
Five Years of Commitment:



**Providing Legal Assistance in the Gulf
Post Hurricane Katrina**



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

**DISASTER
SURVIVORS**
LEGAL ASSISTANCE



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This report was compiled by Joe Rich, Director for the Fair Housing Project at the Lawyers' Committee. This document reflects the work of a variety of current and former staff as well as the Mississippi Center for Justice and the Greater New Orleans Fair Housing Action Center. The Lawyers' Committee would also like to thank the numerous law firms and Citibank for providing extensive pro bono assistance that played such a central role in the work of the Initiative.

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The Lawyers' Committee has a deep and ongoing commitment to addressing environmental, housing and economic issues facing communities in the Gulf Coast region.

—Barbara Arnwine, Executive Director

INTRODUCTION

The Lawyers' Committee for Civil Rights Under Law was established at the height of the civil rights movement in 1963 at the request of President John F. Kennedy. African-American victims of the South's long history of discrimination were in desperate need of legal assistance and the Lawyers' Committee provided a unique organization designed to involve the private bar in providing legal services to address racial discrimination. In the housing area the Lawyers' Committee created a Fair housing Project's whose mission is to promote affordable and fair housing and equitable and inclusive housing development.

When Hurricane Katrina hit the Gulf Coast in August 2005, it quickly became apparent that the impact of the storm fell disproportionately on low income and minority households in both Louisiana and Mississippi.¹ Moreover, prior to the hurricane, the Lawyers' Committee had several clients in Mississippi and Louisiana for whom we were providing legal assistance on community development issues. Within two weeks of the storm, a Lawyers' Committee staff attorney was on site helping those clients, and we had established the *Disaster Survivors Legal Assistance Initiative*. Through this program, the Lawyers' Committee has emerged as the leading national civil rights organization in providing legal assistance to victims of the storm. In Mississippi, we immediately joined forces with our Mississippi affiliate - the Mississippi Center for Justice (MCJ). In Louisiana, we formed a close partnership with the Greater New Orleans Fair Housing Action Center in December 2005.²

The primary focus of the Initiative has been on addressing critical affordable housing needs. Hurricane Katrina had a substantial and disproportionate impact on low income homeowners and renters in Mississippi. According to Amnesty International's April 2010 report, decisions made and actions taken at the federal, state and local levels severely impacted Gulf Coast residents' rights to adequate housing, particularly low income communities and communities of color, and created barriers which continue to prevent their return. Even now, almost five years after the storm, there remain significant unmet affordable housing needs that require our continued attention and work.

The scope and quality of the work and accomplishments of the Initiative over the last five years has been consistently high impact and comprehensive in scope.. In addition to the central focus on housing and community development projects, including fair housing advocacy and litigation, legal assistance to local organizations engaged in community development programs and issues relating title to property, the work included assisting victims of the storm in obtaining immediate assistance from FEMA, promotion of environmental justice on the Gulf Coast through education and legal en-

forcement, policy work involving health issues, protection of voting rights in Louisiana, and assistance in meeting the needs of minority business enterprises.

The number and value of the hours of pro bono work contributed by law firms to our Disaster Survivors Legal Assistance Initiative reflect the resources that the Lawyers' Committee is able to bring to an effort like this. Between 2005 and 2009 law firms contributed a total of 34,856 hours valued at \$16,121,000 to the Disaster Survivors Legal Assistance Initiative.

As the five year anniversary of Hurricane Katrina approaches, the region has been beset by a new calamity, the catastrophic failure of the Deepwater Horizon rig. This environmental disaster will have far reaching consequences for years to come and there is an added urgency to our work in the region. The Lawyers' Committee remains committed to providing desperately needed legal support through the Initiative as a vital component of broader efforts to support low income and minority residents of the Gulf as they struggle to rebuild their lives. Going forward, with the support of funders and in partnership with our network of legal volunteers, we will advance and expand upon the activities described in this report.



Section I. Assistance in Addressing the Immediate Needs of Hurricane Victims

One week after Hurricane Katrina, a Lawyers' Committee attorney was on the coast in Mississippi to help clients. By the end of October 2005, we had joined forces with MCJ to provide [the first of many free legal clinics to victims of the storm](#).³ Shortly after that in November 2005, we initiated the first legal challenge to the Federal Emergency Management Agency's (FEMA) many failures after Katrina, one of the only cases challenging FEMA that was successful. From there we concentrated our efforts for the first year after the storm on helping victims of the storm. This work included:

- **Manual for Disaster Survivors:** Added to the stressors of surviving Hurricanes Katrina, Rita and Gustav, survivors were left to navigate the bureaucracy of receiving emergency assistance and to handle the general upheaval to every aspect of their lives. In response, the Lawyers' Committee created and distributed a manual addressing a myriad of areas where their lives were impacted. The manual explained the intricacies of applying for emergency assistance with FEMA, the review process, and the types of benefits for which survivors may be eligible. Instructions on appealing denials of FEMA assistance were included along with a sample letter. The rights of homeless children to receive a public education were explained as well as a discussion of tips on environmental concerns when returning home to guard against toxins (i.e. obtaining purification tablets for water from local health organizations. The relocation rights of affordable housing tenants, warnings on repair scams for homeowners, and tips for renters were also covered. Eligibility and application information on unemployment insurance was explained as well as OSHA protections for workers. Critically, the manual provided a family law section which offered guidance on child custody and child support issues as well as protections for persons who were also survivors of domestic violence. The reader was also provided with contact information for public interest legal service providers, state health care programs and other local organizations that provided assistance to survivors. The recipients of the manual had a wealth of information at their fingertips.
- **Community Education Workshops:** After the initial legal assistance workshop in October 2005, the Lawyers' Committee organized approximately 25 additional workshops in the year after Katrina. These experiences and others are described in a 2006 law review article published by the two Lawyers' Committee attorneys who led this effort -- Jonathan P. Hooks and Trisha B. Miller -- in *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 California Western Law Review 21 - Fall 2006.⁴ From then until the present, we have provided assistance in managing and staffing a continued series of workshops. Individuals who attended the workshops were often connected with local and out-of-state attorneys from our pro bono network to resolve their legal problems.
- **Protection of Low and Moderate Income Renters in Mississippi:** At the very first clinic held in Gulfport in October 2005, we took action to stop the eviction of some 52 families from Edgewood Manor, a Section 8-subsidized apartment complex. The landlord had told tenants that they were all being evicted and had to leave by

