NO faces the same issues that the city faces: large capital expenditures to rebuild and loss of revenues because of the decrease in usage.¹⁰ It has

⁶ City of New Orleans Mayor's Office, *Situation Report for New Orleans* (July 17, 2006).

⁷ Entergy Corp., Annual Report (Form 10-K), at 264 (Mar. 10, 2006).

⁸ *Id.*

⁹ *Id.*

¹⁰ Entergy New Orleans had 190,000 pre-Katrina customers. It recently has been estimated that only approximately 60% of those customers currently are taking service from Entergy NO. The Brookings Institution, *Katrina Index: Tracking Variables of Post-Katrina Recovery* at 44 (July 12, 2006).

been reported in local newspapers that “[t]he arithmetic is starkly simple and, to civic leaders, appalling: If the huge post-Katrina losses sustained by Entergy NO are added to its customers’ bills, as allowed by law, the cost of gas and electricity in the city will more than double, crippling New Orleans’ prospects for economic recovery.”¹¹ At this point in time, nothing has been resolved. Entergy NO is looking for a bailout from the state and from the federal government. People in Louisiana contend that Entergy NO’s parent company should absorb some of the costs.¹²

In addition, there has been some suggestion that the city municipalize the electric system and take over the assets of Entergy NO. Legislation has been enacted that authorizes this. Certain civic leaders with whom we spoke adamantly were against such a move because (i) the city has no experience running an electric utility business and now is not the time to start such a venture and (ii) the facilities of Entergy NO are in such bad shape that the city does not need to take on such a large project when they have other issues to deal with.

C. Garbage Collection/Debris Removal

With respect to municipal garbage collection, FEMA has provided assistance by helping to cart away the debris. A FEMA press release dated June 1, 2006 reported that the estimated total debris that had been removed from Southern Louisiana as of that date was 40 million cubic yards (over 15 times more debris than resulted from the terrorist

¹¹ Jeffrey Meitrodt, *Bailout for Entergy a shot in the dark; No easy solution in sight for N.O. utility’s losses*, TIMES-PICAYUNE (New Orleans), May 14, 2006, § National, at 1.

¹² One of our interviewees, a local business person, claimed that Entergy NO did not maintain adequate commercial insurance in place on its utility properties. Instead, our interviewee claimed that Entergy NO chose to self-insure, and that the insurance premiums that it thereby avoided were upstreamed to its parent, in the form of higher dividends. As a result, our interviewee contends that Entergy NO’s parent should bear much of the financial burden of rebuilding Entergy NO’s utility infrastructure.

attack on the World Trade Center).¹³ It has been estimated that, as a result of Katrina and the flooding, over 34 years' of trash and debris were dumped in New Orleans alone.¹⁴

The residents with whom we spoke said that garbage collection currently is scheduled by the city for once a week, but it cannot be counted on. As an aside, we asked many residents of New Orleans where the debris was being sent and no one had an answer.

D. Mail

Mail deliveries were not made for months. Initially, the postal service operated out of a trailer, but it recently has been able to reopen one of its buildings. For months after the flood, people were allowed to go once a week to pick up mail. For the last few months, mail delivery has been made available, but that service has been sporadic at best. One interviewee reported that much of the mail from October to December was never delivered and is presumed lost, and that some people have resorted to private mail services. Recently, the post office announced that it would start delivering mail other than first class mail – catalogues, magazines, etc. The issue with the post office is a common issue relating to all of the municipal services and businesses in the city. The post office is open but it does not have enough employees because there is no place for the employees to live. In addition, as one of our interviewees reported, since she is the only person currently living on her block and the homes on that block appear to be damaged and unoccupied, the postal delivery worker just assumed that no one lived there.

¹³ Press Release, Federal Emergency Management Agency, FEMA and State Committed To Recovery in Louisiana, Release No. 1603-487 (June 1, 2006) (<http://www.fema.gov/news/newsrelease.fema?id=26778>).

¹⁴ Women of the Storm Fast Facts About the Aftermath: Personal Impact, <http://www.womenofthestorm.net/facts.php> (last visited Jun. 29, 2006).

E. Water/Sewer/Gas

Most of New Orleans was served by an old system of water and sewer pipes. The City also has been subsiding slowly for decades. The enormous weight of the flooding, however, accelerated the subsidence and apparently resulted in massive damage to underground pipe systems. The corrosive sea water also did extensive damage to the city's water and sewer pipes. Most of them will have to be replaced eventually. It was reported to us that the water pipes now have so many leaks that anywhere from 65-80% of the city's water is leaking out of the underground pipes. Rebuilding this system clearly will be necessary. We also heard that the water pressure is so low that fires sometimes have to be put out by helicopters filling up tanks with water from the river and then dropping the water on the burning buildings.

The question of priority arises in this context, as in so many others in the City, and becomes intimately linked to the debate over the future "footprint" of the City. One constraint on where new housing can be rebuilt will be the availability of services like sewer, water, gas and electricity, as well as transit and local amenities. The decisions made on restoration of these services, as much as planning decisions, may dictate what parts of the City will be rebuilt first, if at all.

F. Transit

The Regional Transit Authority (RTA) lost a significant amount of its buses and trolleys. It also lost its operations buildings, and the staff of the RTA is currently working out of large, modular trailers just outside their bus garage.

The RTA is facing some hard choices. Since Katrina, FEMA has been paying the operating costs for the RTA and rides have been free. It was reported to us that, as of July 1, the RTA would have to become self-sustaining again. Pre-Katrina, the RTA

derived a substantial portion of its income from the ridership of “transit dependent” service workers in public housing and in the Ninth Ward. The RTA staff does not believe that they can increase the \$1.25 fare because the people who rely on public transportation are those with lowest incomes. Other sources of income for the RTA are federal and capital assistance grants, tax revenue, including revenue from State sales tax, motor vehicle registration fees and a portion of hotel and motel taxes. It is easy to conclude that all of these revenues have been reduced after Katrina. The RTA has \$190 million in bonds outstanding. Its pre-Katrina operating budget was \$110 million. The RTA estimates that after Katrina it will be able to count on \$31 million from fare box and tax revenues. Prior to Katrina, the RTA had 1,352 employees. Currently, it has a staff of 775. The RTA officials that we interviewed said that they believe that the RTA will have to lay-off about half of its current staff if it does not get help. As a consequence, the RTA may be forced to take a hard look at its current routes. For example, does it make sense to continue routes to some of the more heavily damaged sections of the city when so few people live there? Though the people who live there need public transportation the most, without those routes, the evacuees who are from those areas are less likely to move back into the city. If these workers do not come back to the city, then there will not be a large enough workforce to allow many businesses to reopen. And, if businesses cannot reopen, the city cannot increase its revenues. Subsequent to our visit, it has been reported that FEMA and the RTA have worked out a compromise. FEMA will continue to subsidize the RTA until November 30 and, in return, the RTA will move forward aggressively to slash spending and payroll to account for a significantly smaller customer base, which likely means cutbacks in routes.

G. Capital Funds

The Sewerage and Water Board and the city itself each are in desperate need of money for capital expenditures. Typically, a city issues bonded debt to finance its capital improvements if it does not have sufficient revenues and reserves to finance them. In this instance, we can surmise that revenues of the city and of the Sewerage and Water Board are and will be down from prior historical levels. To date, there has been some FEMA money allotted to the city, and the federal government recently has appropriated \$19.8 billion for hurricane relief. At this point in time, the city does not know how much money it will receive. The city also is borrowing from private banks. After Katrina, the rating agencies downgraded to non-investment grade their ratings on all of the bonds related to the city, so it is virtually impossible for the city to access the public capital markets at this time. So far, there have been no defaults on any debt issued by the city or by the Sewerage and Water Board. This is because, with respect to the city's general obligation debt, the city's practice was to bill and collect taxes from its residents in advance and also, as a policy matter, to hold back as a reserve an amount equal to one-half of the maximum principal and interest on the bonds. To date, the Board of Liquidation, which acts as the administrator of city debt, has been using those funds to pay the general obligation debt. All property was reassessed downward after Katrina. The property tax bills for 2005 just went out in May, instead of the usual practice of billing in advance. The Board of Liquidation is estimating a 50% collections rate.

People dealing with finances in the city believe that it will be at least an entire year from now before the city can even contemplate issuing debt in the public markets, which limits funds available for desperately needed capital improvements and continues the chicken-egg dilemma of rebuilding.

H. Conclusions/Best Practices Regarding City Government and Services

In essence, it appears that city government leaders and city civic leaders are in a holding pattern right now. Decisions as to what can, or should, be rebuilt depend, among other things, on (i) how much money the city will get from the Louisiana Recovery Authority (LRA), which will disburse Federal funding, and what type of strings will be attached to the money, (ii) confidence in a rebuilt levee system, and (iii) how severe a hurricane season New Orleans will have this year. In addition, according to many civic leaders, the “lynch pin” issue is whether or not property in New Orleans will be insurable in the future. People will not be able to borrow money to rebuild unless the property can be insured. If property cannot be insured privately, then perhaps the state will have to develop some sort of insurance program. One interviewee mentioned to us that the insurance companies may be the determining factor as to what parts of the city are rebuilt. All of these factors are important considerations in the determination of the former residents of New Orleans to come back. In a focus group (with those who have returned to New Orleans), there were complaints that the city had no “plan”. It appears that it is difficult to have any “plan” at this point in time because there are still too many unanswered questions. It should be noted, however, that many of our interviewees did not think that it made much sense for the Mayor to come up with a comprehensive plan for development. Rather, they believe that development can be planned only at the individual neighborhood level, based upon how many people in each neighborhood are interested in returning and rebuilding.

Based upon our discussions with several of our interviewees, it appears that one of the most difficult decisions that needs to be made, and one that will affect the entire process of rebuilding, is what the “footprint” of New Orleans should be post-Katrina.

Many people believe that one of the major contributors to the severity of the post-hurricane flooding of New Orleans was the fact that the geography of New Orleans has expanded greatly over the past several decades, and that wetlands that formerly served as a buffer between New Orleans and the sea now are suburban neighborhoods. We were told that during the 1960's and 1970's, when New Orleans' population was almost 50% greater than it was immediately before Katrina, the "downtown" areas of New Orleans were much more densely populated. In order to protect New Orleans against the type of massive flooding that occurred post-Katrina, several of our interviewees indicated that they thought that some of the outlying neighborhoods that had been almost completely destroyed (like the Ninth Ward) should not be rebuilt, but should be restored to their prior condition as wetlands, and that the people who formerly resided in those neighborhoods had to be relocated to more densely populated central-city areas. This, however, is likely to be a debate that is unlikely to be resolved quickly and easily, since it touches upon myriad social, racial and economic issues that have the potential to widen further the rifts that have existed for many years among the various ethnic and racial groups that comprised the pre-Katrina population of New Orleans.

On the other hand, we met with politicians, city workers, lawyers and civic leaders who showed us the type of perseverance in the face of adversity and a dedication to rebuilding their city as a better place that truly inspired us. To paraphrase another civic leader who was a part of the Bring New Orleans Back Commission, "What we have here now is a group of people who are willing to band together to rebuild this city. We are all working together towards this one goal. We are serious and committed and we will not

tolerate any one who doesn't have the best interests of the city at heart. There is no room for personal gain or agendas.”

One civic leader spoke of the frustration of trying to live and work in New Orleans at this point in time. To paraphrase, the citizens of New Orleans face the constant hassle of everyday living – “it is madness to go through this.” All the people he knew who were working on various committees to save New Orleans have had to cope with an enormous amount of personal, professional and civic stress. They have to find construction workers to rebuild their homes; they have to find schools for their children so that their families can return; they have to try to save their businesses; and, while busy doing all this, they are unable to find a dry cleaner, a gas station with a supply of gas, a dentist or a doctor.

I. Other Matters – Nonprofit Sector

Ben Johnson, President of the Greater New Orleans Foundation (GNOF), the largest community foundation in the City, spoke of an outpouring of local, grassroots activism from different neighborhood and community groups which has developed. An informal process has developed whereby representatives of 200-300 local groups gather once a week to compare ideas and plans. This ties in with GNOF's largest current project. This is to oversee, largely with funding from the Rockefeller Foundation, a community-based planning process which is intended to result in a comprehensive City plan. This planning process is described in more detail in the "Housing" section of this report.

Another nonprofit organization, the Greater New Orleans Nonprofit Knowledge Works, is spearheading a cooperative effort among several local charities, including Catholic Charities, Volunteers of America, Kingsley House (the oldest social service

provider in the City) and others, to develop a unified system to provide services to needy persons. The “old” model required a person or family with needs to seek out separate organizations for different services. The new cooperative approach, being initially funded by a \$6 million grant, follows a model developed in New York after September 11, to have a common intake form and procedure which can assess all of the needs at one time. The collaboration is also working to address needs on a regional basis, across parish lines. Another aspect of this initiative is to regionalize and standardize the protocols for “unmet needs” committees in the different parishes which aim to provide resources or services for needs that fall outside existing program boundaries.

Another interviewee in the nonprofit arena noted that the national "disaster recovery industry" had a protocol to restore communities to the condition they were in before the disaster. However, this was not sufficient in New Orleans, where there were many problems in serving the poor and needy which needed improvement.

III. HOUSING

A. Introduction

According to a 2006 report by the US Census Bureau, the New Orleans metropolitan area lost more than 130,000 homes in the flooding following Katrina, approximately 1/5 of the City's pre-Katrina housing stock. This number does not include the hundreds of thousands of homes that were severely damaged, although not destroyed by the storm.

In the wake of Katrina, the City must be able to (1) provide short-term housing for those displaced by Katrina, and (2) facilitate the rebuilding of permanent housing in and around the City. Rebuilding must be accelerated significantly in order to alleviate the

drastic housing shortage created by Katrina. Some ground has been made in the rebuilding process; however, significant reconstruction has been delayed, largely because the City and its residents were awaiting the Federal Government's release of the Community Development Block Grant ("CDBG") funds earmarked for the Gulf region. This federally-funded aid will primarily be funneled into housing initiatives and is widely considered the most important single factor in rebuilding the devastated homes and neighborhoods of the City.

To date, Mississippi and Louisiana have been awarded more than \$11 billion in emergency CDBG funds, approximately \$6.2 billion of which has gone to Louisiana. Louisiana's CDBG funds will be administered through the Louisiana Recovery Authority ("LRA"), which created the Road Home Program as the State's housing program. LRA's goals include:

- Providing maximum grants of up to \$150,000 for certain eligible homeowners who agree to repair, rebuild or purchase severely damaged homes in Louisiana;
- Compensating homeowners who choose to sell their homes to the State and live elsewhere;
- Supporting construction and restoration of affordable rental housing;
- Restoring housing resources to meet the needs of homeless persons and families; and
- Offering incentives to developers to construct mixed-use housing developments (both rental and homeowner), particularly in the New Orleans metropolitan area.

These funds, which were just released in mid-July 2006, are expected to precipitate a housing construction boom in the region. However, in New Orleans, the program's success may be delayed because it depends on so many external factors, like how confident people are about the levees, how New Orleans comes through the next hurricane season, and whether there is enough infrastructure e.g., schools, health care, transportation, and other social services, to entice individual homeowners to return and rebuild, rather than take the LRA's buyout option. The enormity of the housing problem in New Orleans and the complexities of the solutions have been the subject of almost daily articles in *The New Orleans Times Picayune* and the *New York Times* and cannot be fully captured in this report. This report is merely a snapshot of the various efforts on the ground of numerous non-profit and governmental agencies to address New Orleans' immediate and future housing needs, and to bring residents back to the City.

