

2006

## Confronting the Rights Deficit at Home: Is the Nation Prepared in the Aftermath of Katrina? Confronting the Myth of Efficiency

Maria Isabel Medina  
*Loyola University New Orleans College of Law*

Follow this and additional works at: <https://scholarlycommons.law.cwsl.edu/cwlr>

---

### Recommended Citation

Medina, Maria Isabel (2006) "Confronting the Rights Deficit at Home: Is the Nation Prepared in the Aftermath of Katrina? Confronting the Myth of Efficiency," *California Western Law Review*: Vol. 43 : No. 1 , Article 3.

Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol43/iss1/3>

This Article is brought to you for free and open access by CWSL Scholarly Commons. It has been accepted for inclusion in California Western Law Review by an authorized editor of CWSL Scholarly Commons. For more information, please contact [alm@cwsl.edu](mailto:alm@cwsl.edu).

**CONFRONTING THE RIGHTS DEFICIT AT HOME: IS THE  
NATION PREPARED IN THE AFTERMATH OF KATRINA?  
CONFRONTING THE MYTH OF EFFICIENCY\***

MARIA ISABEL MEDINA \*\*

I want to extend my thanks to Ruben Garcia and Laura Padilla for organizing this conference and to Ruben and Andrea Johnson, in particular, for asking me to participate in this panel. I am going to address you today, primarily, as a person who has been affected by Katrina. To an extent, I am going to take off my law professor hat, but only to an extent, because I must make clear at the outset that I am not the typical Katrina refugee—I am one of those with resources that most persons affected by Katrina lacked. I am also one of those whose house, for the most part, survived—even though, for a time, it too bore one of the dreaded red stickers the students talked about yesterday.<sup>1</sup> I am one of those whose employer, Loyola University

---

\* These remarks were delivered at the Western Law Professors of Color Conference held at California Western School of Law in San Diego on April 1, 2006. The panel, *Confronting the Rights Deficit at Home: Is the Nation Prepared in the Aftermath of Katrina?*, was organized and moderated by Professor Andrea Johnson, California Western School of Law, and featured Barbara Arnwine, Lawyers' Committee for Civil Rights Under Law; Richard Skinner, Inspector General, Department of Homeland Security; and Sharon Robinson, Inspector General, State of Louisiana.

\*\* Ferris Family Professor of Law, Loyola University New Orleans College of Law; Visiting Professor of Law, Thomas Jefferson School of Law, Spring 2006.

1. Panel presentation at the Western Law Professors of Color Conference at California Western School of Law (Mar. 31, 2006). The Conference opened with a special presentation by University of California, Los Angeles students, who had traveled to the area affected by Hurricane Katrina, titled *Critical Race Praxis: Reports on Race, Rights and Reconstruction from the Gulf Coast*, moderated by Saul Sarabia, University of California, Los Angeles. The students described their work in the Gulf Coast area, including assistance provided to a legal challenge to the city of

New Orleans College of Law, although similarly displaced, managed to keep its systems working and not miss a payroll.<sup>2</sup>

This panel confronts the question: Is the nation prepared in the

New Orleans' decision to demolish homes without sufficient notice to homeowners. The red sticker refers to the red or bright orange notices placed on homes that initial city or FEMA inspections had determined were unsafe to inhabit. *Id.*