October 31st. On the residents' behalf, the Lawyers' Committee and MCJ wrote to the landlord demanding that the landlord cease and desist in his efforts to evict the tenants through threats, thereby stopping the threatened evictions. Information from another legal clinic resulted in us addressing a similar situation at a private complex - Waters Mark -- that threatened over 20 families with eviction. As in the Edgewood case, the landlord abandoned a threat of eviction in response to cease and desist letters and adverse publicity generated by the Lawyers' Committee. The Lawyers' Committee and MCJ continued working to represent the tenants' interests, ensuring that sound repairs were made quickly and stopping tenants from needlessly being displaced from their community.

· **McWaters v. FEMA (E.D. La.)**: Quickly following up on the complete and utter failure of FEMA to provide disaster relief to victims of the hurricane, we filed this landmark class action in November 2005 challenging FEMA's failures to meet its responsibilities under the Stafford Act. In securing the first federal court decision against FEMA's federal housing assistance program, it stands as the most successful of the many challenges to FEMA's failed hurricane response. Most importantly, it provided important relief for victims of the storm. Below is a chronology of the case:

- o On December 12, 2005, the district court partially granted plaintiffs' request for a temporary restraining order, which was amended on January 12, 2006. The Court held that FEMA had violated a mandatory duty required by the Stafford Act by incorrectly requiring some applicants to file Small Business Administration loan applications to receive temporary housing assistance - misinformation that unnecessarily delayed housing for thousands of survivors. The Court enjoined FEMA (1) from requiring applicants for temporary housing assistance to complete a Small Business Administration loan application as a prerequisite for receiving such assistance and (2) from terminating the short-term lodging program prematurely. *See 408 F. Supp 2d 221 (E.D. La. 2006)*.
- o Shortly after the initial order, more relief was achieved through a series of agreements with FEMA which (1) preserved FEMA temporary housing for Katrina evacuees in February 2006, thus stopping FEMA's eviction of close to 100,000 Katrina survivors from hotels; (2) required improvement in the processing of applications for emergency benefits; and (3) required FEMA to provide flexibility in assisting households separated by the storm.
- o A final order was entered by the Court on June 16, 2006. *436 F. Supp. 2d 802 (E.D. La. 2006)*. Reaffirming its initial preliminary order, the court found that FEMA was *not* immune from all judicial review because persons who are eligible for FEMA assistance have a constitutionally protected property interest in receipt of housing assistance pursuant to Fifth Amendment procedural and substantive due process protections. This is a very important precedent for future disaster-related litigation against

FEMA. The court also concluded that FEMA violated the Stafford Act by failing to take steps that were considered mandatory under the Act. While the Court denied many of the other claims primarily because FEMA's actions were deemed discretionary and thus protected by sovereign immunity, it severely criticized the response of FEMA to the hurricane crisis, reflecting the many failures of FEMA and providing important evidence later used in Congress when it examined changes to the existing Stafford Act.⁵

- o On April 24, 2007, the district court approved an agreement of the parties concerning costs and attorneys' fees by which the United States paid plaintiffs \$1.3 million. With its share of the fees, Schulte & Roth, the pro bono law firm which so expertly litigated this case with the Lawyers' Committee, generously created a fund which has supported further Katrina-related work.

- **FEMA Appeals Program:** Early in 2006, working with MCJ, we established a procedure which permitted out of state pro bono attorneys to represent hurricane victims to appeal the denial of FEMA assistance to hurricane victims. This grew into a major pro bono project through which over 300 appeals were placed with over 100 pro bono attorneys from national firms and corporate legal departments.

- **Discriminatory Housing Ads:** In December 2005, we started working closely with the Greater New Orleans Fair Housing Action (GNOFHAC). Our first representation came in December 2005 when we assisted in the filing of complaints with the U.S. Department of Housing and Urban Development (HUD) alleging violations of the Fair Housing Act by five internet providers which posted housing ads for victims of the hurricane containing explicitly discriminatory preferences (e.g., "whites only"). Most of the respondents have since gone out of business, and the matter is closed. Because of this representation, Joseph Rich, the Director of our Fair Housing Project, was asked to testify before the House Financial Services Committee's Subcommittee on Housing and Community Opportunity about fair housing issues on the Gulf Coast in February 2006.

- **Right of Return for Public Housing Tenants in New Orleans:** At about the same time that we filed HUD complaints on behalf of GNOFHAC, we also began representing them in a dispute with the Housing Authority of New Orleans, concerning a breach of a 2003 conciliation agreement with the former tenants of St. Thomas, a New Orleans public housing complex that had been demolished and replaced by a mixed-income project before the hurricane. The Housing Authority had imposed barriers to deter former public housing residents from returning to the redeveloped site both before and after Hurricane Katrina in violation of the agreement. A lawsuit initiated by the Tulane Law Clinic with our

support was successfully settled on July 5, 2007, providing extensive protections for former tenants of St. Thomas.