B. Short Term and Transitional Housing

FEMA is probably the largest provider of transitional housing in New Orleans. According to a FEMA source, as of mid-July 2006 there were more than 17,400 occupied FEMA trailers in Orleans Parish and 19,000 in abutting Jefferson Parish. Generally, FEMA provided trailers (at an approximate cost of \$60,000 per trailer to taxpayers¹⁵) to families to use as temporary housing. However, FEMA's efforts were widely criticized because of the many problems that arose concerning these trailers. Many felt that the monies spent on each FEMA trailer could have been better spent by allowing the individual homeowner to draw on that amount to buy into the pre-existing housing market or to use the money to rebuild moderately damaged homes. This would have

¹⁵ James Varney, Someone Somewhere is Making Millions on FEMA's Emergency Housing Trailers, *New Orleans Times-Picayune*, Jan. 21, 2006.

allowed families to make their own choices about housing, and in some cases, to rebuild equity in their homes. Many reported that the trailers were ill-equipped for habitation and often after waiting 2-3 months for FEMA to deliver a trailer, it would take another 2-3 months to install the utilities that were required to occupy the unit. Many of the trailers were given to homeowners to park in front of their homes while renovating their homes. However, a significant number of the trailers were installed in make-shift trailer parks, often remote from commercial centers and without adequate infrastructure, which exacerbates the many social problems already existing in the resident population, often low income people. Because Louisiana officials refused to install the trailers inland, many units were never even distributed.¹⁶ About 10,000 now sit at an airfield in Arkansas, where FEMA is paying \$250,000 a month to store them.¹⁷

Unfortunately, many of the pre-existing transitional and emergency housing shelters in New Orleans were damaged by Katrina. Although most of the organizations that provided short-term housing before Katrina were operational within several months after, they were not able to provide significant assistance to returning evacuees. As a representative from Catholic Charities explained, it was difficult to fill the units they maintained because the "new homeless" were not used to shelter or communal living conditions.

Under HUD's Katrina Disaster Housing Assistance Program (KDHAP), displaced public housing residents, Section 8 voucher holders, and other HUD-assisted households, were eligible for up to 18 months of temporary rental assistance, starting approximately from the date of Katrina. Families were given a rental subsidy based on 100 percent of

¹⁶ Eric Lipton, Breathtaking Waste and Fraud in Hurricane Aid, NY Times, June 27, 2006, *available at* <http://www.nytimes.com/2006/06/27/washington/27katrina.html> (last visited June 29, 2006).

"Fair Market Rent" in New Orleans or in the communities to which they decided to relocate. Many families, however, could not exercise their KDHAP vouchers in the New Orleans rental market due to the unavailability of habitable units to rent. The scarcity of rental units in turn caused rents to far exceed HUD's Fair Market Rent determination for New Orleans. And because the program covers rent but not utilities, even when rental units were available, families were still priced out of the rental market because they could not afford to pay skyrocketing utility bills. These families, many of whom had jobs to come back to, have sought out transitional shelters until they can find affordable housing and exercise their vouchers.

While organizations such as Catholic Charities provide actual short-term housing units to the displaced and homeless, other organizations provide assistance in the form of rent deposit monies to families in need of temporary assistance. Such organizations negotiate rental contracts with various landlords and manage other initial start-up details. Many of these organizations have changed their focus since Katrina to offering services to the elderly and individuals with disabilities, and to providing utility assistance to those living on KDHAP vouchers. As a result of the recent increase in rent and utility prices in New Orleans, the number of people priced out of the rental market and in need of transitional assistance has increased dramatically. Unfortunately, most organizations providing such assistance have not received any significant increases in funding and most still provide assistance to their traditional client base in addition to the "new homeless."

C. The Long-Term Housing Initiative

1. The Governmental Landscape

¹⁷ *Id.*

In early 2006, Mayor Nagin's Bring Back New Orleans Commission ("BBNOC") developed a rebuilding plan, which it submitted to the LRA, as it was required to do along with all other cities in Louisiana affected by Katrina. The LRA integrated New Orleans' plan into its comprehensive statewide plan for the distribution of CDBG funds, which was submitted to and approved by HUD in June 2006.

Many people are perplexed as to HUD's precise role in rebuilding long-term housing in New Orleans. According to a HUD representative, HUD's role is not to provide a long-term comprehensive housing plan for New Orleans but rather to provide funds and technical assistance to the State of Louisiana and the city of New Orleans. HUD will work with the LRA, the entity designated by Louisiana to administer the \$6.2 billion CDBG Funds (plus an additional \$4 billion allocated and approved by Congress for housing), to facilitate the rebuilding of housing in New Orleans using those funds.

Now that CDBG funding is flowing to New Orleans, the City faces the logistical challenge of actually implementing a long-term housing plan. Unfortunately, as stated by one New Orleans housing official, the housing initiative for New Orleans is like "being on a treadmill . . . there is a lot of effort going into solutions, but no real movement." There are six major City governmental entities in New Orleans focused on housing policies and initiatives: (1) the Mayor's Office of Housing; (2) the Finance Authority of New Orleans; (3) NOLA Residential Authority; (4) Safety and Permits; (5) Housing Authority of New Orleans (HANO); and (6) the Industrial Development Board. The biggest problem right now is that these entities are basically working in their own silos with little to no coordination; "the right hand doesn't know what the left hand is doing." It has been suggested that these organizations would be more effective if they coordinated their efforts.

The enormous undertaking of physical reconstruction is another major issue the City must prepare for, as it will require a production capacity that does not exist in the U.S. With over \$6 billion in CDBG funds and approximately \$30 billion in insurance proceeds that will flow to Louisiana, many predict that the use of these funds will create the largest construction economy in the world.

Another challenge that New Orleans' long-term housing initiative faces is that of acquisition and eminent domain. The problem with acquisition of properties by the City is that because New Orleans is a built-out city, there is no room to grow into suburban and rural areas; therefore much of the rebuilding efforts have to be placed on acquisition and rehabilitation of private properties. An additional problem according to a representative of the Finance Authority, is that HUD rules require that if the City uses mitigation funds to buy out individual homeowners, the City has to take that property off market and convert it into green space. Therefore, the City must formulate some methodology for acquiring private property in a way that allows it to get the property back on the market.

D. Private Housing

1. Building Initiatives

One of the major impediments facing homeowners looking to rebuild is the lack of adequate information. There is massive uncertainty surrounding the rebuilding process. Individual homeowners have to contend with complex issues, including city/state/federal planning and legislation, homeowner insurance, environmental hazards, construction financing and subsidies, and the construction process (obtaining permits, hiring contractors and architects, environmental issues, historic preservation and inspections). Homeowners face difficult questions such as where to build; whether to rebuild; what infrastructure,

resources and services are available for those returning to New Orleans; and what new regulations will be imposed on those choosing to rebuild in New Orleans.

Delays and complexities associated with obtaining insurance monies have further complicated the problem. Insurance companies are so overwhelmed with inspecting homes and paying claims that they still have not processed all claims, a full year after Katrina. In some cases, the complexities associated with the insurance process have left insured homeowners no better off than their uninsured counterparts.¹⁸

Now that the CDBG funds have been released and will eventually make its way to individual homeowners as part of the LRA's Road Home Program, individual homeowners must encounter the ever rising cost of construction. Even with insurance proceeds and LRA grant money, this rise in construction costs is pricing many families, especially low-income families, out of the market.

Many local non-profit organizations are focusing their efforts on increasing the affordable private housing stock in New Orleans. These organizations must also face the challenges of securing funding and construction costs, as well as developing a system through which to screen applicants. One of the biggest problems these organizations face is securing land for construction. Because land is so scarce, non-profit organizations are looking to acquire tax adjudicated properties and blighted properties for new construction projects. The tax adjudicated properties typically are vacant lots that the City has taken possession of as a result of tax liens against the properties. Pre-Katrina there were

¹⁸ Federally backed flood insurance policies are intended to replace structures, but not compensate homeowners for land, encouraging homeowners to renovate or build where they are, regardless of the property's elevations. Also, since mortgage holders have first claims on payouts, some homeowners end up still owing a balance. Even if the insurer pays off the mortgage, an owner could be left with owning a destroyed home and a piece of land in a largely abandoned block. See Bill Walsh, *White House Against Baker Bailout Bill*, The Times-Picayune, Jan. 25, 2006.

approximately 40,000 blighted and tax-adjudicated properties in New Orleans, many of which were located in the Central City neighborhood. According to a non-profit source, acquisition of these properties is an important and relatively affordable way for non-profit organizations to secure more land on which to construct new homes. The Jericho Road Episcopal Housing Initiative has begun a pilot program in which it is developing a methodology for closing on adjudicated, vacant lots quickly and effectively. Unfortunately, construction of these new homes will occur in a patchwork manner, as a function of where the vacant lots are located. Also, as there are a limited supply of adjudicated vacant lots, these efforts will only partially alleviate the scarcity problem.

2. Mortgage Assistance

The Finance Authority of the city of New Orleans issues tax-exempt mortgage revenue bonds to provide lower cost mortgage funding to qualified first-time home buyers. An Authority official explained that it is proceeding conservatively now, because of uncertain conditions such as residents' intentions to rebuild, construction costs, capability of low-income residents to meet credit criteria, concerns over predatory contractors, and concerns over how to blend its mortgage product with the billions of dollars of CDBG funding going to individual homeowners.

Many non-profit housing organizations are helping families into homeownership using what's known as a "soft second mortgage." Soft mortgages are used to subsidize conventional home mortgages to help low and moderate income households to qualify for a mortgage and purchase a home for the first time. Unfortunately, rising insurance costs have meant that, many low-income families can no longer qualify for assistance even with a soft second mortgage.

Some families may qualify for HUD mortgage assistance under the Mortgage Assistance Initiative program, which makes mortgage payments for up to one year for disaster victims with FHA-insured mortgages who want to return to their homes. To qualify for HUD's mortgage assistance program, HUD continues to apply its pre-Katrina income restrictions, which for a three person family tops out at \$36,700. HUD will have to dramatically increase these income restrictions in order to get families to qualify for mortgage assistance. However, this increase in income restrictions is expected to help moderate-income families qualify, but not low-income families. In order to help get families back to New Orleans, many of these involved in providing housing to low-income families stressed that HUD needs to be more flexible with its income restrictions and respond more quickly to the changing needs of local residents in devastated areas, and that banks need to be more flexible in their lending policies.

Mortgage repayment has been a big issue for New Orleans homeowners post-Katrina. The FHA, HUD's Office of Housing, has urged, lenders to provide forbearance to borrowers displaced by the hurricanes (FHA allowed borrowers to request a forbearance of mortgage payments for up to 12 months). In Louisiana, foreclosures rose from 81 in April 2006, to 158 in May 2006, and then dropped to 136 in June 2006. Under HUD's Mortgage Assistance Initiative, FHA will advance mortgage payments for up to 12 months to homeowners who have FHA-insured mortgages and were affected by hurricanes Katrina, Rita or Wilma. Up to 20,000 homeowners will be eligible for FHA's mortgage assistance. Lenders were also encouraged to provide homeowners with delinquent mortgage payments and other assistance, including: special forbearance, mortgage modification, refinancing and waiver of late charges. However, at some point

in the future, lending institutions may end up owning a significant amount of New Orleans real estate.

3. Insurance Issues

Another major problem in getting low-income families into home ownership are rising insurance costs. Unless insurance companies are willing to be flexible with their rules and policies in the wake of Katrina, low-income families will be priced out of the home market from high insurance premiums alone. For example, pre-Katrina private insurance companies mandated that home owners carry insurance with no more than a \$500 deductible. Post-Katrina, for low-income families trying to buy homes, however, this policy would be too expensive. If the insurance companies temporarily amended this requirement to allow for a \$1,000 deductible, then many more families would be able to afford the insurance policies and secure housing. Currently, insurance companies are considering waiving the requirement, but they were not able to do so quickly enough for many families. Nevertheless, the Louisiana Department of Insurance has approved an average premium rate increase above 10 percent for seven insurance companies in the State. The alternative to the private insurance is the State's insurance plan, the Louisiana Fair Plan. The Louisiana Fair Plan cannot turn down a homeowner, but the deductibles and premiums are extremely high. Prior to Katrina, non-profit organizations could leverage various lending programs to get low-income families to qualify for home ownership, but now these organizations can only serve mid- to moderate-income families, because low-income families can no longer afford the taxes and insurance on a new home.

4. Gutting and Renovations

There are many non-profit organizations that have been helping New Orleans residents to salvage their damaged homes. These organizations receive supplies from other organizations, such as the Salvation Army, and distribute the supplies to homeowners and volunteers who are mudding (removing garbage and mud from the inside of homes) and gutting (removing walls and roofs) houses to the studs. It typically takes about twenty people one to two days to finish mudding and gutting a house. Whereas contractors charge anywhere from \$4,000-\$6,000 to mud and gut a home, the non-profit organizations use volunteers to do it for free. Most of these organizations rely solely on word of mouth because flyers or ads would result in an overwhelming demand for their services. One of the biggest obstacle these organizations have faced is garbage removal. It has been estimated that it could take up to three years to remove all of the garbage from the City, although recent efforts to improve garbage removal is reducing this estimate.

Although there has been a focus on mudding and gutting homes, organizations are not planning any reconstruction efforts. Rebuilding requires complicated preparatory steps, including that studs be bleached to remove mold and that the structure be rewired and refitted for utilities. These are costly procedures, which homeowners are having a difficult time managing. Uncertain, unworkable, and complex insurance issues and building codes add to the obstacles.

5. Rental Market

Before Katrina, many New Orleans neighborhoods were already experiencing "outrageous rental surges."¹⁹ After a loss of almost half of all rental housing in the City,

¹⁹ Jose Torres, Hard Living in the Big Easy with Post-Katrina Rental Surges, *available at* <http://neworleans.indymedia.org/news/2006/06/7861.php> (last visited June 29, 2006).

rental rates have increased 25-30 percent.²⁰ "One-bedroom apartments are renting from \$1,100 to \$1,300, and two-bedroom units are advertised from \$2,000 to \$2,400."²¹ This increase has caused an "exodus of artists, working class people, and communities of color who cannot afford [such] perverse rents."²²

Because rising costs are pricing low-income families out of the real estate market, many organizations who used to help low income families become homeowners are now changing their focus from helping people buy affordable homes to helping people into affordable rental units. This shift in focus was necessary because these organizations now see the rental market as the only avenue available to help low-income families secure housing. In an effort to address the area's shortage of affordable housing, various non-profit groups, such as Catholic Charities have planned to build rental homes and apartments, by relying on a mixture of HUD monies and tax credits.²³

E. Public Housing

Pre-Katrina, New Orleans had the largest public housing and Section 8 housing population in the United States: 49,000 people lived in HUD subsidized housing, of which nearly half were in public housing.²⁴ The Housing Authority of New Orleans (HANO), acting under HUD receivership, recently decided to demolish more than 5,000 public housing units in the City and replace them with developments for residents with a wider range of incomes.²⁵ Some local officials support the decision not to rebuild the old

²⁰ <http://releases.usnewswire.com/GetRelease.asp?id=68339>

²¹ Jose Torres, Hard Living in the Big Easy with Post-Katrina Rental Surges, *available at* <http://neworleans.indymedia.org/news/2006/06/7861.php> (last visited June 29, 2006).