2. See Kevin W. Wildes, *After Katrina: Two Presidents Reflect*, CHRON. HIGHER EDUC. (Wash., D.C.), Apr. 21, 2006, at B12 (Loyola President describing his decision to keep salaries going despite the University's closure). Many persons had an almost immediate loss of income because their employer lost its business or was not able to get back up quickly, and so might have suffered payroll interruptions. The unemployment rate in Louisiana went from 5.6% in August 2005 to 12.1% in September 2005. S. COMM. ON HOMELAND SEC. & GOV'T AFFAIRS, 109TH CONG., HURRICANE KATRINA: A NATION STILL UNPREPARED 2-1 (2006) [hereinafter SENATE REPORT], available at <http://hsgac.senate.gov/files/Katrina/FullReport.pdf>. Education at all levels was hit hard. For example, universities like Dillard University and Xavier University terminated a number of tenured faculty almost immediately. See April Capochino, *Many N.O. Universities Forced to Slash Positions*, NEW ORLEANS CITY BUS., Nov. 21, 2005, <http://www.neworleanscitybusiness.com/viewFeature.cfm?recID=137>; April Capochino, *Colleges Downsize Staffs To Save Money*, NEW ORLEANS CITY BUS., Nov. 21, 2005, at 8, available at <http://www.neworleanscitybusiness.com/viewStory.cfm?recID=13975>; Katherine S. Mangan, *2 Colleges Hit by Katrina Cut Their Staffs by over Half*, CHRON. HIGHER EDUC. (Wash., D.C.), Nov. 11, 2005, at A1; Coleman Warner, *Xavier Slashes Jobs in Wake of Katrina*, TIMES-PICAYUNE (New Orleans), Oct. 29, 2005, Metro, at 1. Subsequently, Tulane University cut academic programs, terminated tenured faculty, and terminated a number of staff positions. Michael Janofsky, *Lean Tulane To Reopen Its Campus Next Month*, N.Y. TIMES, Dec. 9, 2005, at A18. Loyola University also cut programs, tenured faculty, and staff at the end of the 2005-2006 academic year. Piper Fogg, Eric Hoover & Katherine S. Mangan, *Students Return to Campuses That Are Forever Changed*, CHRON. HIGHER EDUC. (Wash., D.C.), Jan. 20, 2006, at A20; Piper Fogg, *Storm Surge: Professors at Loyola U. New Orleans Thought They Had Dodged Katrina. They Thought Wrong*, CHRON. HIGHER EDUC. (Wash., D.C.), July 7, 2006, at A10. All institutions are the subject of an American Association of University Professors investigation. Piper Fogg, *New Orleans College Presidents Decline To Meet With AAUP Over Layoffs*, CHRON. HIGHER EDUC. (Wash., D.C.), Sept. 1, 2006, at A22; Andrew Mytelka, *New Orleans Colleges Meet With AAUP*, CHRON. HIGHER EDUC. (Wash., D.C.), Sept. 8, 2006, at A9. A few days after the hurricane closed the school's operations, Loyola's law school accepted a generous offer by the University of Houston Law Center to continue its fall semester at Houston's facility, and law students who chose to attend were able to complete their fall studies with Loyola in Houston. *Hurricane Katrina: Colleges Pay Most Workers—If They Can Be Found*, CHRON. HIGHER EDUC. (Wash., D.C.), Sept. 23, 2005, at A10.

aftermath of Hurricane Katrina? That question contains another question: Prepared for what? Another hurricane? A terrorist attack? An outbreak of a deadly virus? An earthquake? I can tell you how the people of New Orleans would answer the question: prepared for another hurricane at some point during this coming hurricane season? And I can tell you how they would answer, then, the original question. Katrina and her aftermath raise serious questions about two issues—how the United States deals with its poor and whether its governmental institutions are as capable and efficient as we have tended to believe they are.

Natural disasters as a rule do not discriminate on the basis of race, color, gender, or wealth, and Katrina, in this regard, was no different from most natural disasters. The surge of water brought by the storm together with, apparently, faulty design and construction of the levees built to protect the greater metropolitan New Orleans area<sup>3</sup> resulted in a number of breaches along the Industrial Canal levee, which flooded the Ninth Ward, a predominantly poor, black area of the city, St. Bernard Parish, a predominantly white area, and New Orleans East.<sup>4</sup> Breaches at the 17th Street Canal and the London Avenue Canal flooded and devastated predominantly white, middle-class, and wealthy parts of the city—the Lakeview area, parts of Old Metairie, and parts of uptown New Orleans, including Tulane University—as well as financially, racially, and ethnically diverse areas of the city like Broadmoor, Gentilly, and Mid-City.<sup>5</sup> The devastation that the storm visited on the city left thousands of persons of all races, ethnic backgrounds, financial status, class, and ages without homes, in some cases temporarily, and in many others, permanently.<sup>6</sup>

---

3. SENATE REPORT, *supra* note 2, at 4-4 to 4-7.

4. *Id.* at 4-5. For narrative accounts by survivors of the effect of the hurricane as it struck the area, see *id.* at 1-3 to 1-14. See also DOUGLAS BRINKLEY, *THE GREAT DELUGE: HURRICANE KATRINA, NEW ORLEANS, AND THE MISSISSIPPI GULF COAST* (2006); JED HORNE, *BREACH OF FAITH: HURRICANE KATRINA AND THE NEAR DEATH OF A GREAT AMERICAN CITY* (2006).