Actions Concerning FEMA Trailers and Trailer Parks: We took several actions addressing problems that arose with FEMA trailers:

- o During the spring of 2006, we successfully took action to halt FEMA's threats to evict hurricane survivors from emergency trailers in Mississippi and Louisiana. In Mississippi, FEMA had proposed to evict some 3,000 families (out of 38,000 trailers throughout the state) without adequately reviewing the basis for the terminations or providing the families time to demonstrate their eligibility for the housing prior to eviction. FEMA reversed this policy in response to our efforts.
- o Later in November 2007, both FEMA and the City of Gulfport announced plans to close trailer parks. We took the lead in drafting a letter to FEMA Administrator David Paulison urging FEMA to ensure that any resident of a FEMA trailer who is forced to leave a trailer has alternative housing available. Thereafter, FEMA worked more closely with HUD and the State to address this problem.
- o In February 2007, we assisted local advocates in addressing an ordinance passed by Jefferson Parish, LA that was designed to force the removal of FEMA trailers on the property of homeowners before repairs had been made to their homes. Several persons living in these trailers had disabilities which interfered with their efforts to either repair their homes or find permanent housing to replace their prior housing.
- o ***Mitchell, et al. v. City of Pascagoula, Cir. Ct. Miss.:*** On May 25, 2007, we took further action to protect hurricane victims living in FEMA trailers when we and MCJ filed a lawsuit in Mississippi state court on behalf of residents of trailer parks in Pascagoula, Mississippi. In the lawsuit, we challenged a decision by the City of Pascagoula refusing to renew special use permits granted to the owner of three properties used to place FEMA trailers for victims of Hurricane Katrina. There remained a tremendous need for emergency housing for the victims of the hurricane and FEMA assistance had been extended until 2009, but Pascagoula continued to pass resolutions proclaiming that the city remained in a state of emergency directly contradicting their decision to deny the continued operation of these trailer parks. As a result of the lawsuit, Pascagoula halted efforts to close trailer parks.

Protecting Public Housing Tenants on the Gulf Coast: Starting in the summer of 2006, we began working with several groups of public housing tenants in coastal Mississippi who were threatened with eviction from public housing projects which were being sold and replaced with Low Income Housing Tax Credit (LIHTC) developments.

- o In February 2007, Region 8 of the Mississippi Regional Housing Authority (MRHA) served eviction notices on public housing tenants at a public housing project in Pascagoula. At the time, Congressman Maxine Waters was holding hearings in Gulfport on disaster recovery problems. We had one of the tenants provide dramatic testimony at this hearing. At that point, the MRHA halted any further eviction efforts.
- o In March 2007, we were successful in working out an agreement with MRHA to protect these and other public housing tenants so that they were not unnecessarily displaced by the replacement of public housing units with LIHTC developments. We agreed that when the construction of new tax credit developments began, thus necessitating displacement of public housing tenants, the displaced tenants would be provided other public housing units and would receive priority for the Section 8 units in the new tax credit development. In the spring of 2009, several of the new LIHTC development properties were opened and the former tenants received priority for the new affordable units.





Valuable Investment

The number and value of the hours of pro bono work contributed by law firms to our Disaster Survivors Legal Assistance Initiative reflect the resources that the Lawyers' Committee is able to bring to an Initiative like this. Between 2005 and 2009 law firms contributed a total of 34,856 hours valued at more than \$16.1 million to the Disaster Survivors Legal Assistance Initiative.



Section II. Assistance to the Rebuilding Effort on the Gulf Coast

As our efforts to provide immediate assistance to victims of the storm in dealing with the devastation and the failure of the federal government to provide adequate assistance continued, the scope of the work steadily expanded. Into 2006 and 2007, the primary focus of our Initiative shifted to ensuring a just, sustainable recovery through work to assist those on Gulf Coast in rebuilding destroyed or damaged housing.

Hurricane Katrina destroyed over 70,000 units of housing on the Mississippi Gulf Coast - over half of which were occupied by low-income families. Despite sanguine (and largely incorrect) media reports of a resilient Gulf Coast, the reality is that recovery from this destruction has not been achieved and a housing crisis for low-income families continues four and one-half years after the storm. State plans to disburse federal Community Development Block Grant (CDBG) disaster funds were extremely slow in coming and failed to meet CDBG requirements for benefitting low- and moderate-income families.

Below is a listing of actions taken by the Lawyers' Committee to assist local communities and organizations in the rebuilding effort:

- **Monitoring Allocation of the Disaster Relief CDBG Funds to Gulf Coast States:** On December 30, 2005, Congress passed a disaster relief bill which included major funding for Louisiana and Mississippi. A supplemental bill was passed in June 2006 with additional funding, primarily for Louisiana. Ever since, the Lawyers' Committee and MCJ have closely monitored the allocation of the funds Mississippi received to ensure that 50% of the funding went to the benefit of low- and moderate-income persons as required by the legislation. This work started in March 2006 when we wrote a detailed comment letter objecting to the very first \$3.4 billion housing plan of the state because it fell far short of adequately benefitting low- and moderate-income persons. Thereafter, we continued to offer comments and had some success in late 2006 and early 2007 when Mississippi created a more modest housing plan targeted at low- and moderate-income persons.
- **[Mississippi Chapter, NAACP, et al. v. HUD \(D.D.C.\)](#)** In 2007 and 2008, our monitoring of Mississippi's allocation of disaster-related CDBG funds, led to a major lawsuit. It grew out of a state plan first published on September 7, 2007 proposing to divert \$600 million of the federal hurricane relief CDBG money from housing assistance programs to fund a major expansion of the Port of Gulfport.

This plan especially hurt low- and moderate-income persons. The affordable housing crisis continued unabated as evidenced by the fact that over 35,000 people remained in FEMA trailers or other non-permanent housing. Recovery of affordable housing stock was almost non-existent at the time of the diversion. By contrast, the funds to be diverted to expand the port amounted to ten times the cost of the hurricane damage to the port, and the port had already received significant insurance and FEMA funds for repairs.