²² *Id.*

²³ Greg Thomas, *Catholic Charities plans to develop 4,000 homes*, The Times-Picayune, April 5, 2006.

²⁴ Elizabeth Cook, Dissent and Collusion in New Orleans, *available at* <http://neworleans.indymedia.org/news/2006/05/7624.php> (last visited June 29, 2006).

²⁵ Susan Saulny, 5,000 Public Housing Units in New Orleans Are to Be Razed. NY Times, June 15, 2006, *available at*

public housing projects, arguing that mixed income developments would keep poverty from becoming concentrated in certain areas, thus alleviating the high crime rates and squalor for which these projects previously had been known. The residents of these units being demolished must now find new homes.

According to a HUD representative every person who had HUD assistance prior to Katrina, whether in public housing or the Section 8 program, is still eligible to receive HUD assistance, regardless of where they are currently living. HANO maintains a database of all families assisted and continues to assist those people under the Section 8 voucher program. Families formerly residing in the complexes slated for demolition will continue to receive assistance where they are and can come back and receive that assistance in New Orleans *if* housing is available.

HUD's position is that families living in public housing should come back to New Orleans, but the complexities as to how and when this is to occur are unknown. HUD has opened 1,100 housing units and recently pledged to make available 1,000 more units by the end of the summer.²⁶ Against this backdrop, HUD has announced its plan to demolish four public housing complexes, containing 5,000 units,²⁷ and HANO is not taking any new applications for public housing. A comprehensive plan is being developed by HANO in conjunction with HUD's Office of Public Housing, but the availability of public housing may turn simply on whether the units are habitable. Unfortunately, the public housing question cannot be examined in isolation. As explained by a HUD

<http://www.nytimes.com/2006/06/15/us/15housing.html?ex=1151726400&en=ae71615ec11163e8&ei=5070> (last visited June 29, 2006).

²⁶ Kate Moran, *Public Housing Advocates Protest St. Bernard's Closure*, The Times-Picayune, July 5, 2006.

²⁷ Gwen Filosa, *Displaced Residents File Suit*, The Times-Picayune, June 28, 2006.

official, "when assisting a population that relies on so many other social services, it is prudent to keep in mind other quality of life issues that are joined to the housing question."

Notwithstanding HUD's promises to re-open or keep open approximately 2,000 units, it appears that most of the public housing units will remain closed. Many fear that no alternative arrangements will be made by HUD for the thousands of families who formerly resided in public housing and who now wish to return to New Orleans. Indeed, given the tide towards gentrification in New Orleans and the high crime and drug use rates that existed in the public housing units before Katrina, it's unclear what efforts the federal government will make to bring its poorest residents back to New Orleans.

Various fair housing advocates are protesting HUD's position on public housing. One of their most publicized activities is Survivor's Village, a tent city that has been set up outside of the closed St. Bernard Housing Development in the Seventh Ward. This housing project, which formerly housed 4,000-6,000 people, is currently closed and slated for destruction. The tent city is intended to act as a physical reminder of those former residents who have been displaced. These activists have teamed up with legal advocacy groups and have organized marches and community meetings in order to address public housing issues and return public housing residents to their homes. It remains to be seen whether HUD can address the concerns of those displaced by the imminent closing of the thousands of public housing units.

F. Neighborhood Development Planning

People expressed great excitement about the City's plan to put neighborhood development at the forefront of the City's rebuilding program. As part of the BBNOC

initiative, the City has requested that neighborhoods submit a neighborhood viability report and plan. Along with allocating CDBG funds to fuel this process, the City has hired an architect with Rockefeller Foundation grant monies, under the oversight of the Greater New Orleans Foundation, to oversee the development of neighborhood plans, which will be tied together in a comprehensive master plan based on community input. In addition, the City has hired Lambert Advisory LLC, a private redevelopment and housing advisory group, to assist less organized and low-income neighborhoods to develop individual neighborhood plans.

More recently, the City announced the formation of the Unified New Orleans Plan to oversee New Orleans' post-Katrina planning effort. Under the auspices of the recently created New Orleans Community Support Foundation, and through a series of the public meetings with the neighborhoods, it will work with the neighborhoods to weave the individual neighborhood plans into a single citywide recovery plan.²⁸ The plan will be submitted to the City Planning Commission, the City Council, the Mayor and finally the LRA. LRA officials have stated that LRA's job is not to plan for the vision of New Orleans, and have expressed public approval of the formation of the Unified New Orleans Plan.²⁹

Many believe that the empowerment of these neighborhood-based organizations will mean that the individual neighborhoods and parishes in New Orleans will have a much greater influence in City planning than in the past. As expressed by one non-profit source, the neighborhood-based approach that the Mayor's office and the City Council have actively encouraged would disperse power to the residents of the neighborhoods, and away

²⁸ Coleman Warner, *N.O. Blazes Trail for Grant Money*, The Times-Picayune, July 6, 2006.

from power brokers “cutting deals.” Unfortunately, this planning process will take until early 2007, and may be incompatible with many building permits already issued by the City.

G. Closing Remarks

In the wake of Katrina, housing scarcity issues were compounded by massive confusion and uncertainty as to the real estate market. So much of the housing stock in New Orleans has been wiped out that many describe the current housing situation as a large social and urban planning experiment. New Orleans faces a number of challenges in the road ahead. First, it is fighting against time – as more time passes, more residents are getting settled into other areas and losing the incentive to return to New Orleans. Second, the fact that the rebuilding process is so time-consuming and expensive is further deterring population re-growth. Also, preserving affordable housing appears to be an elusive goal; increasing rents, construction costs and insurance costs have further stymied the repopulation of New Orleans. Organizational turf wars and poor communication between the various housing programs at the various political levels, both local and federal, and between private organizations have made the process yet even more difficult.

H. Best Practices

- Respond to the massive uncertainty associated with the rebuilding process that may follow a major disaster. The displacement of individuals and widespread destruction of housing and infrastructure may create uncertainty as to the future of a city, especially if the availability of housing is the bottleneck issue, in terms of re-growth. Problems arising from an uncertain future need to be addressed through the creation of information resource centers and immediate and effective policy planning.
- Find alternative forms of housing both for the short-term and for the long-term. There appeared to be inadequate short-term housing for evacuees

²⁹ *Id.*

returning to New Orleans, as the FEMA trailers proved to be a complete and wasteful failure. Legislative measures to control abusive eviction procedures and rising rental rates may be desirable. Land shortages and the costs associated with gutting and rebuilding also presented major hurdles for creating long-term housing.

- Develop and protect information resources pertaining to property data, both in the private and public sectors. Formulate a common procedure for the many departments and agencies that collect property data, and maintain data with regular updates. Create a Land Bank that is a consolidation of information related to acquisition, management, and disposition of properties acquired for development.
- Be able to provide a variety of housing types for people at all socio-economic levels. There will be a need for temporary and long-term housing, and for rental housing and private housing. Middle-income residents will have different needs than those in the low-income group. Gentrification concerns may cause problems for the poorest and the most disadvantaged, and these concerns will need to be addressed.
- Prepare for and be able to respond to rising costs associated with rebuilding and providing housing. In New Orleans, we noted that construction costs, insurance rates, utility costs, rental rates all increased severely after the storm. This presented logistical hurdles for many. It also required organizations, including non-profits and governmental agencies such as HUD to respond to rate increases and to raise income restrictions.
- Initiatives for long-term rebuilding and development must involve all players. All concerns must be addressed. Unfortunately, involvement and participation at all levels will make the process complex and time-consuming, and may hinder timely population re-growth.

IV. EMPLOYMENT

A. Pre-Katrina New Orleans: Employment Opportunities and Climate

Even prior to Hurricane Katrina, employment conditions in New Orleans were bleak. In September 2005, the Bureau of Labor Statistics released data showing that through August of that year, New Orleans had experienced the largest unemployment increase of any metropolitan area in the United States. The Bureau's data showed an increase of 1.3 percentage points, from 4.5% unemployment to 5.8%; New Orleans was the only city where an increase exceeded one percentage point.³⁰

Historically, as one of the nation's largest ports, New Orleans' economy relied heavily on manufacturing, oil and gas and transportation. In recent decades, however, New Orleans has lost jobs in some of these areas and they have been replaced by greater emphasis on tourism, services, conventions and gambling. New Orleans offered relatively few "New Economy" jobs, ranking 38th out of the 50 largest metropolitan areas in an index measuring the role of high technology and new industries in local economies.³¹ The shift away from manufacturing, which occurred gradually over several decades, reduced the number of high-paying jobs available to working-class residents.³² In 2000, the service and retail sectors accounted for 52% of employment.³³ Half of the jobs overall were in sectors paying below the national average, with accommodations

³⁰ *BLS Issues Report on Metropolitan Area Employment, Unemployment: August 2005*, U.S. FED. NEWS, Sept. 28, 2005.

³¹ *Id.* at 12.

³² *Id.*

³³ "New Orleans After the Storm: Lessons from the Past, a Plan for the Future," *The Brookings Institution (look at recommendations) Metropolitan Policy Program* 11, October 2005, available at <http://www.brookings.edu>.

among the lowest-paying at \$19,131 per year.³⁴

B. Katrina's Effect on Employment Opportunities and Climate in New Orleans

Tens of thousands of businesses in Louisiana were damaged or otherwise impacted as a result of Hurricane Katrina, Hurricane Rita, and the subsequent breach of the New Orleans levee system.³⁵ These ranged from Fortune 100 international corporations, to utility companies, to small businesses. All faced common problems, including coping with lack of communications, as telephone and electricity services were lost. As personnel evacuated all over the nation, many businesses needed days or weeks just to get in contact with their employees. Some relocated entire departments to other states, leaving their employees who could return to New Orleans jobless. The most severe impact has been on small businesses, whose owners in many cases suffered a “double hit.” Both their business and their home may have been damaged by flooding. Their ability to focus on restarting a business is hampered by the need to attend to personal issues, and a frequent source of capital for small businesses – equity in a home – has been lost for many.

1. Labor and Reconstruction

Shortly after Katrina, the rebuilding effort began. Local and out-of-state contractors took federal reconstruction grants but faced a shortage of construction workers.³⁶ The Department of Homeland Security suspended some labor regulations in September and October to allow survivors who had lost their identity papers to secure

³⁴ “New Orleans After the Storm,” *supra* note 4, at 11.

³⁵ Louisiana Recovery Authority, 2006 Quarterly Report (February – May): Executive Summary.

³⁶ Laurel Fletcher et. al., *Rebuilding after Katrina: A Population Based Study of Labor and Human Rights in New Orleans*, available at <http://www.law.berkeley.edu/news/topstories.html#katrina060706> (last visited June 9, 2006).

employment.³⁷ The Department of Labor lifted wage restrictions for two months, allowing contractors to pay below standards in order to facilitate early recovery efforts.³⁸

Much of the reconstruction is performed by day laborers, who often work 14-hour shifts.³⁹ Approximately 64 percent of construction workers in New Orleans are Latino, half of whom are undocumented workers.⁴⁰ Undocumented workers face more exploitation, fewer legal protections, and lower wages. The average wage among documented workers is \$16.50 per hour, compared to \$10 for undocumented workers.⁴¹ These workers often have to do the dirtiest clean-up jobs, working with dangerous substances in dangerous conditions and without proper protective equipment.⁴² Bill Lurye, an attorney with the AFL-CIO, described workers living in abandoned, mold-infested houses while they conducted repairs. He also noted that these workers are paid in cash – sporadically, and without compensation for overtime hours. While some complaints have been referred to the Department of Labor, Lurye believes that the Department, itself facing staffing shortages, has not addressed the issue. Therese Bouey, also with the AFL-CIO, reported that laborers who had worked for several weeks and who expected \$1,700 in pay received checks of \$200 on average. Both documented and undocumented workers have had problems receiving for regular hours and overtime pay, Bouey said.

³⁷ *Id.* at 1.

³⁸ *Id.*

³⁹ Rukmini Callimachi, *Illegal Workers Face Hardship in Big Easy*, N.Y. TIMES, June 7, 2006.

⁴⁰ Fletcher, *supra* note 33 at 2.

⁴¹ *Id.*

⁴² *Id.*

2. Business Recovery and Unemployment

With high demand for reconstruction-related efforts and yet a diminished population and labor force, New Orleans is simultaneously a place of great opportunity and of great need. The shortage of low-income workers and the boom in construction-related trades has put pressure on many businesses to raise wage levels to stay competitive. The lack of affordable housing has contributed to the labor shortage regardless of income level. Nevertheless, businesses are steadily reopening in the wake of the disaster. The Brookings Institution Index on Katrina reports that by April 2006, 41% of all food establishments, and 60% of hotels in the metropolitan area had reopened.⁴³ Most of these are in the areas which did not flood.

By April 2006, the unemployment rate in greater New Orleans had returned to pre-Katrina rates – 5.7% in the metropolitan area, and 4.8% in the state of Louisiana.⁴⁴ The unemployment rate is dropping in New Orleans but has remained steady statewide since January 2006. Displaced families have a better chance of finding employment by moving back to New Orleans than by remaining in other cities. The reduction in unemployment has not been universal across all sectors. Public school teachers have lost their jobs, awaiting reorganization of the city's schools. While only 50% of transportation workers have returned, the RTA expects to cut the current workforce in half again.

Businesses have sought both loans and grants from public and private sources to help with reopening costs. Many businesses and business support organizations provided

⁴³ Bruce Katz, Matt Fellowes, and Mia Mabanta, *The Katrina Index: Tracking Variables of Post-Katrina Reconstruction*, Brookings Institution, May 3, 2006, at 5, available at http://www.brookings.edu/metro/pubs/200512_katrinaindex.htm (last visited June 9, 2006).

⁴⁴ *Id.*

basic services for employees returning to the distressed area, including but not limited to housing assistance, meals, and child care. Some sectors struggle due to a decreased customer base (tourism, food and retail services) while other sectors struggle to find enough employees to help meet demand (construction). All reopened businesses face the challenge of predicting what the customer base will be, where the city will repopulate, and whether the basic infrastructure of the city will be stable in the coming years.

C. Private Sector Response Post-Katrina

The hurricane recovery story of Todd Higgins, an owner of the local civil engineering and planning firm 2H International, illustrates many challenges facing small businesses after Katrina and reflects the dedication to rebuilding New Orleans. The company kept all 225 employees on the payroll through December, at which point it was no longer feasible to do so. While 70 of Mr. Higgins' employees returned to New Orleans, the majority initially stayed away due to destroyed homes and education concerns. Wages have increased dramatically in order to recruit and retain employees – employees now earn \$25 per hour for jobs that would have paid \$5-6 before the hurricane. The company has been active, even with reduced manpower, as its expertise is highly sought in connection with clean-up and rebuilding. However, as large national firms like Halliburton have entered the market as competitors, they now do more work as a sub-contractor.