5. See SENATE REPORT, *supra* note 2, at 4-6; Brenda Lloyd, *New Orleans Rebuilds, Rebounds*, *TIMES-PICAYUNE* (New Orleans), Aug. 21, 2006, *Metro*, at 3; see also Ivor L. van Heerden et al., *Initial Assessment of the New Orleans Flooding Event During the Passage of Hurricane Katrina* (2006) (unpublished manuscript, on file with author).

6. See SENATE REPORT, *supra* note 2, at 2-1.

As of March 20, 2006, 1464 deaths in Louisiana have been attributed to Katrina.<sup>7</sup> At least 300,000 homes were destroyed or rendered uninhabitable.<sup>8</sup> One hundred eighteen million cubic yards of debris are estimated to have been created by Katrina.<sup>9</sup> Losses are estimated at \$125-150 billion.<sup>10</sup>

The students in the opening session referred to the disconnect in the New Orleans community between how poor blacks have been treated or the resources they have had access to, and the more affluent white or black New Orleans community.<sup>11</sup> To some extent, the disconnect reflects a racial divide; at least, that is how national media have depicted it.<sup>12</sup> The disconnect, however, is of grander scope and bears not just on race, but, ultimately, on wealth. In every major metropolitan American area, there is a community that is impoverished; in New Orleans, its face is primarily black, although there are many white, Vietnamese, and Latino poor in New Orleans as well.<sup>13</sup> These are communities that had been forgotten in New Orleans long before Katrina made landfall. These communities had been forgotten by a city government that is bi-racial, headed by Mayor Ray Nagin, an African-American ex-businessman elected to his first political office in 2002 who pledged to clean up the corrupt political culture of New Orleans, and a city council, which has been predominantly African-American for two decades.<sup>14</sup>

---

7. Louisiana Dep't of Health & Hosps., Hurricane Katrina Deceased Reports (Aug. 2, 2006), <http://www.dhh.louisiana.gov/offices/page.asp?ID=192&Detail=5248>.

8. SENATE REPORT, *supra* note 2, at 2-1.

9. *Id.*

10. *Id.* at 2-1, 2-2.

11. *See supra* note 1.

12. *See, e.g., Live Benefit Includes Appeals—And Unscripted Criticism*, USA TODAY, Sept. 3, 2005, [http://www.usatoday.com/life/people/2005-09-03-kanye-west\\_x.htm](http://www.usatoday.com/life/people/2005-09-03-kanye-west_x.htm).

13. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 12 tbl.10 (2006), available at <http://www.census.gov/compendia/statab/population/pop.pdf>.

14. City of New Orleans, <http://www.cityofno.com> (last visited Nov. 9, 2006); *see also* JOHN MCQUAID & MARK SCHLEIFSTEIN, PATH OF DESTRUCTION: THE DEVASTATION OF NEW ORLEANS AND THE COMING AGE OF SUPERSTORMS 142-44 (2006).

These are communities that lack the resources to prepare adequately for a disaster; to evacuate; to maintain themselves in a different location after having had to abandon their home and all their possessions for a lengthy period of time; to return home, not once but many times, to arrange for repairs, rebuilding, reconstruction; and to deal with insurance companies, mortgage companies, creditors, schools, and the myriad of institutions that persons who have had to abandon homes for a lengthy period of time have to do. We saw the face of this community in New Orleans on national television the first week of September last year. But this is a community that exists in Houston, Miami, New York, Chicago, Minneapolis, Kansas City, Washington, D.C., Los Angeles, and San Diego. We have ignored these communities to our peril, and Katrina should have made us sit up and take notice.

The nation, as a whole, is suffering a complete disconnect between the reality of Katrina and what Katrina should have made us realize. No, we are not prepared in the aftermath of Katrina. We are not adequately prepared to face, deal with, and recover from a major disaster, whether natural or man-made. The lessons we should have learned, or thought we had learned, from the failure of our systems on 9/11, have not been implemented, and it appears unlikely that the massive failure of government at all levels that Katrina represents will not visit us again. Many of the governmental failures identified in the response to 9/11—failures of communications, leadership, collaboration between agencies and planning—played a role again in the governmental responses to Katrina. Moreover, Katrina was no surprise—the likelihood that a storm much more devastating than Katrina would strike the New Orleans area had been predicted and discussed in the New Orleans media for some time before Katrina hit.<sup>15</sup>

Let me tell you a story. It is a story about citizens and refugees, of the national and international variety, and a story about hurricanes, always good for color and drama. It is a story about three hurricanes.