In September and December of 2007, we drafted a detailed comment letters to Mississippi and HUD on behalf of local and national organizations strongly opposing this proposal. Nonetheless, in January, 2008, the Secretary of HUD approved this proposal even though he explicitly recognized the continuing affordable housing crisis in the approval letter. HUD took the position that it had no discretion but to approve the state's plan, and later, in March 2008, the Secretary of HUD testified before Congress that had he thought he had discretion to disapprove this plan, he would have done so. Thereafter, a revised proposal diverting \$570 million to the Port project was submitted and approved by HUD in November 2008.

On December 10, 2008, the Lawyers' Committee, MCJ, and pro bono attorneys filed a 51 page complaint pursuant to the Administrative Procedure Act against the HUD in the U.S. District Court for the District of Columbia on behalf of the Mississippi State Conference NAACP, the Gulf Coast Fair Housing Center, and several individuals. The complaint alleges that HUD's approval of the diversion of CDBG funds to the port violated the Housing and Community Development Act of 1974, 42 U.S.C. § 5301, *et seq.* because HUD (1) failed to adequately review whether the plan provided the required benefit to low- and moderate-income persons and (2) did not require Mississippi to certify that the plan would affirmatively further fair housing. The complaint details the failure of the State of Mississippi to use the CDBG funds to replenish much needed affordable rental housing stock in three coastal counties directly affected by Hurricane Katrina and documents HUD's consistent approval of multiple waivers sought by the state from the 50% requirement.

The case continues. In January 2010, HUD's motion to dismiss was granted. We have appealed this decision, and our appeal is pending before the U.S. Court of Appeals for the D.C. Circuit. At the same time, we are working closely with both HUD and the State seeking to reach agreement on a recovery plan that will meet the continued unmet affordable housing needs and provide adequate funding to meet these needs.

Legal Assistance to Landowners with Title Problems: As we worked with homeowners to assist them in obtaining hurricane relief benefits, it became apparent that title problems were a major problem in the African-American community on the Gulf Coast. Problems of clouded title in African-American communities are deeply rooted in Mississippi's history of discrimination and segregation. Because of these title problems, many individuals were completely unable to access federal and state hurricane relief government benefits, and grant programs because they were unable to prove ownership of the land on which they lived. Working with pro bono attorneys and MCJ, the Lawyers' Committee mobilized nearly 100 attorneys to represent 116 clients with title problems related to their land. With the assistance of our volunteers, we unlocked over \$1.7 million in hurricane relief grants for homeowners through this Mississippi Title Clearing Initiative.

Expanding Grassroots Participation: The expense of legal services prevented many communities from organized participation in state and local decision making. The Initiative promoted effective community leadership by linking emerging organizations with law firms that could assist with 501(c)(3) applications, bylaws, board oversight, and other basic issues. The need for grassroots organization is all the more urgent in the devastated Gulf Coast and in New Orleans, where powerful interests push a narrow view of economic redevelopment at the expense of minority and low-income communities. This work has included:

- o **Supporting and Enhancing Local Advocacy Networks:** We provided assistance and support for the new STEPS coalition, a group of community-based NGOs across the Mississippi coast working to strengthen the advocacy efforts of low-income hurricane survivors. STEPS has already proved to be a vital force in unifying local community and public interest groups that previously lacked a collective voice to elevate their concerns.
- o **Nonprofit Capacity Building:** The Lawyers' Committee has provided assistance to organizations like Housing 2010, the North Gulfport Community Land Trust, and Turkey Creek Community Initiatives as they strategically reorganize and develop new capacities to face emerging challenges on the post-disaster Gulf Coast. Assistance has included review and revision of critical organizational documents, board trainings, and assistance with strategic planning.

Assisting Communities in the Rebuilding Effort: The Lawyers' Committee has initiated numerous actions to assist homeowners and grassroots organizations in their efforts to rebuild their communities. These include:

- o **Representation of the North Gulfport Community Land Trust (NGCLT):** Created shortly before the hurricane with assistance from the Lawyers' Committee, NGCLT has become a new model for the provision of afford-

able housing across the Gulf Coast. As a Community Land Trust, the organization acquires land in the historic African-American community of Old North Gulfport, builds affordable housing on the land, and then sells the housing (but not the land) pursuant to ground leases. The Lawyers' Committee has provided extensive assistance to this organization throughout its history, including drafting the ground lease documents, assisting with real estate transactions, providing guidance on state and federal government programs, and providing general legal assistance.

To further assist the recovery in this community, the Lawyers' Committee assisted with the placement of an office building for the organization, the first new structure erected in that community in several decades. When it opened, an inspiring celebration in the North Gulfport community that drew hundreds of local residents was held to dedicate the home

Subsequently, we assisted the NGLCT with transplanting two historic houses from other parts of Gulfport, where they would have faced demolition. One of those houses is now occupied by a low-income family, while the other is undergoing rehabilitation. Both received historic preservation grants from a state program related to the hurricane.

- o **Unity Homes Project:** One of our more innovative and potentially far-reaching projects has been assistance to Unity Homes. We provided a complete range of legal services to this entity, an emerging nonprofit whose goal was to provide green, modular, affordable housing for the Gulf Coast after the hurricane at very low cost through an innovative "vertical integration" of the housing production process. Services to be provided by the Initiative included assistance with corporate formation, trademark protection, construction contracts, land-use applications, state licensing and labor issues, and overall project coordination. As discussed above with regard to our work with NGLCT, the first green, modular, affordable house in Gulfport opened in January 2007. This home was erected by Unity Homes.

Our work with Unity Homes then progressed to providing legal assistance in its efforts to create a factory facility to assemble more affordable modular homes. On October 30, 2007, in Columbia, Mississippi, Governor Haley Barbour presided over the groundbreaking ceremony for the Unity Homes green modular affordable housing factory and donated \$1 million to the effort. These efforts continue despite difficulty in obtaining sufficient financing to finish this project.