D. Survival and Adaptation

Disaster preparedness was key for those businesses that have managed to get on the road to recovery. According to Sandra Gunner, President and CEO of the New Orleans Chamber of Commerce, those businesses that had contingency plans in place – for example, for financial assistance for employees or an emergency communication

system – have made the most progress in recovering from the storms. Crucial to such preparedness is a foolproof way to contact employees in the wake of a catastrophe. For example, due to Bell South’s “fairly well-regimented . . . safety and security procedures,” the company managed to contact all but a handful of employees within five days of Katrina making landfall. The Embassy Suites-New Orleans ran advertisements in major evacuation cities with the emergency number for employees to call, and continued to compensate employees for thirty days after the storm.

When businesses reopened, they had to adapt to a different New Orleans. Many businesses were destroyed physically, forcing them to find temporary or permanent locations in other areas. Tim Williamson, President of The Idea Village (a non-profit/private partnership that, among other things, provided local entrepreneurs with “relief” grants designed to help such entrepreneurs get through a business recovery period and back on a growth track), gave a grant to a barber whose shop had been destroyed. The barber had set up a roadside tent to give haircuts to those who returned immediately after the hurricane. Psychiatrist Aaron Wolfson (who is also co-founder of The Savvy Gourmet, a cooking school, store, and restaurant) was forced to close his practice when none of his medical staff returned to New Orleans. Mr. Wolfson chose to share space in a group practice rather than try to hire and train new assistants. The Savvy Gourmet also had to revise its business plan to succeed in the city’s new economic climate. Although the original business plan involved a cooking school and cooking supply store, when the co-founders realized that very few local restaurants were open, they launched a restaurant serving lunch. Soon the store became a community gathering space, offering free wireless connection along with meals.

Finding employees to reopen businesses was a major obstacle. Again, the housing shortage directly contributed to the shortage of workers, particularly as the demand for rental properties drove up rental prices. Robert Reso, Assistant General Manager of the Embassy Suites-New Orleans, explained that anyone who inquired about employment at the hotel was interviewed and possibly hired on the spot. After the storm, The Savvy Gourmet paid employees hourly wages 4-5 times the normal rate. Such an increase was not unusual. Due to the labor shortage, even fast food restaurants offered \$10-\$15 per hour, plus hefty signing bonuses. Sandra Gunner estimates that hourly wages are up 15-20%. At Bollinger Shipyards, wages have gone up three times since the hurricane and will likely increase again before the one year anniversary of Katrina. CEO Donald "Boysie" Bollinger said that workers who earned \$15 per hour prior to the storm now earn \$18-\$19.

Many people entered the labor market for the first time following the hurricane. Robert Reso said Embassy Suites hired many first-job workers. Construction contractors working for Chevron have hired younger, more inexperienced off-shore workers; in order to do so, Chevron has relaxed its normal hiring and contracting requirements resulting in a significant increase in the number of employees using drugs. As a result, Chevron has had to step up drug testing among the contract workforce. A few drug incidents have also been reported at Bollinger Shipyards' FEMA trailer sites, although CEO Boysie Bollinger said those incidents were not common.

The blue-collar workforce is not solely in demand; there is also a shortage of engineers, attorneys, doctors, and skilled laborers in New Orleans. The workforce at Bollinger Shipyards decreased by 750 people after the hurricanes, 250 of whom have

returned to work; as a result, the company looks to contract labor to fulfill its welding and other skilled labor needs. At Chevron, Marc Anderson and Matt Carmichael reported that “uncertainty is keeping the middle-class and skilled labor away from the city.” Beverly DeLaune, an attorney at the law firm of Deutsch, Kerrigan & Stilesa, offered some explanation why educated employees were not returning: “A number of people have left because they lost their house and found other career opportunities in other places and just decided to move and not worry about the hassle of rebuilding and kind of start fresh.”

E. Employee Assistance

Larger employers offered a wide array of short-term and long-term assistance to their employees, including flexible and alternative work schedules for employees, housing, food, and other services on a temporary or semi-permanent basis.

Bollinger Shipyards. Bollinger Shipyards arranged for 130 FEMA trailers to be set up at five of their locations for families of employees returning to work, and the company arranged for necessities such as sewer, water, and power to be established at the sites. The company also built playgrounds and barbeque sites for families to use. For those new contract employees coming from outside the area who did not qualify for FEMA trailers, Bollinger built bunkhouses for 650 single employees to live (normally those contract employees would stay in hotels arranged by contract labor placement agencies).

Bell South. After the hurricane, Bell South set up “tent cities” in Baton Rouge, Covington Louisiana, Jefferson Parish, and Gulfport Mississippi. These facilities provided showers, meals, cots, clothing, and washer/dryers for employees and their families. The Baton Rouge tent city also served as a staging facility for convoys that

would enter New Orleans each day to bring fuel, water, food, and supplies to essential employees maintaining the Bell South office. They contracted several hotels to house employees after the storm, and many stayed overnight in the offices. Permanent housing is still a major challenge according to Bill Oliver (President of Operations, Louisiana), and many employees remain in temporary quarters.

Chevron. Chevron also moved employees to temporary work sites in Lafayette and Madisonville in Louisiana, and Sugarland, Texas, for up to six months and provided housing and meals. The company purchased 115 fully-furnished trailers for its employees and their families. These facilities also offered a gym area, maid service, meals, and laundry.⁴⁵ Chevron provided assistance in finding permanent housing and assigned employees to more temporary domestic assignments throughout the country.

Businesses continue to devise solutions for the many challenges facing employees – housing, healthcare, childcare, and transportation, to name a few. Chevron added extra services while the city is rebuilding. The company secured a city policeman to be posted outside its building in an effort to deter crime. Chevron also hired two EMTs and an ambulance to be on-call for emergency care needs for employees. In the case of an emergency, it is more efficient for the ambulance to drive employees to an emergency room in Baton Rouge instead of to one of the two emergency rooms open in New Orleans, where there is typically a long wait.

Despite the many obstacles, businesses have been successful in reopening in New Orleans. Sandra Gunner believes that a deep commitment to historical businesses helped some survive. Particularly since many New Orleans business owners have inherited their

business and 83% of residents overall are native-born, many have a strong dedication to the city. Robert Reso said that all 70 employees who returned following the storm were native to the city and came back with a desire to work hard and help rebuild.

F. Responses From Government and Civil Society

In part to address the economic devastation of the hurricanes, Governor Kathleen Babineaux Blanco established the state-wide LRA by Executive Order in October 2005.⁴⁶ Among other responsibilities, the LRA proposes allocations of recovery funds received by the state; of the \$6.2 billion in Community Development Block Grants (CDBG) passed to fund Louisiana's recovery from the disasters, the LRA allocated \$350 million to economic renewal and redevelopment.⁴⁷ \$100 million of this allocation was immediately pledged to the Louisiana Bridge Loan Program, which "offers up to \$100,000 in working capital to businesses in 37 parishes."⁴⁸ More recently, the LRA proposed the following allocations to the state legislature: \$100 million for a Long Term Recovery Loan Program; \$40 million for a Small Firm Recovery Loan and Grant Program, to fill a void for smaller businesses; \$30 million for a Louisiana Tourism Recovery Program ("to revive the second largest industry in the state"); and \$10 million to assist smaller business seeking to open or expand into impacted areas.⁴⁹

Organizations assisting employers' and employees' recovery from the hurricanes face many of the same problems as those they are trying to help. JOB1, a federally

⁴⁵ The recognition by the private businesses which set up temporary shelters for employees that more than just housing was needed contrasted sharply with the experience in FEMA trailer parks, which reportedly had no amenities whatsoever, and often were located far from stores, recreation, or other services.

⁴⁶ Louisiana Recovery Authority, 2006 Quarterly Report (February – May).

⁴⁷ *Id.*: Executive Summary.

⁴⁸ *Id.*

⁴⁹ *Id.*

funded “one-stop shop” that provides employment counseling, training, and placement, saw its downtown office destroyed and its workforce dwindle from 75 people to 15 – although one employee pointed out that her organization can now channel more money to programs because of lower operating costs. The first floor of the Urban League of New Orleans flooded, forcing the organization to shutter its doors and relocate to Baton Rouge for several months. Sandra Gunner grabbed important documents from the Chamber of Commerce’s office late on Saturday night and evacuated to Chicago, operating a satellite office until she could return to New Orleans in October 2005.

But the employees who have remained understand that, in the words of Barbara Johnson, Senior Vice President of the economic development organization Greater New Orleans, Inc., “our mission is more important than ever.” In addition to providing immediate relief, some organizations are attempting to solve the long-term economic challenges plaguing the region, such as the need to attract new businesses and improve the skills of the workforce. The services currently provided fall into roughly three areas: job placement and training, basic employee needs, and economic development. Given that all three areas are interrelated and that so many individuals and organizations need assistance, prioritization is a challenge. While the programs they offer may not be new, non-profits engaged in relief efforts have had to adapt their operations and goals to radically changed circumstances. Recognizing this, the United Way initially shortened its funding cycle from three years to two months, recognizing that its partner non-profits would need to evolve continuously. The upcoming cycle will provide six-month grants.

G. Job Placement and Training

Demand for job training is high among both prospective employers, who must replenish their workforces, and employees, including college-educated individuals forced

to transition to new industries. Given the unemployment problems plaguing the city even before the hurricanes hit, job training may help create a more competitive workforce, making the city more attractive to employers and ameliorating poverty in the long term. With these needs in mind, JOB1 and the Urban League have re-instituted their job training programs to meet the needs of evacuees. Ultimately, the Urban League hopes to place 150 people in skilled labor positions with approximately 60 employers. JOB1's training program, meanwhile, has grown from 50 participants per year before the hurricanes to 400 in just over six months.

Before Hurricane Katrina, JOB1 held one fair per quarter; it has since increased its activity to one fair per month, with more than 1000 people attending each fair. Greater New Orleans, Inc. has conducted outreach in remote cities such as Detroit; it targets economically depressed locations throughout in the country for potential New Orleans employees. As a result, there is currently a waiting list for its training programs. While important, these programs do not come close to meeting the needs of employers or potential workers.

H. Basic Employee Needs

Members of the Urban League of New Orleans walk along the blocks of Baton Rouge's FEMA cities, going trailer door-to-trailer door to find individuals seeking to return to work in New Orleans. The problems are clear: evacuees lack the housing, transportation, and childcare they need to pursue employment in the Crescent City. Organizations promoting employment and economic development must at least provide referrals to help prospective employees fulfill the basic needs that will allow them to take advantage of placement assistance.

Other organizations provide direct short-term assistance with basic needs. JOB1

pays a portion of childcare expenses for three months during participation in its training programs. The Urban League offers a \$500 stipend to help evacuees secure an apartment in New Orleans and, for those who can't afford to relocate, funds transportation until a new employee receives his or her first paycheck. A representative from the United Way called such assistance “infrastructure for individuals,” recalling an instance where the Urban League provided an employee with an alarm clock to enable punctuality. FEMA subsidized free bus service to get workers from Baton Rouge to Louisiana for free for several months following the hurricane; transportation concerns have magnified since the free rides have ended.

Given the daunting reconstruction tasks ahead, though, some basic needs assistance will have to stretch further into the future. The AFL-CIO has pledged \$250 million through its public employee pension investment trusts to help New Orleans rebuild its housing stock.⁵⁰ Several organizations funded by the United Way, such as the Jefferson District Recovery Committee and North Shore Disaster Recovery, Inc., are focusing on long-term recovery. Combining the resources of faith-based and community groups, they aim to replenish the housing stock. Other organizations have revived their childcare programs, such as Early Head Start, an Urban League service for working parents. People who are not back to work may rely on various federal and state unemployment programs, although most of these benefits had expired by June 2006.⁵¹

On behalf of those who have jobs, the AFL-CIO is engaging in community organizing efforts to reinstitute collective bargaining agreements in place before the

⁵⁰ “AFL-CIO President John Sweeney Announces Billion Dollar Labor Sponsored Gulf Coast Revitalization Program,” <http://www.aflcio.org/mediacenter/prsptm/pr06142006.cfm>.

⁵¹ Further information regarding unemployment insurance programs in Louisiana will be found in the comparable section of the Report on Baton Rouge.

hurricane and police contractors to ensure that they follow wage and hour rules. It is also pursuing wage-and-hour litigation on behalf of construction workers.

I. Economic Development

In addition to training and placing employees and supporting their basic needs, a third prong of employment-related recovery is improving the economic health of New Orleans in order to maintain demand for labor. Economic assistance ranges from government-subsidized Small Business Administration (“SBA”) loans to the entrepreneurial mentoring and “triage grants” offered by The Idea Village.

The SBA is a major source of business loans through its Disaster Recovery Program, offering taxable financing with more lenient credit requirements and lower interest rates than commercial banks. Only previously existing businesses qualify for these Disaster Recovery Program loans; new businesses must apply for a regular Section 7(a) loan instead. The Disaster Recovery Program includes both business loans and special Economic Injury Disaster Loans (EIDLs) to assist small businesses with up to \$1.5 million through the disaster recovery period, which may last several years. Only applicants who cannot provide for their own recovery from non-government sources qualify. Similarly, applicants for Disaster Recovery business loans who lack other sources of credit receive a lower interest rate and a longer repayment period.

According to Ben Raju, a Public Information Specialist with the SBA, approximately 13.6% of 250,000 applications for SBA assistance in Louisiana came from businesses (34,000) – the rest were from homeowners.⁵² Some loan applicants have complained about delays in processing, but Raju stated that the problem is with

distribution, not approval, and 99% of loan applications to the SBA have been processed, resulting in the approval of \$2.1 billion in loans to businesses. SBA personnel reported that while many household and business loans have been approved, a large number of recipients have not drawn down their funds, because of uncertainty about whether they would rebuild their homes or whether they would rebuild or relocate their businesses. This was another consequence of the delay in planning for rebuilding the City.

Raju noted that the SBA used several means to publicize the availability of loans to a wider range of people. Techniques include newspaper ads, the internet, leaflets, and a television tickers. SBA representatives also attend community meetings, walk the affected neighborhoods, and reach out to specific industries/associations. Application deadlines have now been reached for virtually all SBA-managed programs. However, most business and civic representatives interviewed gave poor marks to the SBA, citing long times to process loans, inexperienced personnel, and bureaucratic requirements. For instance, since SBA only provides loans, applicants must prove an ability to repay. But with many business and personal records lost, this occasionally resembled a “Catch 22” exercise.

Local economic development organizations, such as Greater New Orleans, Inc. and the Chamber of Commerce, are also providing financial assistance. For example, the Chamber of Commerce is collaborating in the privately-funded Economic Equity Fund, which invests between \$5 and \$15 million in individual small businesses. These organizations’ main efforts, however, have focused on lobbying for resources and providing non-monetary assistance to businesses. While retaining only 1/3 of its pre-

⁵² Because Katrina was a Presidentially-declared disaster, federal law directs the SBA to provide low-interest loans to homeowners suffering losses, in addition to managing its regular business loan and

Katrina membership paying current dues, the Chamber of Commerce is still funneling information about insurance, infrastructure repair and employment to its members who have reopened their doors, and will publish a guide to municipal resources in July 2006. It also provides support to members seeking permits for rebuilding. Greater New Orleans, Inc. is marketing job openings on behalf of local companies.

Advocacy efforts at the state level have targeted issues broadly impacting businesses. The Chamber of Commerce supported the appointment of a czar to oversee levee reconstruction and lobbied for an overhauling of the state healthcare program that would support employer-provided healthcare and help businesses attract employees. Most recently, it has voiced concerns about energy rate increases.