Take a step back in history. It is night on September 9, 1965, and

---

15. *Washing Away*, TIMES-PICAYUNE (New Orleans), June 23-27, 2002, available at <http://www.nola.com/hurricane/?/washingaway/>. In fact, FEMA had staged a practice hurricane event with state and city officials entitled “Hurricane Pam” only the previous year. See SENATE REPORT, *supra* note 2, at 8-1 to 8-9.

Hurricane Betsy, a category four hurricane when it hits Grand Isle, the lowest point on the Louisiana Gulf Coast, hits New Orleans as a category three hurricane, packing winds of 125 miles per hour.<sup>16</sup> Betsy drove a storm surge into Lake Pontchartrain that flooded parts of the Lower and Upper Ninth Ward, and Arabi and Chalmette, low-lying areas beneath the city.<sup>17</sup>

I remember Betsy. I was a child at the time, and my family lived in the Iberville federal housing projects in downtown New Orleans. We were not U.S. citizens—we were immigrants, refugees from Cuba, who had settled in New Orleans in late 1961. I arrived as a student on July 21, 1961, and at some point in time was reclassified as a refugee. Subsequently, I adjusted to the status of permanent resident alien. I imagine that for some period of time I might have been illegal, although Congress was very generous with Cubans and cured any illegality of this early crop of Cuban immigrants fairly quickly.

The point is we were poor. My father had just arrived from Cuba. We had a rickety old car that might have made it out of the city, but no one was willing to try. We had no resources to speak of—we were on government aid, although my parents worked. I remember there was talk of evacuation but it did not include us. And so we stayed. I remember not sleeping that night until the worst of the hurricane was over. The miracle was those projects came through unscathed. We did not evacuate, and I suspect most of the other inhabitants of the projects did not either.<sup>18</sup> Not because we weren't scared. Not because we didn't want to. Simply because we couldn't.

---

16. See SENATE REPORT, *supra* note 2, at 6-1.

17. Craig E. Colten, From Betsy to Katrina: Shifting Policies, Lingering Vulnerabilities, presented at MaGrann Research Conference (Apr. 2006) (unpublished manuscript), available at [http://geography.rutgers.edu/events/magrann\\_conference/2006/\\_papers/colten.pdf](http://geography.rutgers.edu/events/magrann_conference/2006/_papers/colten.pdf); see David Snyder, *Great Flood Surge Came Many Ways*, NEW ORLEANS STATES-ITEM, Sept. 13, 1965, at 1. One of the lessons we have learned from Katrina is the difference forty years of coastal erosion and wetlands loss makes to Louisiana's ability to weather storms. Were a storm like Betsy to hit today, damage would be much more severe.

18. The mayor of New Orleans at the time, Victor Schiro, did not call for a mandatory evacuation of the city. See MCQUAID & SCHLEIFSTEIN, *supra* note 14, at 55-58. Few people, in fact, appear to have evacuated. *Id.* There was little advance warning of the hurricane, however, and it was still common practice to open emergency shelters within the city. See Jack Wardlaw, *Hurricane Moving To Strike Southwest La. Coast Tonight*, NEW ORLEANS STATES-ITEM, Sept. 9, 1965, at 1.

But I remember seeing the waters high on Elysian Fields in the city. I have never forgotten the sight. It took ten days to drain the city in 1965.<sup>19</sup> At least seventy-five people died.<sup>20</sup> At the time, Betsy was the costliest hurricane in the history of the United States.<sup>21</sup> It was Betsy that prompted Congress to authorize a ring of levees around the city to protect it from future storms.<sup>22</sup> These are the same levees that failed when Katrina hit.

Flash-forward to another September, this time in 1998, and another hurricane, Georges, appears headed toward the city.<sup>23</sup> I am a law professor now and live in uptown New Orleans, the section of the city where two universities are, including Loyola. I'm no longer an alien or refugee in 1998. I'm a citizen. In some ways, I fit the classic first generation immigrant mold. In my youth, I completely accepted the American dream. Upon reaching the age of eighteen, I naturalized—became a citizen. So in 1998 and in 2005 I am a citizen. But my mother is not a citizen. She has been plagued by ill health all her life—she has never desired to, nor gone through, the process of naturalization.