- o **Neighborhood Redevelopment Planning:** Over the last four years, we have represented African-American organizations in Gulfport, Moss Point, and New Orleans as they reacted to adverse land use proposals and developed their own plans designed to preserve community landmarks and environmental features. We have also advised these communities on the implementation of “Smart Code” land use ordinances as they affect community planning efforts.

- § In 2006, we assisted North Gulfport by obtaining the pro bono assistance of the national planning firm, MIG, in the development of a [comprehensive neighborhood redevelopment strategy](#) for Gulfport’s historic African-American communities. These plans have been of great assistance to local communities in advocating for inclusion in planning and rebuilding processes.

- § The historic and predominantly African-American city of Moss Point suffers from problems of housing loss and environmental injustice. Moss Point is a 70% African-American city with one of the best collections of historic African-American houses on the Gulf Coast. We won a significant victory in 2007 with the adoption of a new historic preservation ordinance for the city. Along with a pro bono law firm, we drafted the ordinance and made a presentation to the Moss Point Board of Aldermen on the benefits of the ordinance. The ordinance created a new Historic Preservation Commission for the city. Through our client organization, we have provided guidance to the Commission in obtaining Certified Local Government status with the State Historic Preservation Office. The city officially received the designation last summer.

- § In New Orleans, we began working in the historic neighborhood of Gert Town on October 31, 2007. With pro bono legal assistance, the community group hoped to form a land trust in this often overlooked neighborhood near Xavier University. We assisted the Gert Town Revival Initiative in the development of strategies to counter top-down planning from the city.



Section III. Fighting Exclusionary Zoning Barriers

One of the biggest obstacles to housing recovery efforts in Mississippi and New Orleans has been zoning barriers to affordable housing for low- and moderate-income persons passed by local jurisdictions. In many instances, the opposition has been racially or ethnically based. Such exclusionary zoning and land use decisions have been a major barrier to affordable housing recovery for low- and moderate-income people. One of the Lawyers' Committee's highest priorities in its Disaster Survivors Legal Assistance Initiative has been directed at this ongoing problem.

By far the highest profile and most important action is [*Greater New Orleans Fair Housing Action Center, et al. v. St. Bernard LA Parish. \(E.D. La.\)*](#), a case demonstrating the extraordinary recalcitrance of a local jurisdiction to affordable housing for low- and moderate-income households, even in the face of federal court orders enjoining exclusionary zoning ordinances. Shortly after Hurricane Katrina, St. Bernard Parish, a 93% white Parish which abuts two virtually all African-American neighborhoods of New Orleans, including the Lower Ninth Ward, passed a series of restrictive land use ordinances, culminating in a September 19, 2006 ordinance that prohibited all but "blood relatives" from renting homes from homeowners. As a result of the close working relationship that we had established with GNOFHAC starting in December 2005, we were immediately contacted by GNOFHAC and asked to represent them in fighting this ordinance. Shortly thereafter on October 3, 2006, we brought this case on behalf of GNOFHAC and an individual plaintiff alleging violations of the Fair Housing Act by St. Bernard Parish. A detailed history of this important case is set out below:

- After the complaint was filed, we obtained pro bono legal assistance and on November 2, 2006, an amended complaint and motion for preliminary injunction was filed. Almost immediately after that, on November 13, 2006, the Parish agreed to the preliminary relief sought - an injunction against any implementation of the discriminatory ordinance. Thereafter, St. Bernard Parish formally repealed the ordinance on December 2006, and, after extensive negotiations, the Court approved a consent decree on February 27, 2008 which formally ordered rescission of the blood-relative ordinance, awarded \$32,500 in total damages to the plaintiffs, and enjoined the Parish from further violations of the Fair Housing Act. On May 15, 2008, a report and recommendation by the Magistrate Judge, subsequently approved by the District Court, awarded over \$116,000 in attorneys' fees and costs to the Lawyers' Committee, the GNOFHAC and Relman & Dane, the pro bono firm working on the case as co-counsel for plaintiffs. *614 F. Supp. 2d 721 (E.D. La. 2008)*

· But the discriminatory actions of St. Bernard Parish did not end with this consent decree. In September 2008, after Provident Realty, a real estate development corporation, had initiated the process of developing four affordable multi-family housing developments in St. Bernard, the Parish passed another ordinance which placed a twelve month moratorium on the construction of all multi-

family housing with more than 5 units. Provident Realty intervened and along with Plaintiffs filed a motion alleging a violation of the consent decree and after a full evidentiary hearing, the District Court entered an in-depth opinion and order on March 25, 2009 granting plaintiffs' motion to enforce, finding that the Parish's intent in "enacting and continuing the moratorium is and was racially discriminatory." *641 F. Supp. 2d 563 (E.D. La. 2009)*.

Intervenors and plaintiffs had filed another motion for contempt on June 9, 2009, alleging that after the March 25, 2009 order the Parish had denied Provident's applications for re-subdivision thus continuing to block Provident's proposed multi-family developments for racially discriminatory reasons in defiance of both the 2008 Consent Order and the Court's Order of March 25, 2009. On August 17, 2009, the District Court found the Parish in contempt and required the Parish's Planning Commission to review Provident's applications at their next meeting. *2009 U.S. Dist. LEXIS 79567 (E.D. 2009)*. At the August 25, 2009 meeting of the St. Bernard Parish Planning Commission, the Commission continued its recalcitrance, treating Provident's re-subdivision applications as major requests and voted to uphold their previous denial of the applications at the close of a hearing where intense public opposition to the proposed developments was expressed. Thus, on August 28, 2009, the intervenors and plaintiffs filed another Motion for Contempt in response to the Parish's failure to comply with the Court's August 17 order and on September 11, 2009, the District Court issued another contempt order, and this time enjoined the Parish from withholding approval of Provident's re-subdivision applications, set a specific time frame for specific actions to be taken by the Parish and ordered that fines of \$5,000 on the first day of noncompliance and \$10,000 a day thereafter be imposed for any failure to meet the required time frame. *2009 U.S. Dist. 88539 (E.D. La. 2009)*.