J. Conclusions

From speaking with employers and employment-related organizations and agencies serving the greater New Orleans area, it is clear that preparedness is the key to recovery after a catastrophe the magnitude of Katrina. A means of communicating with scattered employees, as well as infrastructure to support those employees upon their return to a city in recovery, have been critical to those businesses that have managed to revive themselves after Katrina.

economic injury loan programs.

V. EDUCATION

A. Primary and Secondary Education

1. Before the Hurricane

Prior to Hurricane Katrina, there were 126 public schools in Orleans Parish, with approximately 60,000 students and 4,000 teachers.⁵³ Parochial and private schools also played an important role in New Orleans, serving approximately 40% of the city's students prior to the hurricane.⁵⁴ The primary and secondary school systems were also starkly divided by race and class – in the 2004-05 school year, 94% of Orleans Parish public school students were black, 3% of students were white, and the remaining 3% were either Latino or another ethnicity.⁵⁵

Orleans Parish was widely regarded as one of the lowest-performing school systems in the country and had one of the highest poverty rates. Sixty-eight of the parish's public schools were considered “academically unacceptable” in 2004-2005.⁵⁶ As a result, the common sentiment in the community was that no one who had a choice in educating their children would send them to public schools. One parent observed, “you just *don't* send your kids to public schools if you want them to get an education.”

Most school buildings were in need of significant repairs and maintenance. A lack of resources combined with inefficient administration meant that desperately needed

⁵³ New Orleans Schools Before and After Katrina, Online NewsHour, November 1, 2005, available at http://www.pbs.org/newshour/bb/education/july-dec05/neworleans_11-01.html.

⁵⁴ Paul Hill and Jane Hannaway, “The Future of Public Education in New Orleans,” The Urban Institute, January 2006, available at http://www.urban.org/UploadedPDF/900913_public_education.pdf.

⁵⁵ Louisiana Department of Education, 2004-05 Composite District Report, available at <http://www.louisianaschools.net/lde/pair/DCR0405/DCR036.pdf>, p. 10.

⁵⁶ 2004-2005 Accountability Summary Results for Louisiana public schools available at: <http://www.doe.state.la.us/lde/uploads/8103pa.pdf>. See also Paul Hill and Jane Hannaway, “The Future of Public Education in New Orleans”. The Urban Institute, January 2006.

repairs were significantly delayed or altogether neglected. The problems of inferior school buildings were exacerbated by large class sizes.

Furthermore, New Orleans public schools were mismanaged. In 2005, a federal audit of the New Orleans school system found that \$69 million in Title I funds had not been properly accounted for.⁵⁷ The school system had a deficit of between \$25 - \$30 million dollars in 2005-2006.⁵⁸ The Orleans Parish School Board was plagued by infighting and had seen ten different superintendents in the last eleven years.

⁵⁷ The Kids and Community Project –NOLA Education Today, available at <http://www.kidsandcommunity.org/history.html>.

⁵⁸ Paul Hill and Jane Hannaway, “The Future of Public Education in New Orleans,” The Urban Institute, January 2006.

2. Organization of Schools After Katrina

The foundation for the plans for rebuilding education in New Orleans was laid back in 2003, when the state legislature passed a law granting the state the authority to take over schools that are determined to have “failed” under the school and district accountability program. Specifically, a “failed” school is one that has been identified as being “academically unacceptable” for at least four years. The legislation also allowed for the operation of a special state school district, the Recovery School District (“RSD”), which is administered by the state department of education and subject to the authority of the state Board of Elementary and Secondary Education (“BESE”).

In November 2005, the state legislature expanded the definition of a “failed” school to include schools that scored below the state average and that operated in school systems that were in “Academic Crisis,” meaning that at least one school in the district had been labeled as failing for four or more years. The legislature then voted to take over 107 of New Orleans’ lowest performing schools which would then become part of the RSD.⁵⁹ As a result, virtually the whole public school system in New Orleans is now managed by the RSD, with only four schools left in the control of the Orleans Parish School Board.

A major component of the plans for post-Katrina public education is extensive reliance on charter schools. Moreover, in September 2005, the state received a \$20.9 million grant from the federal government to help reopen charter schools damaged by

⁵⁹ The Kids and Community Project –NOLA Education Today, available at <http://www.kidsandcommunity.org/history.html>.

Hurricane Katrina, create new charter schools, and expand the capacity of existing ones.⁶⁰ Thus, when the Recovery School District took over, it decided to run most of the schools as charters. Unlike traditional public school principals, charter school principals can manage their own budget and make their own decisions about hiring and firing teachers. New Orleans charter schools can be approved by either the Orleans Parish School Board (run by elected school board members) or the Recovery School District (operated by the state of Louisiana).

In June 2006, the state issued Phase 1 of its plan for the operation of the RSD. The RSD includes two types of public schools: RSD-operated schools and “Type 5” charter schools. The RSD-operated schools are open-admissions schools administered directly by the RSD. Type 5 charter schools are authorized by the BESE and overseen by the RSD. Like the RSD-operated schools, the Type 5 schools have open admission policies. However, the Type-5 schools have significant autonomy in their operations, including their staff selection process, salary schedule, curriculum, and other policies and procedures.

In addition to the Type 5 and RSD-operated schools, there will be three other types of public schools in Orleans Parish. “Type 3” and “Type 4” charter schools will be authorized by the Orleans Parish School Board, but operated by independent organizations. In exchange for autonomy over areas like curriculum and staffing, Type 3 and Type 4 schools must meet strict performance guidelines. “Type 2” charter schools will operate outside of the Orleans Parish public education system, instead reporting to and receiving funding from the BESE. Lastly, the Orleans Parish School Board will

⁶⁰ U.S. Department of Education, “Louisiana Awarded \$20.9 Million No Child Left Behind Grant to Assist Damaged Charter Schools, Create New Charter Schools,” available at

continue to operate a number of “traditional” public schools. These schools will be governed by the school board and all policy and hiring decisions will be made at the district level.

Although the state’s plan anticipates that the New Orleans public schools will evolve into a “highly decentralized model,” the plan calls for the creation of a central organization that will meet the needs of each type of school. This organization, which is to be more streamlined than the previous school district administration, will consist of a superintendent and executive team to provide guidance and serve as the liaison between the district, the state department of education, and the BESE.

Under Louisiana law, the RSD will retain control over its schools for a minimum of five years, at which time the Louisiana State Board will re-evaluate the status of the local school system and all of the schools under its control to decide which, if any, schools will be returned to local control.

Although it remains to be seen which, of the state’s planned reforms will be carried out, many people were optimistic about the opportunity for change. One BESE member described the process of rebuilding the schools as a “once in a lifetime opportunity” to transform New Orleans schools, a sentiment that was echoed by many others. One parent anticipated that parents would become more involved and hold school officials accountable. The parent noted that some displaced New Orleans residents had seen how involved parents were (and were required to be) in other districts and would in turn be more hands-on and have higher expectations for New Orleans schools. Another person described the current state of education as a “clean slate,” and believed that the

<http://www.ed.gov/news/pressreleases/2005/09/09302005.html>.

post-Katrina rebuilding efforts offered a tremendous opportunity for people who are passionate about improving education but were turned off or discouraged by the politicization of education in New Orleans, to return and influence the future of education in the city.

3. Current Student Populations

Schools and students have slowly returned to New Orleans since Hurricane Katrina. While some private schools opened as early as November 2005, Perry Walker High and Edna Carr High, which opened in December, were the first public schools to reopen. By January 2006, most private schools had reopened and roughly 9,000 public school students had returned to seventeen schools, including fifteen charter schools.⁶¹ By June 2006, twenty five public schools were open, serving about 12,000 students.⁶² Of those twenty five schools, four were operated by the Orleans Parish School Board, three by the state of Louisiana, and eighteen were charter schools. Officials expect to open thirty-eight schools for the 2006-2007 school year, with the capacity to serve around 25,000 students.

It is evident that many families chose not to interrupt their children's education once they had settled into a school at their evacuation location. (One focus group participant noted that for children who had evacuated and returned, "they experienced the first day of school three times.") Thus, the real test of the school system will occur over the coming year when it is expected substantially more families will bring their children back to the schools.

⁶¹ Associated Press, "Chairman: N.O. Has a Chance to Build Progressive School System," available at <http://www.wvlv.com/local/stories/WWL011706tpschoos.11f87a4a.html>.

Facilities were a significant issue for both the charter and regular public schools. After the hurricane, only twenty out of 120 school buildings were immediately usable.⁶³ Alvarez and Marsal, a turnaround firm hired by the district, reported that 28 to 40 schools were damaged beyond repair. The state has reported that the cost of damage to school facilities is \$800 million.⁶⁴ While all of these costs should be reimbursed by FEMA, they must be initially paid for by the school district or the charter schools, which has created significant cash flow problems. This is an especially difficult problem for the Orleans Parish School Board, which has about \$450 million in outstanding debt obligations.⁶⁵ This dilemma is complicated by dwindling tax revenue statewide and the fact that the Orleans Parish School Board now only receives funding for a small number of schools. In addition, many charter schools have cash flow problems as they struggle with unpredictable enrollment levels and must sustain startup costs while waiting for their first disbursement of per-pupil funds. The federal government has pledged a pool of money to assist charters with startup expenses, but finances are a significant issue for many charters as they wait for the checks to arrive.

B. Higher Education

New Orleans was home to several universities and colleges; collectively, these institutions educated approximately 70,000 students annually.⁶⁶ Tulane University,

⁶² Joel Rubin, New Orleans Schools Charter a New Course, Los Angeles Times, June 4, 2006, available at <http://www.latimes.com/news/nationworld/nation/la-na-schools4jun04,0,2479311.story?coll=la-story-footer>.

⁶³ Paul Hill and Jane Hannaway, The Future of Public Education in New Orleans, January 2006.

⁶⁴ Recovery School District Legislatively Required Plan, June 7, 2006, p.11, available at <http://www.louisianaschools.net/lde/uploads/8932.doc>.

⁶⁵ Coleman Cowan, A Turnaround Ace for New Orleans, BusinessWeek online, April 3, 2006, available at http://www.businessweek.com/magazine/content/06_14/b3978082.htm.

⁶⁶ Scott Cowen et al, Rebuilding New Orleans: Don't Overlook Higher Education's Role, The National Association of Independent Colleges and Universities, November 15, 2005, available at

considered one of the nation's top research campuses, was the city's largest private employer with a pre-Katrina payroll of over 8,000.⁶⁷ Other schools include Loyola University of New Orleans, the largest Catholic university in the South, three historically black institutions, including Dillard University and Xavier University, two medical schools, Southern University at New Orleans, The University of New Orleans, Delgado Community College and two technical colleges.

All of the colleges and universities in New Orleans were closed for the fall 2005 semester. However, as the spring semester started, most schools reopened in some form. Tulane University estimated that it suffered about \$200 million of damage.⁶⁸ Once it was forced to close down, its leaders recognized that it would face a financial crisis. The university quickly decided to reduce its faculty by about 200 people and pare down some of its programs (primarily in engineering and the medical school, which in any case would have been severely impacted by the loss of the teaching hospitals destroyed by the storm). The majority of its students returned in the second semester, but Tulane expects a significantly smaller freshman class in the fall. Like almost all other employers, Tulane has a shortage of workers.

http://www.naicu.edu/news/NOrecoveryOped.shtm?bcsi_scan_5EA516750908D910=0&bcsi_scan_filename=NOrecoveryOped.shtm.

⁶⁷ Holly K. Hacker, New Orleans Campuses Coming Back to Life, Dallas Morning News, January 23, 2006, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/012406dnmetnohighered.d0cc577.html>.

⁶⁸ New Orleans Colleges Reopen, Online NewsHour, January 17, 2006, available at http://www.pbs.org/newshour/bb/education/jan-june06/colleges_1-17.html.

The campus of Dillard University was uninhabitable so students moved into a Hilton hotel where they lived and held classes.⁶⁹ Certain classes which were not feasible there (i.e. laboratories) were held at Tulane. The University of New Orleans currently has about two-thirds the number of students that it had before the hurricane. Technical and community colleges were hit even harder. Only half of the students returned to Delgado Community College, and two technical colleges did not reopen in January.

There has been an extraordinary amount of cooperation among the leaders of New Orleans' colleges and universities. They have helped each other and lobbied jointly for federal aid, which resulted in a \$50 million allocation. The leader of one university stated that the nonprofit sector would have to lead the City in its rebuilding, as they were the first sector to face up to their problems and make the hard, but necessary, decisions.

C. Challenges in Rebuilding Education in New Orleans

The greatest challenge in rebuilding education in New Orleans is how to take the “clean slate” that Hurricane Katrina has provided and build *and* sustain a high-quality educational system. Part of this challenge is fiscal – having adequate funding and running the system efficiently to pay teachers, maintain the facilities and support various programs. Just as, if not more, important, however, is the investment in *human* capital to ensure that qualified people are running the schools and educating children. This means recruiting the most talented educators and enabling them to keep the system functioning at a high level even if there is a change in governance. Getting these individuals to come to (or back to) New Orleans is a challenge in itself, however. As one educator noted,

⁶⁹ Holly K. Hacker, New Orleans Campuses Coming Back to Life, Dallas Morning News, January 23, 2006, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/012406dnmetnohighered.d0cc577.html>.

“our ability to rebuild education hinges on the city’s ability to rebuild in general.” People’s access to affordable housing and other basic services will be key in determining whether New Orleans will be able to attract talented educators. Furthermore, the system needs to be able to retain the quality educators who do come to New Orleans, and this means “changing the culture” of the system to reward excellence and encourage professionalism.

While the broader goal is to create a new educational system of the highest caliber, New Orleans must deal with the immediate challenge of providing the best education it can to students while the system is being rebuilt. One complication is the continuing uncertainty about how many students will return to the city. This uncertainty is particularly problematic, as the size and demographics of the student population directly influence the number, type and location of the schools that reopen, as well as staffing decisions such as the number of teachers to recruit and hire. Due to this uncertainty, those who are involved in rebuilding public schools find themselves having to do everything required to open a school in a short timeframe, making it difficult to “do things right.”

Another complication that some educational institutions face is funding, whether it be a lack of funding or problems with disbursement and allocation. The damage that Hurricane Katrina caused has impacted the fiscal health of many of the educational institutions. For private schools that depend on student tuition for much of their budget, the drop in student population threatens their ability to keep the schools running. Several individuals familiar with the independent school sector expressed concern that the smaller schools would not be able to survive. For public schools, there is concern that the

decline in the city's population—and tax base—will lead to less funds for the schools. As one school board member put it, “we are under intensive care but don't have the financing for it.” Moreover, even when the government has appropriated funds for schools, in many instances, it has been slow to reach the intended recipients. Few educational institutions have received money from FEMA. Furthermore, although much of the funding has been allocated for curriculum and development, relatively little has been dedicated to capital outlay, the “brick and mortar” needed to build (and rebuild) school facilities.

The psychological and emotional impact of the storm also complicates the rebuilding process. Many students—regardless of age or whether they attended public or private schools—have experienced trauma and major life changes as a result of Hurricane Katrina. Consequently, teachers and other school officials now find themselves attending not only to their students' educational needs, but their emotional and psychological needs as well. This task becomes even more of a challenge, given that many of the educators were themselves displaced and now struggle to rebuild their own lives. Teacher burnout is a constant concern as teachers cope with the difficulties of their daily lives post-Katrina, even as they are expected to return to their already-stressful jobs. As the director of a charter school observed, “we are still sprinting, but we can't sprint endlessly.”