I live in an area that is considered at risk for flooding, but my house, raised approximately three to four feet from the ground has, apparently, never flooded. As far as I'm concerned, though, the whole city is a potential flood risk, sandwiched in as it is between the waters of Lake Pontchartrain and the great Mississippi, a few blocks away from my home. Georges is not a huge, bad storm. I know my home made it through Betsy, and I decide this time to ride the storm out.

---

19. See Jack Wardlaw, *City Near Victory in Flooding Battle*, NEW ORLEANS STATES-ITEM, Sept. 16, 1965, at 1.

20. See Colten, *supra* note 17, at 2.

21. *Hurricane Betsy Disaster of September 1965: Hearings Before the Special Subcomm. to Investigate Areas of Destruction of Hurricane Betsy of the H. Comm. on Public Works*, 89th Cong. 7 (1965); see also HORNE, *supra* note 4, at 20-21.

22. Flood Control Act of 1965, Pub. L. No. 89-298, § 204, 79 Stat. 1073, 1077; see *Army Corps of Engineers, Lake Pontchartrain and Vicinity Hurricane Protection Project: Hearing Before the Subcomm. on Energy and Water Development of the H. Comm. on Appropriations*, 109th Cong. 1 (2005) (Statement of Anu Mittal, Director Natural Resources and Environment), available at <http://www.gao.gov/new.items/d051050t.pdf>.

23. *Hurricane Georges: The Day After*, TIMES-PICAYUNE (New Orleans), Sept. 29, 1998, <http://www.nola.com/hurricane/index.ssf?/weather/georges/index.html>; see HORNE, *supra* note 4, at 15.



My extended family gathers in my home, as we decide it is the house most likely to survive the storm. We are all counting that it will not be a direct hit. And we are right—Georges veers off to the east and hits Biloxi, a town in Mississippi on the Gulf Coast.<sup>24</sup> That night I gather my two boys on my bed and try to get them to sleep. The house shakes the entire night. Though it is not a direct hit, Georges leaves New Orleans with damage.<sup>25</sup> The next morning we are up—trees and electrical wires are down, including a huge branch off my over 100 year old elm tree in my backyard, which comes down across the street and manages to spare any of the houses on the other side. Traffic signals are out; power is out; and telephone service is out. Mayor Marc Morial declares a curfew almost immediately, as reports of looting and fires start to come through.<sup>26</sup> Mayor Morial used the Superdome as an evacuation center, and those people are not allowed out after the storm because of the curfew.<sup>27</sup> “I don’t feel safe in here. I don’t want to stay another night.’ . . . ‘I would have taken my chances with the water if I knew it’d be like this. I should have never come to this dump,’” one of the residents kept inside the dome is quoted as saying in the *Times-Picayune* the next day.<sup>28</sup>

It is days before power is restored for some in the community, and days before the trees are cleared. For the first time, I become cognizant of the fact that it is not just the actual storm that is to be feared, but its aftermath. I resolve that I will never ride out another hurricane of any strength in the city. From now on, we evacuate.

Fast forward now to August 27, 2005, the day that the New Orleans community first hears that Katrina may be headed our way. I don’t hear about it until that night when a neighbor calls me with the news. I go to sleep hoping that its track veers overnight. We have

---

24. HORNE, *supra* note 4, at 15.

25. See John McQuaid & Mark Schleifstein, *The Big One: A Major Hurricane Could Decimate the Region, but Flooding from Even a Moderate Storm Could Kill Thousands*, TIMES-PICAYUNE (New Orleans), June 24, 2002, National, at 1; Steve Ritea, *Lingering Aftermath: Many Georges Victims Not Home for Holidays*, TIMES-PICAYUNE (New Orleans), Dec. 27, 1998, Metro, at 1.

26. James Varney, *Curfew Traps Thousands in City Shelters*, TIMES-PICAYUNE (New Orleans), Sept. 29, 1998 <http://www.nola.com/weather/georges/tpm092998h.html>.