The Parish complied with the September 11 order, but, at a September 15 hearing, it set a special election for November 14, putting to the voters a referendum to permanently ban the construction of multi-family housing complexes of more than six units in the parish. On October 13, the plaintiffs filed yet another motion for contempt alleging that the Parish Council's decision to place the referendum on the ballot again violated the February 2008 consent decree and the Fair Housing Act. However, before this motion was heard by the court, the Department of Housing and Urban Development informed the Parish that, if they continued to proceed with this new effort to ban multi-family housing, federal funds would be cut off. The Parish then canceled the November 14th election. All the 2009 decisions are presently on appeal to the Fifth Circuit.

In addition, GNOFHAC is investigating other instances of possible violations of the 2008 consent decree and has filed several fair housing complaints with HUD related to this investigation.

In addition to the landmark *St. Bernard* case, the Initiative has been fighting exclusionary zoning actions on the Gulf Coast on several other fronts, including the following:

- **Mississippi Cottage Advocacy:** After Hurricane Katrina, the Mississippi Emergency Management Agency (MEMA) received a grant to develop a pilot project to design, build, and deploy an alternative form of disaster housing. The Lawyers' Committee was one of the first organizations to recognize that the resulting "Mississippi Cottage" program represented an important opportunity for permanent affordable housing in the communities of the Gulf Coast. Working with officials from MEMA and the original designers of the cottage program, the Lawyers' Committee developed a public relations brochure to explain the cottages and dispel rumors that they were simply mobile homes. The brochure was quickly adopted by MEMA itself in its attempt to explain and promote the cottages.

However, local governments greeted this highly versatile affordable housing tool with skepticism and often with open opposition. Working with MCJ, the Lawyers' Committee has worked across the Coast to lay out practical and legal arguments for allowing these cottages to serve as a source of permanent affordable housing. Recently, in the summer of 2009, we assisted MCJ in their filing of fair housing complaints with HUD concerning exclusionary zoning practices by five localities on the Mississippi coast - Gulfport, D'Iberville, Long Beach, Waveland, and Bay St. Louis. A HUD regional office dismissed several of these complaints in early 2010 on the basis that the complainants did not have standing, a decision that is patently wrong in our view. We will be taking further action to seek reconsideration of these decisions by HUD.

- **Promoting Low Income Housing Tax Credit Development in Mississippi:** In March 2007 the City of Gulfport denied approval of several LIHTC developments. This program is the primary federal program for assistance in the construction of affordable housing and was a central part of the Mississippi plan for affordable housing recovery after the hurricane. In April 2007, we prepared a memo to be distributed publicly explaining LIHTC program and its importance to the rebuilding effort. On May 3, the Mayor of Gulfport unveiled a plan which included approval of eight such projects.

Thereafter, we worked to assist the Realtex Company, a Texas-based company that has been a major developer of tax credit housing in Mississippi. This assistance was also extended to Region 8 of the Mississippi Regional Housing Authority (MRHA) which was partnering with Realtex on several LIHTC developments. During these efforts, the City of Gulfport refused zoning approval for two of Realtex's planned developments (Hillside Terrace and Sandstone), the only two that were not placed on the sites of former public housing complexes. Racial NIMBYism appeared to be a major factor in these decisions. This led to Realtex and

MRHA (1) filing an appeal of the zoning denial for Hillside Terrace in a state court action; (2) filing fair housing complaints with HUD concerning these zoning decisions; and (3) threatening a fair housing lawsuit against Gulfport. We assisted Realtex in finding expert fair housing legal counsel. Through these efforts, an agreement was reached by which Gulfport agreed to permit the Sandstone project to go forward.

- **Jefferson Parish, LA Ordinance:** Working with the Greater New Orleans Fair Housing Center and AARP, we prepared a Fair Housing Act lawsuit challenging an ordinance passed by Jefferson Parish in February 2007 which placed a moratorium on the construction of any LIHTC developments in the Parish. This ordinance blocked housing that would attract residents of majority black New Orleans, specifically a development that had been approved in Jefferson Parish to serve elderly African-American residents displaced from an apartment complex in New Orleans East. Subsequently, these residents decided not to go forward with legal action, and this suit was not filed.
- **Other Exclusionary Zoning Ordinances:** We are presently working with GNOFHAC to identify other ordinances adopted by local jurisdictions in the New Orleans area that have prevented affordable housing development. We are aware of several such ordinances and will determine which are most appropriate to attack legally.



Section IV. Protecting the Environment

Another important part of the Disaster Survivors Legal Assistance Initiative has been provided by the Environmental Justice Project of the Lawyers' Committee.

The National Commission on Environmental Justice on the Gulf Coast:

Hurricane Katrina revealed the broad range of environmental threats facing communities across the Gulf Coast - particularly communities of color. Residents were left wondering whether their ground soil was contaminated, whether the state and/or federal government would remediate their land, and whether homeowners and renters would be faced with continued exposure to mold and other toxins when they returned to their homes.