Higher education institutions face similar challenges of losing student populations and absorbing costs incurred due to the hurricane. More significantly, as these institutions struggle to recruit students and professors, their success hinges on the progress that New Orleans makes as a whole, and the perceptions of prospective students and professors that New Orleans is a safe and vibrant place to move to.

D. Best Practices

- Decentralization. One of the reasons why the Catholic Schools of the Archdiocese of New Orleans were able to reopen so quickly was that the administration provided guidelines to their principals but allowed the schools themselves to direct the process of reopening. The idea is that the people who are closest to the day-to-day operations of the school understand best what needs to be done and have the means to get it done efficiently. By providing individual schools with more autonomy, the public school system can also achieve a more efficient rebuilding process.
- Maintaining contact with families. Another reason why the parochial and private schools were able to reopen relatively quickly is that they were able to maintain communications with the families they serve. As a result, they were able to better assess the rate of return of their students and encourage the return of their students by informing them of the schools' plans to reopen. Because public schools must deal with a larger and more diverse population, keeping track of displaced residents is more difficult. However, the school district's disaster plan should include an easily accessible and centralized way for parents to contact the district to find information about the schools and to enroll their children in schools. Keeping in line with the increased autonomy discussed above, individual schools should have primary responsibility for tracking families.
- Addressing emotional and psychological needs. Hurricane Katrina has had a deep emotional and psychological impact on students as well as educators. Some schools in New Orleans have offered additional counseling after Katrina to address post traumatic stress syndromes. Counseling and psychological services should be provided in schools not only to students but also to the adults who are expected to support the students while also dealing with their own personal stresses from the disaster.
- Community involvement. Entities involved in rebuilding education are trying to tap into the knowledge of the community. The RSD is engaged in dialogues with local communities to assess the rebuilding process and determine whether there is a need to build schools in particular neighborhoods. It is doing so by meeting with grass roots organizations, publicizing its efforts in community media, and creating listservs to keep people informed. New Schools for New Orleans spoke of using community groups to help spread the word on school openings and helping to educate the community and parents on how and where to enroll their children. Finally, Tulane University is requiring that their students devote a certain number of hours to community service to help rebuild New Orleans and increase the university's ties to the larger community.

- Having a good disaster plan Many educational institutions have restructured their disaster plans because of Hurricane Katrina. Some private schools have moved their main servers to locations outside of New Orleans, and efforts are made to ensure the lines of communication stay open during a disaster. For example, the Archdiocese of New Orleans is making sure key administrators and principals have cell phones with out-of-state area codes so they can maintain contact, even if the lines are down in the city.
- Ensuring Continuity. The current public school system in New Orleans will allow the students to choose what school they attend, regardless of where they live in the parish. Given that the student mobility will be even higher during the time of rebuilding, the system will allow the students to stay at the same school even if they move. This flexibility allows for continuity and stability in education and will allow students to focus on learning and better cope with the trauma and stress of a disaster.

VI. HEALTH CARE AND MENTAL HEALTH

A. Introduction

The health care system in post-Katrina New Orleans requires substantial reorganization and improvement. Its current operations cannot be sustained without better organization, further funding, and more medical professionals. Louisiana's below-average status in national health rankings and percentage of uninsured citizens has further declined in the aftermath of Katrina. Hospitals are losing millions of dollars every month as they treat uninsured and Medicaid patients who have nowhere else to go. Costs and demand are higher than ever while efficiency and the number of health care providers are extremely low. Perhaps the most positive aspect of the current state of health care in New Orleans is that Hurricane Katrina has so devastated the system that the city has the opportunity to improve its health care structure as it rebuilds.

B. State of the Health Care System in New Orleans

1. Current State of Hospital System/Practices/Funding

Nearly a year after Hurricane Katrina struck New Orleans, the hospital system remains in disarray, both financially and operationally, and the region's previously two-tiered health care system – in which state-financed facilities treated the majority of Medicaid and uninsured patients and private entities treated privately insured and Medicare patients – has been abandoned. Now, private hospitals cope with strained financial, medical and human resources in meeting the increasing demand for health care services in New Orleans. The closure of Charity Hospital, the city's only public hospital, has forced private hospitals into treating a much greater number of uninsured patients than before Hurricane Katrina. Because such patients are uninsured and public funding does not support the services provided, private hospitals administering to the poor go without reimbursement for these services. This situation has imposed significant financial strain on private hospitals.

About 20 to 22 percent of all patients in Louisiana now are uninsured. Individuals have lost jobs that had health benefits due to Katrina. People have been forced to cancel health insurance because they can no longer afford it. In addition, many individuals interviewed said a significant number of undocumented immigrant workers who lack insurance have entered the state seeking jobs.

Private hospitals now provide treatment for 90 percent of the uninsured patients Charity Hospital had been treating prior to the storm. For the five months immediately following Hurricane Katrina, the U.S. Congress granted a waiver to all New Orleans area private hospitals treating uninsured patients. Among other things, the waiver reimbursed private hospitals for providing care to uninsured patients at Medicaid rates, which generally covers about 70 percent of the cost of care. However, following that program's

expiration in January 2006, private hospitals were left to finance uninsured patient care without any federal or state reimbursement. With almost no available nursing homes, rehabilitation clinics, or home-based care available to discharged patients, patients remain hospitalized 40 percent longer on average than before the storm, increasing hospital costs and preventing patient turnover.

In response to the deteriorating financial health of many hospitals in New Orleans, the Louisiana legislature enacted in June 2006 a one-time \$120 million program to help private hospitals in the region defray the escalating costs of treating uninsured patients. This infusion expires in early 2007, when hospitals will once again have to absorb uninsured, unreimbursed patient expenses.

To illustrate the weakening financial environment, the Louisiana Hospital Association says that payroll and benefit costs typically comprise 50 percent of a private hospital's expenditures under normal conditions. With staff shortages and skyrocketing labor costs, payroll and benefits are now reaching 70 percent of overhead costs for affected hospitals. According to Mark McGinnis, the Chief Financial Officer of West Jefferson Medical Center ("WJMC"), between August and December 2005, WJMC lost \$31 million and its sister institution, East Jefferson Medical Center, lost \$36 million and they continue to lose money this year. Mr. McGinnis said no hospital in New Orleans "can operate at a profit in the current climate. It will be years before anyone makes a profit."

There is significant disagreement within the health care community whether the demand for health care has actually returned to pre-Katrina levels. Much debate centers on the exact number of people who have returned to the region following the storm—a

question that seems virtually impossible to answer. While New Orleans houses up to 50 percent fewer residents than before the storm, the numbers can be deceiving. Some observers believe the immediately surrounding parishes have seen significant permanent increases in their population and attribute the rise to the greater availability of housing, education and social services in those areas. These residents may not be officially counted as residents of New Orleans, but they live within the city's regional health care system and account for a sizable portion of the health care demand. The Louisiana Hospital Association estimates that 25 percent of all patients seeking treatment in New Orleans hospitals come from outside the greater New Orleans region. In addition to those outsiders, the presence of many undocumented and uninsured workers, who are not counted in population statistics, have further increased overall demand.

The dearth of reliable information regarding current and future demographics makes it difficult for the health care system as a whole to plan for the immediate and long-term future. For example, many hospitals report that they cannot keep a sufficient number of staffed beds open to handle incoming patients, because of high, unforeseen demand coupled with staff shortages. Private hospitals report that the lack of available beds force the postponement or cancellation of elective surgeries. When Tulane University's hospital reopened 80 hospital beds in early 2006, they were completely filled within 48 hours. Similarly, Dr. Dwayne Thomas, Chief Executive Officer of the Louisiana State University ("LSU") Health Care Services Division, believes that when LSU's University Hospital reopens 200 beds in October 2006, those will be completely full within 72 hours. Dr. Thomas said the loss of Charity Hospital's more than 200 beds, combined with a reduced number of beds at currently operating hospitals, has created

such a drastic deficit of available beds that many patients are not getting a sufficient quality of care. Whether or not there is truly enough bed capacity in New Orleans to handle the needs of the returning population is not conclusive, but other factors within the health care system, as discussed below, have made optimal usage of the current bed capacity difficult.

2. Emergency Care

According to published reports and experts interviewed, emergency rooms in New Orleans are stretched to the limit. Because Charity Hospital and many primary care clinics remain closed, all currently operational emergency rooms have been forced to improvise to provide this care. The LSU Health Care Services Division operates an emergency services unit in a converted department store in central New Orleans, handling approximately 4,500 non-acute emergency patients per year, about 50 percent of Charity Hospital's emergency treatment before Hurricane Katrina. LSU also operated the only certified trauma center in New Orleans prior to the storm, but it was forced to close. The trauma unit is now operating in a limited capacity under a contract with Ochsner Medical Center in Jefferson Parish.

There has been a large influx of undocumented, uninsured immigrants into New Orleans working in the citywide rebuilding and reconstruction effort. Many of these workers suffer job-related injuries and seek treatment in emergency rooms, absorbing critical emergency room capacity. Many health care experts believe that the current emergency care structure in New Orleans will not be able to respond to situations where large numbers of people require immediate emergency care because no capacity exists to handle such crises.

Emergency care is also stretched because patients often use emergency rooms for primary and behavioral health needs, clogging available beds and increasing wait times for more urgent cases. At hospitals where emergency rooms typically had short wait times before Hurricane Katrina, such as West Jefferson Medical Center, East Jefferson Medical Center, Touro Infirmary, and Ochsner Medical Center, non-urgent patients now frequently wait up to 24 to 48 hours for initial physician consultations. The general lack of primary and preventive care forces hospital emergency rooms to handle more patients than they ordinarily would if a strong primary care system existed in the New Orleans metropolitan area.

3. Primary Care

New Orleans struggles to provide adequate and accessible primary care for current and returning residents as well as an influx of new people to the area. A number of factors have contributed to this situation:

- a. The current status of New Orleans' overall health care infrastructure;
- b. The lack of operating primary care clinics, which could otherwise alleviate the pressures placed on emergency rooms;
- c. A severe physician and medical staff shortage (for more, see below). Some experts estimate that only 30 to 40 percent of pre-Katrina physicians are actively practicing in the New Orleans area.
- d. Deficient continuity of primary care attention; and
- e. The loss or destruction of a staggering number of patient medical records due to the storm and flooding, causing difficulties for patients to receive timely treatments and medication.

f. The lack of reliable public transportation within New Orleans means many low-income patients have no way to travel to primary care medical facilities.

Due to the lack of primary care doctors in the region, New Orleans residents are unable to receive long-term continuous primary care from one physician. Instead, patients receive episodic care from different doctors who only see the patient once or twice. Because they do not see the same doctor, patients are much less likely to follow physician advice, fill their prescriptions, or seek follow-up care from the primary care provider or the specialists whom the physician recommended.

Aggravating the physician shortage is the fact that the state of Louisiana allows little autonomy for nurse-practitioners to operate independently in a variety of situations. In the absence of adequate primary care physicians, nurse-practitioners can provide much of the same preventive and primary care as physicians but at lower costs.

As more evacuees return to the city, the problems arising from the lack of primary care are becoming increasingly acute. The lack of sufficient primary care is one reason why area hospitals are currently losing money, said Louisiana Hospital Association Vice President of Finance and Operations Patricia “Tatsy” Jeter. Experts have said this situation will not change until the primary care system can relieve the strain put on hospitals to provide all facets of patient care.

4. Specialized Care

The hurricane and subsequent flooding caused a sharp decrease in the number of specialized and secondary care providers in the area. For example, the number of neurosurgeons in the area has fallen to half of the pre-storm level. This shortfall has forced many patients to endure long waits for appointments or to seek specialty treatment

outside the city, which only imposes further barriers to care, including arranging and paying for travel and missing work.

On the other hand, some experts believe New Orleans does not need more specialized care facilities and providers, opining that primary care is more important because it serves patients living with, for example, diabetes, high cholesterol or heart conditions before their conditions become acute. One public health expert noted that an increase in primary care services would eventually reduce the number of individuals requiring specialized care and costs system-wide.

B. Behavioral Health Care

Nearly all experts interviewed agreed that the general state of mental health and behavioral health care situations in New Orleans are in dire condition. Dr. Jackie Robinson, director of the state-funded Metropolitan Human Services District ("MHSD"), noted that 50 to 60 percent of people who formerly had no psychiatric issues now complain of mental health-related problems, including anxiety, post-traumatic stress disorder, and depression. Experts also said that, since Katrina, there have been spikes in the numbers of suicides, incidents of drug and alcohol abuse (as a byproduct of stress), violent outbursts, and domestic violence. Jennifer Kopke, the Executive Director of the Jefferson Parish Human Services Authority ("JPHSA"), confirmed the severity of the problem in noting that, between August 29, 2005 and March 21, 2006, for every six people who came to the JPHSA for service, one came for behavioral health and five for substance abuse treatment.

Individuals who lost their homes and/or jobs have suffered among the hardest blows to their mental well-being, according to experts. As Ms. Jeter of the Louisiana Hospital Association said, these people have no breaks in their lives as they go to work or

look for a job and work on their destroyed homes at night and on weekends. Most of their money, time and energy are spent dealing with the problems the hurricane and flooding left behind.

The mental health of physicians and first responders has suffered as well. For example, many doctors work long hours and have overwhelming patient loads. One focus group participant described a psychiatrist friend as “a nervous wreck” who “weighs 85 pounds right now.” In addition, policemen, firefighters, and other first responders who remained to help after the flooding were overwhelmed, overworked, and angst-ridden by blistering media criticism.

Despite the demand for mental health professionals, only 23 percent of the psychiatrists who were in New Orleans before the hurricane have stayed or returned, according to LSU's Dr. Thomas. The New Orleans Times-Picayune places that number at 22 out of an original 169 practicing psychiatrists. In addition, there has also been a decrease in the number of available behavioral health facilities. There has been at least a 50 percent reduction in the number of available mental health beds in New Orleans. Charity Hospital's closure alone eliminated 100 beds reserved for behavioral health patients, and it is estimated that only 20 of those beds are scheduled to reopen in the next several months.

WJMC CEO Mr. Muller said the patients who formerly would have sought behavioral health services at Charity are now coming to WJMC, which is not equipped to treat all the people needing care. The shortage of behavioral health facilities has led many individuals to visit the already overburdened emergency rooms. The clinics that do

continue to provide behavioral health care are faced with increased demand, but often lack the funds to provide the best care to their patients.

In the face of this shortage, the various behavioral health care providers still in operation are doing their best to meet the needs of patients. Recognizing the stresses brought about by Katrina, the MHSD and JPHSA relaxed their patient eligibility criteria, which allowed these organizations to treat patients with more wide-ranging issues than usual. However, JPHSA will likely return to more limited eligibility criteria this summer.

Other groups have expanded their missions to cope with behavioral health needs in the hurricane's aftermath. For example, the Red Cross has worked with FEMA to provide mental health classes and presentations for people living in FEMA trailer parks with a focus on managing stress and identifying and treating post-traumatic stress disorder. Red Cross Director of Hurricane Relief Lou Kennedy said this program is important because the trailer parks are a stressful and constant reminder of the devastation left by the hurricane and flooding. Through education and disaster preparedness programs, the Red Cross has also focused on children, who suffer from anxiety that such a calamity could happen again.