27. *Id.*

28. *Id.*

already evacuated once during the summer of 2005, and we really don't want to have to do it again.<sup>29</sup> But Saturday morning all of the computer models have it heading our way and it's looking like it could be a direct hit. It takes me most of the day to find a hotel that would take the animals, and arrange for this second evacuation, and it is not until three in the afternoon that we find ourselves on the interstate headed, this time, to Little Rock, Arkansas. I am comforted the next day to hear that the President has promised all of the assistance we will need.<sup>30</sup> He has already acted, I think; we are safe. Everyone is on top of this one, I think. I am afraid of what lies ahead for my city, but I trust in the levels of government we have—city, state and federal. Traditionally, local government is primarily responsible for evacuations and first responses to a natural disaster. The National Weather Service predicted that Hurricane Katrina would be a direct hit to the New Orleans area at least by Saturday, August 27, at 7:30 a.m. At 1 p.m., Mayor Ray Nagin declared a state of emergency and stated he would issue a voluntary evacuation order. He also indicated that the Superdome would be open as a shelter of last resort. The mayor did not order a mandatory evacuation order until 9:30 a.m. the next morning, after repeated urgings by Max Mayfield, Director of the National Hurricane Center.<sup>31</sup> But the city was not ready to execute a mandatory evacuation order, and there was no plan for transporting the many who had no transportation out of the city and could not afford several days stay in a hotel.<sup>32</sup>

I am disturbed by the fact that it has taken our mayor a long time to declare a mandatory evacuation. I am disturbed that once again we are telling people to go to the Superdome.<sup>33</sup> I don't understand why we are not evacuating the poor—those who cannot afford to evacuate

---

29. Hurricane Dennis threatened the New Orleans area in July 2005. See Bruce Nolan, *The Decision To Evacuate Doesn't Come Easily*, TIMES-PICAYUNE (New Orleans), July 9, 2005, National, at 1; MCQUAID & SCHLEIFSTEIN, *supra* note 14, at 156-57.

30. Press Release, The White House, President George W. Bush, Statement on Federal Emergency Assistance for Louisiana (Aug. 27, 2005), available at <http://www.whitehouse.gov/news/releases/2005/08/20050827-1.html>.

31. MCQUAID & SCHLEIFSTEIN, *supra* note 14, at 165, 171-77.

32. SENATE REPORT, *supra* note 2, at 1-4, 1-5.

33. See Mark Schleifstein, *Morial, State Dispute Dome as Shelter*, TIMES-PICAYUNE (New Orleans), June 2, 1999, Metro, at 2.

on their own. I am disgusted when I see our sheriff saying that we are not going to evacuate the prisons.<sup>34</sup> We know better. Or do we?

After Hurricane Georges, the *Times-Picayune* did a four-part series on hurricane response. Among the issues covered were the necessity to evacuate, the problems that a massive evacuation of the New Orleans area posed, the fact that many residents of this poor city could not evacuate on their own, and the fact that serious doubts existed as to whether the levees (any levee) could prevent serious flooding in the case of a direct hit by a serious storm.<sup>35</sup>

We have now poured millions, I think, into studies, investigations, and reports—but we knew—we knew way in advance what, potentially, was headed our way.<sup>36</sup> But even on Sunday, I feel somewhat secure. The federal government is behind us, I think. I know my city is a dysfunctional city—like many other American cities. Our infrastructure is weak—troubled by incompetence, corruption and political infighting. But I'm comforted because I still believe in the myth you see. 9/11 did some damage to the myth—but I know we've all been busy coming up with disaster plans and we've studied emergency response as it's never been studied before. I think we are going to do better this time, because we have advance notice—not too much advance notice, but some. And we have expertise in reconstruction, don't we? We helped to reconstruct Japan, Germany, and now Iraq?

If people come down to build houses and restore power, telephone, and cable service to communities in New Orleans, and the rest of the Gulf Coast communities devastated by Katrina, I think we can guarantee that for the most part they won't be bombed, fired upon, or be subjected to harassment.

What do we need? We need houses. We need stop lights that

---

34. See Gordon Russell, *Nagin Orders First-Ever Mandatory Evacuation of New Orleans*, TIMES-PICAYUNE (New Orleans), Aug. 28, 2005, [http://www.nola.com/katrina/updates/index.ssf?/mtlogs/nola\\_TimesPicayune/archives/2005\\_08\\_28.html](http://www.nola.com/katrina/updates/index.ssf?/mtlogs/nola_TimesPicayune/archives/2005_08_28.html).

35. *Washing Away*, *supra* note 15.