To document and address these issues, the Environmental Justice Project formed the National Commission on Environmental Justice on the Gulf Coast in 2006 to gather information on the environmental concerns of local residents and identify what, if any, actions local, state, and federal agencies were taking to protect communities from hazardous environmental conditions. The Commission held four hearings -in Gulfport, MS, New Orleans, LA, Mobile, AL and Houston, TX. In early 2008, the Commission issued its final report, [*Protecting Vulnerable Coastal Communities: Meaningful Political Action and Strategies For Environmental Justice Advocacy Two Years After Hurricanes Katrina and Rita.*](#)

The report includes the compelling testimony of coastal activists still recovering from Katrina and Rita and provides recommendations to federal and state legislators for securing environmental justice for the coastal residents. Among the recommendations are the following: amend Title VI of the Civil Rights Act to permit use of a disparate impact analysis to prove a violation of the statute; codify Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;" conduct aggressive Congressional oversight of the Environmental Protection Agency and the Army Corps of Engineers' enforcement of environmental laws on the Gulf Coast; and enact stronger state laws governing debris management during emergency responses to protect the health and safety of residents. The report also includes statements and recommendations from experts in the field which serve as a guide to community groups on environmental justice issues, and to local, state and federal agencies for incorporating environmental justice considerations in rebuilding plans. The Commission's work stands as a model for communities across the country seeking to achieve environmental justice.

Opposition to Environmental Permits Sought by the Port of Gulfport and the Mississippi Department of Transportation: As part of the Initiative's work opposing the diversion of \$600 million of CDBG disaster recovery funding from housing programs to the expansion of the Port of Gulfport (discussed above), the Environmental Justice Project supported our clients -- the North Gulfport Community Land Trust and Turkey Creek Community Initiatives -- in opposing the environmental permit sought by the Port in November 2007 from the Army Corps of Engineers. The Port's proposed plan in 2007 included an inland port facility directly adjacent to these predominantly African-American communities. The Port's plan proposed to fill in 70 acres of wetlands near these communities that would have resulted in significant air and noise pollution. On January 25, 2008, we filed an extensive comment letter with the Army Corps of Engineers opposing the permit sought for the entire plan, with special emphasis on the significant adverse environmental impact of the inland port facility on these communities, and urging that an environmental impact study be required before going forward with this \$600 million project. A second letter concerning the port plan focused on the environmental impact that the port would have on the 28th Street Elementary School which was destroyed during the hurricane and was being rebuilt. The letter, pointed out that in addition to impact of the port on the school, the proposed location of the replacement for the school has a history of environmental contamination and requires the filling of at least seven acres of wetlands.

Subsequently, the Port withdrew this application and eventually submitted another plan in November 2008. The new Plan dropped the objectionable inland facility - a major victory for our two clients.⁶ We continue to oppose this proposal in our lawsuit against HUD because of the diversion of housing CDBG funds to the Port. The Port is now preparing a major environmental study for this new plan as part of its application for an environmental permit to the Army Corps of Engineers. The initial application was submitted on April 16, 2010 and is now being reviewed for comments. We will continue monitoring the Port's plans to determine their environmental impact on minority and low- and moderate-income residents of the Mississippi coast.

In addition, our clients have opposed a related proposal for a highway connecting the expanded port facility with Highway I-10. This plan was proposed by the Mississippi Department of Transportation (MDOT) to run the connector road through wetlands near the North Gulfport and Turkey Creek communities. These communities have been fighting to protect the wetlands for close to ten years. In 2009, the EPA brokered an agreement between these African-American communities and MDOT that will permit the highway to proceed. As a compromise, MDOT agreed to acquire more than 1,600 acres of land within the Turkey Creek watershed, much of it wetlands, and turn it over to the state's Department of Marine Resources. The tract will be held in perpetuity by a local land trust and will be off limits to economic development forever. Turkey Creek is content with this com-

promise, but the City of Gulfport is threatening to challenge this agreement. We will be monitoring developments and, if pro bono assistance is needed, we will provide it.

· **Turkey Creek Community Initiatives and North Gulfport Community Land Conservancy, Inc. v. Army Corps of Engineers (D.D.C.)** On August 23, 2007, the Project filed this case on behalf of the community organizations that we had worked with since the before the hurricane -Turkey Creek Community Initiatives and the North Gulfport Community Land Conservancy. It alleged that the Army Corps of Engineers violated the National Environmental Policy Act and the Clean Water Act by issuing a Regional General Permit (RGP) in May 2007 that allows the discharge of dredged and fill materials into wetlands in six Mississippi coastal counties. This region contains many acres of vital wetlands which serve to buffer inland communities from the ravages of hurricanes and inclement weather. It was alleged that the removal of wetlands at the scale authorized by the RGP would significantly worsen flooding when the next hurricane hits the Mississippi Gulf Coast.

Subsequently, the case was transferred to the Southern District of Mississippi, and then, in the summer of 2009, that court granted defendants motion for summary judgment on standing grounds. The court found that, because no applications under the challenged permit had been made, there was no injury in fact to our plaintiffs. It held that without a particular application issued under the Regional General Permit 20 at issue, there is no case or controversy before the Court. However, the litigation played a role in the dearth of applications for permits, which was our ultimate goal.





Section V. Policy Work

The location of the Lawyers' Committee in Washington and its strong relationships with other national organizations have led to the Lawyers' Committee playing a leadership role in responding to important policy issues relevant to the Gulf region. This work includes:

- **Securing Stafford Act Reform:** The Lawyers' Committee joined with other national groups in advocating successfully for passage of legislation in September 2006 which corrected some of the numerous defects in the Stafford Act, the law which governs FEMA disaster assistance. Advocacy for further Congressional changes to the Stafford Act has continued, and, in 2007, Lawyers Committee staff focused on Stafford Act reform legislation that would protect vulnerable populations by strengthening due process and notice requirements for individuals who have received FEMA denials and recoupment letters.
- **Advocating for Continued Federal Hurricane Assistance:** The Lawyers' Committee has actively participated in a coalition of low-income housing advocacy organizations seeking additional legislation to meet the recovery. In advocating for passage of the Gulf Coast Recovery Act of 2007, our attorneys prepared Congressional testimony for an April 24, 2007 hearing before the Senate Subcommittee on Disaster Recovery, which highlighted the procedural and legal barriers to hurricane recovery and policy recommendations for reforming housing assistance.
- **Extending FEMA Temporary Housing:** The Lawyers Committee has also been deeply engaged in ongoing advocacy on behalf of hurricane survivors facing termination of FEMA temporary housing benefits. This included testimony by David Tipson on January 29, 2008 at a hearing held by the House Committee for Homeland Security about the continuing housing crisis in Mississippi and the need for better coordination between FEMA and HUD in providing ongoing housing assistance to victims of the hurricane.
- **Preserving Tenants' Rights:** In November 2005, we advocated with local and national organizations during the special legislative session in Louisiana, focusing on revision of a landlord-tenant law that was hostile to tenants' rights. The bill, as

proposed, would have allowed landlords to dispose of tenants' personal property after the storm without adequate notice or a chance to retrieve the property.