C. Health Professional Shortage

1. Doctors

Clinics are closed, hospitals are short-staffed, and many relocated doctors are reluctant to return to New Orleans. While exact numbers of those who will return are unavailable, active membership in the local medical societies has plummeted. The Orleans Parish Medical Society's 700 dues-paying members are now down to 200, and the Jefferson Parish Medical Society estimated it lost a third of its members. According to the Orleans Parish Medical Society Executive Director Susan D'Antoni, 6,000 doctors

throughout the nation were displaced by Hurricanes Katrina and Rita; about 4,600 came from Orleans, Jefferson, and St. Bernard Parishes.

An increasing number of uninsured patients and rising health care costs are keeping doctors from returning, according to Ms. D'Antoni and others. In some cases, the state will pay hospitals for uncompensated care, but private physicians will not receive payment, forcing private practices to shut down or operate at a deficit. The Louisiana Department of Health and Hospitals has distributed federal funding for post-Katrina health care in such a way as to exclude private partnerships of doctors and those physicians whom hospitals do not directly employ. Meanwhile, Medicaid reimbursements were restricted to only those doctors who were previously enrolled in the Medicaid program. Other factors prevent doctors who have already relocated from returning, including the lack of functioning schools for their children and absence of many of their regular patients and staff.

Those doctors who have returned to New Orleans are barely surviving, according to experts we interviewed. Physicians are working longer hours and performing procedures more often per day than usual, working from early in the morning until late at night. The stress of operating in a constant financial deficit, without a patient base, and in such arduous physical conditions is taking a serious toll. One observer of the medical community said that three New Orleans doctors had committed suicide in the spring. One member of the focus group shared her physician's experience:

She is the only doctor in the building right now ... She lost all of her staff and so she answers the phone, she does the billing, she is doing everything. She said she gets calls every day asking 'can you please take new patients' ... and she said she simply can't because she can't physically see everybody.

The plight of physicians inevitably affects patients. Even patients fortunate enough to have health insurance are not secure, because their health insurance companies no longer have a long list of in-network providers in New Orleans. Privately insured patients do not know where to find physicians to replace their former doctors because health plan lists are not current. According to one member of the New Orleans focus group, her health plan formerly listed 50 approved doctors, but only five remain in the city after the hurricane.

New Orleans has taken some steps to attract doctors to the city. As mentioned above, the U.S. Congress enacted a temporary waiver (known as the "Stark waiver," named for the law authored by Congressman Pete Stark) that would suspend the usual restrictions on hospital-provided perquisites (such as office space, housing and other incentives) for doctors for a period of time after the storm. The Stark waiver, however, has already expired. While some advocate extending it, others, such as Tulane's Dr. Farley, propose instead new fund allocations to raise the overall quality of care and create doctor-friendly facilities as better long-term ways to encourage physicians to stay in New Orleans.

2. Nurses

New Orleans is grappling with a nursing shortage, too. Raising salaries to compete with area businesses, surviving this year's hurricane seasons, and replenishing the housing supply are among the conditions that experts believe must be addressed to solve this problem.

Metropolitan Hospital Council President Jack Finn suggested that New Orleans could increase its nursing population by growing its local nursing schools. Finn said nurses originally from New Orleans are much more likely to stay and work in the area.

Prior to Hurricane Katrina, private hospitals with a shortage of nurses invested in the local Delgado nursing school, which increased its graduating class dramatically – from around 200 several years ago to about 600 graduates this year.

D. Ways Forward: Brief Descriptions Of Restructuring Proposals

The following are brief descriptions of a statewide public health effort to redesign the region's health care system and two prominent studies/recommendations for the New Orleans health care system:

1. Healthcare Collaborative/Redesign

Only weeks after Hurricane Katrina, the Louisiana state legislature created a Health Care Collaborative (the "Collaborative") composed of 37 representatives from various public and private health care entities to design a new proposed health care system for the region. Led by the state's Secretary of Health and Hospitals, Dr. Fred Cerise, the Collaborative is expected to submit a draft plan to U.S. Secretary of Health and Human Services Mike Leavitt, who has pledged to support a viable Collaborative plan. The following are broad directives Collaborative members hope to address in their eventual proposal:

1. Encourage patients to use primary and preventive care through the expanded use of neighborhood clinics;
2. Eliminate duplication of services;
3. Increase the emphasis of paying for outcomes and not transactions;
4. Recruit and retain workforce;
5. Integrate behavioral health care with other health services; and
6. Create an electronic database to preserve medical records.

Significant areas of debate include:

1. The "chicken and egg" conundrum of creating a health care system when the city lacks a plan for itself. In particular, experts seem to disagree about the future size of the region's population and, without such data, the system will be difficult to plan;

2. Whether to create a universally accessible health care system or rebuild the old two-tiered one. For example, advocates of the poor and uninsured are concerned that the loss of Charity Hospital will be a major blow to the quality of care for those who cannot pay, and that the proposal of increased community clinics will only lead to substandard care for this population; and

3. The role of teaching hospitals and whether they should receive a disproportionate amount of public funds or whether such money should go directly to providing citizens with health care services.

2. Framework for a Healthier Greater New Orleans

Authored by Dr. Tom Farley, chairman of the Tulane School of Public Health & Tropical Medicine's Community Health Sciences Department, and Dr. Eric Baumgartner of the Louisiana Public Health Institute in consultation with more than 100 representatives of various local, state, and federal health agencies, private providers, nonprofit organizations, and community groups, the Framework provides guidelines that it hopes the Collaborative will follow in drafting their plans. Suggestions include:

1. Measuring results in terms of improved health of residents and not services delivered;

2. Establishing a high-quality network of neighborhood-based clinics to provide comprehensive care (including mental health care services) in order to prevent expensive emergency room visits. While the central focus of the clinics would be primary care, including free services for flu shots and other vaccines, they would also

provide seamless entry to other services such as in-patient care, specialty care, and diagnostic services. Dr. Farley predicted New Orleans would need about 15-20 such clinics with 75 doctors to serve them all at a roughly estimated cost of \$5 million per clinic;

3. Digitizing all medical records; and
4. Designing healthier neighborhoods by building more playgrounds and sidewalks for increased biking and walking.

3. PricewaterhouseCoopers Report

In spring 2006, PricewaterhouseCoopers published a Louisiana Recovery Authority-commissioned analysis and recommendations for the health care system in New Orleans and Louisiana. Overall, the report concluded that the two-tiered hospital structure consisting of Charity Hospital as the hub for all under- and uninsured patients, was highly inefficient and too expensive. This structure diminished the quality of care delivered to both insured and uninsured patients, the report said. Private hospitals maintained excess capacity (and therefore increased costs and inefficiency) while public hospitals suffered from a lack of capacity and scarce resources. The imbalance between the two systems resulted in a lower quality of care than if there were one coherent system treating an entire mix of patients, ranging from the privately insured to the uninsured.

Reaction to the findings and recommendations of the report has been mixed. Some observers have supported the report's call for overhauling the entire health care structure in Louisiana, pointing out that Louisiana is the only state still operating under a two-tiered hospital structure. Supporters also agreed with the report's assessment that Charity Hospital's technology and infrastructure were outdated, and patients could receive better care in private hospitals. Critics have argued that the two-tiered structure

effectively served the needs of the under- and uninsured, and that those patients would not get the same attention or quality of care in a revamped, one-tiered healthcare system.

E. Best Practices

- **Create a registry of medical professionals.** There should be a universal registry where doctors can sign in to find each other when dislocated, to volunteer to help in the aftermath, and to let others know whether they plan to return to practice.
- **Recruit doctors to New Orleans with a salary guarantee and hospital affiliation.** With such a high level of non-paying uninsured patients, doctors must have salary stability provided by the hospitals.
- **Provide some reimbursement to private caregivers for services and losses due to Katrina.** There should be at least some compensation for health care services given to uninsured patients in the wake of the storm and the increased costs of treating Medicare and Medicaid patients due to Katrina.
- **Extend the Stark waiver for New Orleans medical professionals.** Allow doctors to accept housing and other perquisites in the longer term that will compensate for the post-Katrina difficulties of living in New Orleans.
- **Include behavioral health services in emergency disaster plans.** Services should be provided for both disaster victims and first responders. Communications should be improved among various mental health and frontline disaster relief organizations.
- **Locate medical treatment near schools.** To make physical and behavioral health services more easily accessible for children, incorporate medical clinics into or near schools so that appointments are more likely to be made and kept and treatments are more likely to be received.
- **Redesign health care system with a focus on primary care in clinics.** Improve health and reduce costs from unnecessary emergency room visits by promoting consistent primary care.
- **Train New Orleans nurses in local nursing schools.** This will help to ensure that more trained nurses will remain in New Orleans.
- **Create database for electronic medical records to prevent future loss and destruction of medical records.**
- **Expand nurse-practitioner and home-care services.** As New Orleans rebuilds, efforts should be made to increase the number of health care services that will reduce the pressure on physicians and hospitals by increasing health care in the home.

- **Encourage continuity of doctor-patient relationships.** Clinics and other primary care providers should strive for as much consistency as possible between doctors and patients in order to maximize patient benefits from seeking primary and preventive care.
- **Treat behavioral health problems alongside physical health problems to foster a more holistic approach to health care.**
- **Improve public transportation and use mobile clinics to make health care more accessible.**

VII. LEGAL SERVICES

Hurricane Katrina wreaked havoc on an already debilitated legal system in the New Orleans area. While it exacerbated existing weaknesses, the hurricane has also provided the opportunity to create greater inter-agency communication and cooperation, and demonstrated ways in which the legal community could coalesce to help both fellow attorneys affected by the storm and those local and displaced citizens most in need of legal assistance.

A. Criminal Justice System

Long before Katrina, the criminal justice system in New Orleans was distressed and chaotic. Chronic underfunding, particularly of indigent defense, contributed to a system that many believed was on the verge of collapse. Katrina took this broken system and, in the words of one senior member of the New Orleans bar, "completely dismantled it." The courthouse flooded, files were lost, and evidence in pending cases was damaged or destroyed. Witnesses and victims fled the city, many of whom have yet to return and some of whom simply cannot be located. Cases were delayed and court dates cancelled. Jury trials in criminal cases did not resume until June 5, 2006, more than nine months

after the storm. Perhaps the most stark examples of Katrina's immediate effect on the criminal justice system, however, rest with the experiences of prison inmates.

On August 30, 2005, when the levees broke, there were approximately 5,000 jailed inmates awaiting trial in Orleans Parish. Reports indicate that as the Orleans Parish Prison began to flood, guards abandoned the prison and stranded these inmates without food, water, or electricity. When the inmates finally were evacuated, in some cases up to four days later, they were scattered to correctional facilities throughout Louisiana. There was no centralized database of criminal defendants and inmates, so at first it was difficult to determine how many people were being held, where they were being held, or the charges pending against them. As the Department of Corrections and a corps of volunteers worked to re-create the necessary information, many of these inmates, including those facing only misdemeanor charges, languished in jail without legal representation. In response, public interest and social justice organizations, as well as lawyers from the private sector, began to file mass habeas corpus petitions seeking the release of – and not the dismissal of charges against – those individuals not accorded representation. Hundreds of prisoners were eventually released as a result of these petitions, including inmates charged with petty offenses who had already served more time than they would have served if they had been convicted. In one published report, Neal Walker, director of the Louisiana Capital Assistance Center, recounted the story of one inmate who got in a fistfight three days before the storm. He was jailed for 4 1/2 months before prosecutors decided not to file charges. In a related anecdote, Philip Wittman, a partner at Stone Pigman Walther and Wittman, LLC and a member of the Indigent Defenders Board recounted the stories of Mexican migrant workers who arrived

to New Orleans in the wake of the storm in search of construction and other work. When found in affluent mostly white neighborhoods, these migrant workers were arrested by police for "attempted looting". In early June 2006, the Department of Corrections released a list of 378 inmates who had not been before a judge in more than a year. Katherine Mattes, Deputy Director of the Tulane Law Clinic, expressed hope that, as time goes on, fewer cases will arise in which individuals are incarcerated so unnecessarily or unfairly. Nevertheless, she emphasized the need to improve communications and promote systemic recordkeeping. More effective case "triage" would have been possible had there been a centralized database with, at a minimum, each inmate's name, offense, and case status.

B. Evidence

Evidence crucial to both old and active cases was stored in the basements of flooded buildings, and the police department and the Orleans Parish clerk of court's offices hired restoration specialists to save what they could. Ms. Mattes indicated that she has been pleasantly surprised at how much evidence survived the hurricanes, though there remain issues with evaluating the integrity of that evidence. While much of the active evidence was relocated to higher ground, lack of proper refrigeration and handling has contaminated some of it. Most of the evidence from old cases is presumed to be lost. This loss has had a significant impact on the Innocence Project New Orleans, which frequently performs DNA tests on old evidence to free wrongly convicted inmates. In addition, it remains unclear to what extent, if any, cases will be dismissed as a result of lost or compromised evidence. Despite these problems, it appears that New Orleans will continue to locate their evidence rooms in basement areas.

C. Indigent Defense

The problems plaguing indigent defense in New Orleans existed long before Katrina ravaged the city. Historically, the Orleans Indigent Defender Program has been understaffed and significantly underfunded. The OIDP represents approximately 85% of people arrested in Orleans Parish. Before Katrina, the OIDP had a staff of 42 attorneys to handle, in an average year, approximately 3,000 to 4,000 filings in criminal district court, 12,000 bond hearings and arraignments and 100,000 to 150,000 traffic and municipal offenses. To cover this tremendous caseload, public defenders are paid very little -- some studies put the salaries at \$29,000 while others place them a little higher at \$35,000. As a result, some public defenders are economically compelled to hold private criminal law practices on the side.

The OIDP also suffers from an unstable and unreliable funding source. Unlike the district attorney's office, whose funding is covered in the state budget, the OIDP's funding is derived primarily from court costs and traffic fines. Dwight Doskey, a senior public defender, believes it is critical to provide the OIDP with state funds so that its budget does not fluctuate as wildly as it has in the months since Katrina. In the storm's immediate aftermath, Tilden Greenbaum, director of the OIDP, terminated the employment of three-quarters of the public defenders due to budget constraints, at one point leaving four public defenders to handle the cases of approximately 6000 incarcerated individuals. Other parishes cut the already low compensation of public defenders in half, while still requiring them to handle the same number of cases as they did pre-Katrina. After everyone evacuated the city, traffic fines were non-existent and the OIDP's budget plummeted. Mr. Greenbaum estimates that before Katrina, the OIDP received approximately \$100,000 to \$120,000 per month from traffic fines. From October

to December 2005, the OIDP received a total of \$30,000 in fines. As residents return to the city, those numbers have gradually increased but they are nowhere near their pre-Katrina levels. Even if they were, Mr. Greenbaum and Mr. Doskey argue, the amount and source of funding are still insufficient to meet the needs of indigent defense. Many involved in the criminal justice system agree. District Attorney Eddie Jordan has admitted that the OIDP needs more funding and a more reliable source. Two criminal court judges recently ruled that the OIDP's funding system is unconstitutional and the Louisiana Supreme Court is expected to consider the matter in the future.