36. In 2004, FEMA conducted, with Louisiana and New Orleans officials, a week-long simulation of a category three hurricane hitting the New Orleans area, Hurricane Pam. See SENATE REPORT, *supra* note 2, at 4-5; BRINKLEY, *supra* note 4, at 18-19; HORNE, *supra* note 4, at 51, 147; MCQUAID & SCHLEIFSTEIN, *supra* note 14, at 138-40.

work. We need power, cable, and telephone service. We need garbage pickup. We need schools that do not reek of mold and that offer basic educational competence to our students. We need mail service. We need competent law enforcement that doesn't pose the same kind of risk to residents that criminals do. We need to move beyond the racial and ethnic divide that has too often driven city, state, and national politics.

When the media referred to the Katrina evacuees as "refugees," there was an outcry in the African-American community. Critics complained evacuees were citizens, not "refugees" or "aliens" and, thus, entitled to better treatment than they received at the hands of the government.<sup>37</sup> This is not the first time writers, legislators, or the media have referred to hurricane or disaster victims as "refugees."<sup>38</sup> Persons affected by Hurricane Betsy, the Mississippi River valley floods of 1927, and other natural disasters were referred to as "refugees."<sup>39</sup> The term is a legal term of art under international and federal law, but it is also a term that in the common vernacular is used to refer to those who are seeking shelter from some type of disaster in a place other than their home. Even the farmers fleeing the dust bowl in the 1930s, indelibly etched into the American memory by John Steinbeck's *Grapes of Wrath*, were referred to as "refugees" by newspapermen.<sup>40</sup> It should not be surprising that in a country where citizenship, rather than personhood, threatens to become the demarcation line for the possession of rights, even basic human rights, the use of the term "refugee" should be viewed by African-Americans as something of a disparagement of their basic rights under the American system of law. The question remains: Are those that see the issue as one of citizenship really suggesting that only citizens were entitled to rescue and humane treatment? We are facing this question

---

37. See MICHAEL ERIC DYSON, *COME HELL OR HIGH WATER: HURRICANE KATRINA AND THE COLOR OF DISASTER* 176 (2006); see also Michael Ignatieff, *The Broken Contract*, N.Y. TIMES, Sept. 25, 2005, Magazine, at 15.

38. See JOHN M. BARRY, *RISING TIDE: THE GREAT MISSISSIPPI FLOOD OF 1927 AND HOW IT CHANGED AMERICA* 184-86 (1997).

39. SENATE REPORT, *supra* note 2, at 1-11; BARRY, *supra* note 38, at 184; HORNE, *supra* note 4.

40. Frank J. Taylor, *California's Grapes of Wrath*, FORUM, Nov. 1939, at 232-38 reprinted in JOHN STEINBECK, *THE GRAPES OF WRATH: TEXT AND CRITICISM* 457 (Peter Lisca & Kevin Hearle eds., 2d ed. 1997).

today in the United States in a number of contexts, not just in terms of our response to natural disasters. We owe it to ourselves and our national consciousness to more thoroughly analyze and inform our answers.

We need loans to rebuild. People who cannot afford to come back on their own but who want to come back need assistance getting back. We need coastal restoration efforts that address the damage that years of natural gas and oil drilling have done to the Louisiana coast.<sup>41</sup>

We need levees that work and that are maintained. We need an evacuation plan that enables everyone in the area at risk to seek safe haven. Over a million people evacuated the New Orleans area before Katrina struck land. One hundred thousand, however, remained behind.<sup>42</sup> It is expensive to evacuate, and it is stressful. One has to evacuate knowing that the storm may, at the last moment, veer off the predicted path. What happens when the city is asked to evacuate once, twice, three times during a hurricane season? How many of those who evacuate the first time evacuate the third, if the first two have been misses? If it is a challenge for law professors (accompanied by three dogs, a cat, and two kids) to evacuate more than once a season, how will low-income or poor people handle it? If the New Orleans area is to survive in the long-term, we need to come up with a system that supports and facilitates evacuations in the face of significant storms.

We have not gotten these things yet, and we face another hurricane season come June 1. Is American efficiency a myth? Where are the energy, imagination, will, and drive that made the United States one of the earth's leading countries? Will we continue to ignore the plight of the poor and to deny them basic dignity? Storms don't discriminate on the basis of race, color, gender, or wealth—but people and governments do.

---

41. See Alan Scher Zagier, *Deep Trouble: Oil's Louisiana Legacy*, NAPLES DAILY NEWS (Florida), Oct. 1, 2003, <http://web.naplesnews.com/03/10/naples/e1666a.htm>.

42. SENATE REPORT, *supra* note 2, at 1-5.