- **Hurricane Information:** In March 2006, the Lawyers' Committee circulated a question and answer brochure entitled "New Orleans Property Owners' Rights After Hurricane Katrina." In November 2007, we prepared a brochure entitled "Your Risks, Your Rights as a FEMA Trailer Resident." Several new versions of the brochures were developed in response to rapidly changing circumstances on the Coast throughout the spring of 2008.
- **Documenting the Housing Crisis on the Gulf Coast:** We have produced two compelling videos that portray the hurricane's devastating effects on local communities, the dire housing situation faced by low-income renters, and the need for immediate action.



Section VI. Other Actions of the Initiative

As described above, most of the Initiative's work has addressed housing and environmental issues. But, other parts of the Lawyers' Committee addressed other important issues, including:

- **Health Care:** The hurricane destroyed many of the clinics that provided the only sources of health care for low-income and uninsured families. As these clinics were rebuilding, the Initiative took an active role in offering legal services to nonprofit health care providers, as follows:
 - o Starting in 2006, the Initiative represented the Women's Health and Justice Initiative in New Orleans, an organization which seeks to offer desperately needed health services to women in the historic African-American neighborhood of Treme.
 - o In 2007 and 2008, the Lawyers' Committee provided legal assistance to the Coastal Family Health Center in building a community health facility in D'Iberville for low-income and uninsured persons.
- **Voting Assistance to Victims of Hurricane Katrina:** The Voting Rights Project's Election Protection program provided extensive assistance to voters from New Orleans during the elections in the spring of 2006. It developed materials for voters, volunteers, and advocates to help each navigate the difficult election system created after the disruption of Hurricane Katrina. On election day, for both the primary and general elections, it mobilized over 200 volunteers who were deployed to monitor over 30 polling places covering 300 precincts in Orleans Parish.
- **Minority Business Assistance: The Second Wind Project in New Orleans:** Second Wind is a grassroots small business advocacy group which the Lawyers' Committee and pro bono partners started putting together shortly after Hurricane Katrina. On March 19, 2007, it held its first legal and business counseling workshop. The workshop was in response to the myriad legal and business needs expressed by Second Wind members. Intake centered around tax, leasing, employee, contract and insurance issues. Small businesses were also able to meet with business coaches from the Urban Entrepreneurship Partnership (UEP) Gulf Coast, which provides individual assessments and in-depth coaching sessions for small businesses affected by the hurricanes. By September 2007, membership was over 1,000 small businesses, and a representative from Second Wind participated on a panel discussing the second anniversary of the hurricane.

Closing of Biloxi Elementary Schools: On April 20, 2010 the Biloxi school board voted to close three elementary schools. This action was taken because of a drop in school enrollment since the hurricane and an accompanying budget shortfall. However, one of the schools voted to be closed is the Nichols Elementary School, which is the school with the highest enrollment of African-American students. Nichols is located on the site of the old Nichols School, which was the historical black school when the schools were segregated by law. Nichols was rebuilt in 2004 and is the newest in the school district in the dual school and the one of the highest performing schools in the entire state. We are working with our MCJ partners and leaders of the Biloxi African-American community in an effort to have the school reopened.



Endnotes

¹The Mississippi Governor's Commission and housing agencies recorded the extent of damage along the 70-mile "invisible coast" of Mississippi, noting that the damage was borne in significant part by both low- and moderate-income homeowners and renters.

²These partnerships are close. Indeed, two of our clients – Rose Johnson of the North Gulfport Community Land Trust and Derrick Evans of the Turkey Creek Communities Initiative – were honored at the Lawyers' Committee's annual Leon Higginbotham Dinner. In addition, they, along with Reilly Morse of the Mississippi Center for Justice and James Perry of the Greater New Orleans Fair Housing Action Center, were honored by the Lawyers' Committee at its annual awards dinner in 2007.

³There are two videos available on the Lawyers' Committee website that document this work:
<http://www.youtube.com/watch?v=fkcqE01mgO8>

⁴See also, Trisha Miller, "The Second Storm: Mass Evictions Threaten Gulf Coast Tenants," *Shelterforce* (Summer 2006), available at <http://www.nhi.org/online/issues/146/secondstorm.html>

⁵The following statement of the Court is an example of this criticism: "[W]hile FEMA may not be *legally* required to notify applicants or recipients of assistance about what FEMA provides, much less provide any data regarding its availability or the requirements for obtaining such assistance, one can only wonder *why* FEMA would choose to *not* do so, as has so often been the case herein. It defies reason that a federal agency whose exclusive provision--and indeed, sole reason for existence--is to assist fellow Americans in a time of natural disaster in meeting their utmost needs would *fail* to notify people of the available services *and* the requirements for engaging those services, in some clear, consistent, and accessible way. It also defies reason that such an agency would be seemingly more concerned with fraud on the individual level than with actually helping those persons whose lives have been literally turned upside down through no fault of their own." *436 F. Supp. 2d at 820*.

⁶However, to our knowledge the plans for the 28th Street Elementary School did not change and it is our understanding that since then a new school has been constructed on the site feared to be contaminated.

Five Years of Commitment: Providing Legal Assistance in the Gulf Post Hurricane Katrina

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