Money and staffing are not the only ills in the long-neglected indigent defense system. Outdated statutes, which allow for jail stays of up to 60 days for felony offenses (45 days for misdemeanors) without legal representation, are often cited as a significant contributor to the crumbling system. Jelpi Picou, executive director of the Capital Appeals Project, offers a drug paraphernalia case as an example of the huge gap in representation. If an indigent defendant is arrested for possession of drug paraphernalia, a public defender assigned to the courtroom will be there for the initial representation. The public defender will be that defendant's counsel solely for the purpose of the initial appearance, which typically last for a few short minutes. If unable to make bail, as many indigent defendants are not, the defendant may then be jailed for up to 45 days while the prosecutor decides whether or not to file charges. During this period, the defendant lacks legal representation. A public defender will only be assigned to that defendant when the prosecutor determines to file charges. With arrests for "social offenses," such as public intoxication and spitting in public, apparently on the rise, more indigent defendants may be spending too long in jail.

A recent report by the Department of Justice noted that, for the poor in New Orleans, justice is unavailable. Some in the criminal and social justice communities are more optimistic. Mr. Picou noted in a recent interview that he believes New Orleans is on the cusp of something great. With national attention focused on the criminal justice system as a whole, and indigent defense in particular, there is a real opportunity for reform. He hopes that just as the broken levees are being repaired in a different, stronger way, so too can the criminal justice system.

For now, the OIDP continues to operate out of its courthouse offices with limited resources. Access to the courthouse remains limited, so fewer cases are being heard and less progress is being made. It only has 2 telephones, so the OIDP's director conducts business on his cell phone. The office does not yet have a fax machine, so Mr. Greenbaum uses a personal fax machine to send and receive correspondence. The OIDP has been able to re-hire some of the laid off public defenders, increasing the total number of public defenders to approximately twenty, and it recently received a \$2.5 million dollar grant to replenish staff at pre-Katrina levels.

D. Civil Legal Services

Hurricane Katrina's devastating effect on court personnel, litigants as well as infrastructure posed numerous problems for the civil legal system. On September 6, 2005, Governor Blanco responded to the crisis in the courts by issuing an Executive Order which suspended "all deadlines applicable to legal proceedings ... in all Louisiana state courts" until September 25, 2005. This order ensured that those who were affected by the devastation would not be penalized by an inability to meet court deadlines. When the legislature was called into special session on November 6, 2005, it determined that the Executive Order would not affect certain civil legal filing requirements, for example,

the calculation of the waiting period requirement to file a divorce petition for both no-fault and covenant divorces. The Louisiana Supreme Court was closed until November 25.

By now, parts of the civil system have reemerged. Documents in flooded courts that could be salvaged were preserved and returned. Courts have reopened and staff positions have been filled. However, many lawyers, law firms and court personnel have still been unable to return. 5,000 - 6,000 lawyers (1/3 of the lawyers in Louisiana) lost their offices, their libraries, their computers with all information thereon, their client files and in many cases their clients. Lawyers from New Orleans, almost a year after the hurricane, remain scattered from Florida to Washington. Many have reopened their practices but with only a fraction of their pre-Hurricane business.

Katrina spawned an outpouring of volunteer legal support, with attorneys from around the country providing substantial assistance to affected individuals, and litigating significant claims in state and federal courts. The American Bar Association, through its many committees, divisions, and its Center for Pro Bono, enlisted more than 2,000 volunteers to assist local residents in New Orleans and other affected areas. Moreover, the Supreme Courts of Mississippi and Louisiana issued orders allowing out-of-state lawyers to provide pro bono assistance to clients. In particular, a significant number of attorneys were mobilized to offer pro bono legal assistance to individuals whose FEMA claims were denied, an effort which continues to this day as many students and attorneys from across the country continue to volunteer their services.

E. Housing Issues

One substantive area of law where legal service needs expanded was housing. After Katrina, NOLAC faced many difficulties, including a significantly increased workload (especially housing issues) and severe funding, personnel and physical plant problems. NOLAC also had to contend with delays resulting from court closings in the New Orleans area, which meant that eviction proceedings were initially brought in a court located sixty miles outside of New Orleans. This adversely affected the thousands upon thousands of tenants who were displaced by the storm, and also created one of many post-Katrina due process problems. One successful due process challenge raised by legal advocates (*Smith v. Boissiere*) involved a successful state court constitutional challenge to holding New Orleans eviction hearings in Gonzales, Louisiana, rather than in New Orleans, during the closure of New Orleans courts. *Sylvester v. Boissiere* involved a challenge to inadequate notice given by landlords to evacuees displaced by Katrina; "tacking" notices on apartment doors did not constitute adequate notice. As a result of the district court challenge, all eviction proceedings against residents of the Orleans and Jefferson Parishes, whose whereabouts were unknown were immediately stayed.

Other due process challenges were successfully raised by Professor Quigley and lawyers from the Advancement Project, and prevented some of the abuses of the eviction system. Professor Quigley noted that while these due process challenges temporarily alleviated some situations, they did not address fundamental problems with the landlord-tenant scheme that followed after the storms.

According to some interviewees, one thing that the city should have done, but did not do, was institute some form of temporary rent control. When cities face a disaster on

such a massive scale, they should be ready to implement temporary restrictions and laws aimed at controlling the housing market. The mixture of sharply increasing rents, displaced tenants, and units damaged by the storms created a quagmire of legal headaches for landlords and tenants alike and made recovery difficult.

Significant changes in the housing environment resulted in dramatic changes in the types of law that NOLAC housing attorneys had to learn or begin practicing. NOLAC attorneys had to become acquainted with previously unfamiliar areas of the law: making utility allowance challenges (which have become inadequate for many people, due to the tremendous increase in the cost of utilities), probate law in order to clear title to property so that homeowners can get insurance proceeds, FEMA aid, Road Home grants,⁷⁰ close on homes, insurance, housing fraud and bankruptcy, appeals for families who have been turned down for FEMA assistance.

In order to deal with these new areas of the law, NOLAC had to rely on third parties. NOLAC received assistance with training from other attorneys and law firms, which was especially helpful since the state's disaster law manual had not been adequately updated. Its work was complemented by that of Professor Quigley and legal advocacy organizations such as the Advancement Project, which tended to focus on cases that had a greater precedential effect on issues that affect NOLAC's everyday practice.

F. Voting Rights Issues

When considering the effects of Hurricanes Katrina and Rita on New Orleans' election system, reference must first be made to Louisiana's long record of voting discrimination. That being said, Damon Hewitt, a staff attorney for the NAACP Legal

⁷⁰ The Road Home Housing Program aims to use Community Development Block Grants of up to \$150,000 to Louisiana homeowners who owned real estate damaged by Hurricanes Katrina and Rita.

Defense Fund in New Orleans, cautioned that, "It's not just a history. It's a continuing pattern." As a result of this history, the entire state is "covered" under § 5 of the Voting Rights Act of 1965, meaning that any voting plan must be pre-cleared by the United States Attorney General. Louisiana's initial proposal has been rejected consistently since 1965. As with the criminal justice system, the hurricanes exacerbated an already poor situation.

While elections have been held in New Orleans since the hurricanes, the displacement of the population, the destruction of polling sites, and a host of other factors have made it considerably more difficult to ensure that elections are both fair and legitimate. Voter turnout is reduced, especially among the African American community. Still, Mr. Hewitt suggests that African American turnout in the municipal elections is not indicative of the desire of that community to participate. Rather, Katrina's impact has created a situation where individuals must expend significant resources to vote, constituting what he characterizes as a "modern day poll tax." Although Katrina motivated many individuals to vote for the very first time, various obstacles coalesced to prevent them from doing so. As but one example, Mr. Hewitt related the story of Donald Jolly, an eighteen-year-old who would have to undertake a six-hour roundtrip with the sole family car in order to vote. Given the distance and his financial circumstances, Mr. Jolly was unable to vote.

Absentee voting has also been a major issue. Among the well-intentioned anti-fraud mechanisms put in place long before Katrina was a requirement that anyone wishing to vote by absentee ballot must have voted in person on at least one prior occasion. In the January elections, approximately fifteen thousand people failed to meet

this test, approximately two-thirds of them being African American. Many in this class were thus effectively denied the opportunity to participate.

When many of these individuals made the personal and financial sacrifice to vote, they were often confronted with further barriers. Since many sites had been destroyed or rendered unusable by the hurricanes, simply locating the proper polling site could be of enormous difficulty. Several precincts were consolidated to form so-called "megsites." As these sites were very large, some people were denied the right to vote because, though inside the building, they were not in the appropriate line by the cutoff time. Mr. Hewitt told the story of one woman who traveled all the way from Houston to vote, but was not able to do so for this reason. An agreement has since been reached to remedy this situation, but it represents an instance where the law did not anticipate the unique problems caused by a disaster of this magnitude.

There have been several counterweights to the negative effects of the hurricanes. The NAACP Legal Defense Fund's Protect Katrina Vote Project went directly to the community in an attempt to encourage participation and, as an outgrowth of a federal suit challenging the state's voting plans, trained election monitors were charged with observing the polls during the municipal elections. Although these projects did not result in the success that many hoped for, monitors were able to intervene on voters' behalf and achieve small victories. Mr. Hewitt related the story of a woman who was told that she had already voted in the runoff election by absentee. After two hours of effort, three lawyers and one volunteer were able to secure her right to vote.

In the immediate future, Mr. Hewitt anticipates that more people will return to New Orleans, but expects that problems with the voting system will be ongoing.

Redistricting is likely to be a controversial issue, particularly since it is likely to affect the political power of African Americans. Of seven congressional districts in Louisiana, the state's single majority African American district encompasses much of New Orleans. Post-Katrina, demographics could change dramatically and therefore redistricting will likely be a political, racially-charged issue. More generally, New Orleans' representation in the state legislature will likely decline, and the city may no longer have a population sufficient to constitute a congressional district.

From New Orleans' experience, other communities can gather several lessons in avoiding, or at the very least mitigating, the voting rights-related dislocations that New Orleans experienced in the wake of Katrina. Communities should, at a minimum, familiarize themselves with the technologies that may be used to permit displaced persons to participate in elections. Mr. Hewitt expressed his view that an allowance for limited satellite voting would have permitted greater participation by the displaced community. They may also consider having in place an expedited mechanism for suspending anti-fraud mechanisms that, while well-intentioned, undermine voter participation among a displaced populace. At bottom, however, Mr. Hewitt emphasized that much of a community's response will be shaped by its ability to harness the necessary political will.

G. Emergency Legal services

The American Bar Association had a pre-existing "disaster plan" which operated in conjunction with state bar associations to provide legal services in the case of an emergency. Within the "young lawyers" group of the state bar association there is a designated contact person who enacts the plan after an event is labeled an emergency. Tornados, floods, and train wrecks are some examples of planned-for emergencies. The

plan is fluid, but basically provides for the establishment of a hot line which is made available to those without access to legal advice. Individuals who call are either helped by the attorneys on the phone or, if their case requires greater attention, referred to other attorneys. After Katrina this disaster plan was put into effect, and the designated hotline number was that used by a lawyer referral service in Baton Rouge. The Access to Justice Program, a division of the Louisiana State Bar Association, was designated the point of contact for the hotline and the provision of emergency legal services after the hurricane. The temporary hotline was immediately overwhelmed, as the service previously fielded very few calls per day and was inadequate to handle the huge influx of calls post-Katrina.

The hotline received publicity from TV interviews and newsprint. In addition, FEMA representatives distributed the number to needy and displaced individuals. The Access to Justice Program focused all their efforts on maintaining the hotline, eventually seeking help from Louisiana State University and private law firms for space, volunteers, and infrastructure such as phones, computers, and a case management system. The Access to Justice Program has only recently been able to return to its pre-Katrina focus, coordinating non-profit legal organizations that provide legal assistance to the poor, as its limited staff have been occupied with the hotline. Monte Mollere, the director of the Program, was personally responsible for the hotline and believes it will maintain its present form, as it is especially relevant for those residents of New Orleans who are presently displaced and are attempting to deal with legal issues from across state lines.

The hotline depends on volunteers coordinated through various state bar associations, as those cases which require in-depth legal assistance are frequently distributed to out-of-state attorneys. Thanks to a newly created web-based case

management system, these attorneys can access case materials through a website and coordinate their efforts on-line. Because many of the volunteer attorneys who take the cases are from outside the Louisiana area and are not admitted to the Louisiana bar, they initially faced difficulties in being able to provide needed aid. After some difficulties, the state ultimately enacted a suspension of the usual practice rules to allow non-admitted attorneys to provide limited legal assistance through the hotline, and eventually to do work with 6 recognized legal services agencies.

H. Continuing Pro Bono Efforts

Immediately after Katrina, New Orleans became the focus of national attention and received a flood of volunteer assistance. Although the immediate needs of the city were centered around basic survival, many national legal services organizations recognized the need for legal assistance for the citizens of New Orleans. Law students from around the country organized winter and spring break caravans to provide what help they could, and the bar association was flooded with attorneys looking to volunteer their time. It quickly became clear that volunteers were plentiful but the facilities to organize them and direct their efforts were unprepared to handle the demand. Organizations such as The Pro Bono Project (New Orleans) were looked to as managers of the volunteer effort, but could not handle the flood. As a practical matter, the staff of local pro bono organizations were busy coping with their own personal losses and family matters, and could not be expected to spend their days in an office while their houses stood in disrepair. As a result, many of the volunteers went unused, simply because of a lack of managers to properly direct this valuable resource. The most effective volunteers were those groups that were self-sufficient, and arranged their own housing and facilities and

could independently provide emergency assistance without the help or direction of local pro bono groups.

In addition to lack of organization, it would appear that much of the initial pro bono effort was premature. Legal services have been described as a "luxury" by attorneys in New Orleans, and are not foremost on the minds of individuals who have been ravaged by catastrophic natural disasters. It is only now that displaced citizens or those attempting to rebuild are recognizing the need for legal assistance in family, housing and governmental issues. Succession (probate) and family law cases are on the rise among those seeking help from pro bono associations. The need for assistance in these legal areas is only expected to increase, and it would seem that outside pro bono efforts are waning with each passing day. Americans not exposed to Hurricane Katrina seem to be losing interest in New Orleans, an effect labeled "Katrina fatigue" by some interviewed within the city.

Key steps which could have been taken prior to Katrina to mitigate its effects include communication plans and focusing limited resources on managing outside aid to the greatest extent possible. According to Rachel Piercey, the executive director of The Pro Bono Project, websites and communication systems are essential for organizing the massive volunteer efforts which follow Katrina-level disasters. Availability of volunteers would not seem to be a problem, but the resources to properly use and direct their efforts must be in place prior to the disaster. Identification of contact people at pro bono organizations and law firms is an essential step in reopening the lines of communication after the event. In addition, any disaster plan put into effect must be flexible to allow for the contingencies that will invariably arise during different emergency scenarios.

I. Best Practices

- Centralized list of inmate information (including, at a minimum, name, alleged offense, and case status) and accessible information system with out-of-state backup;
- Systematic recording of any inmate transfer in the courts of an evacuation;
- Willingness and plan to make "value choices," specifically with respect to non-violent offenders in custody;
- Provision for evacuation plans and alternate court-sites;
- Establishment of legal community leaders prior to the disaster who could manage the offer of pro bono legal services from the outside;
- Development of electronic files, including off-site backup system.

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