

KATRINA DISASTER FAMILY LAW: THE IMPACT OF HURRICANE KATRINA ON FAMILIES AND FAMILY LAW

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INTRODUCTION

When Hurricane Katrina slammed into New Orleans and spread through the Gulf Coast on August 29, 2005, the city began to flood when the levees broke.¹ As a result, more than a thousand persons died, lives were devastated and almost incalculable losses were suffered.² At least 80% of the city's buildings and infrastructures—homes, stores, schools, libraries, police and fire stations, city and state museums, office buildings, hotels, restaurants, highways, bridges, and levees—were totally destroyed.³ Almost four years after the disaster, the city's population is approximately two-thirds of what it was before Hurricanes Katrina and Rita and the subsequent levee breaches (collectively the Storm).⁴ Most of the homes, stores, schools, and infrastructure destroyed in the city's poorer, African-American communities, such as the Lower Ninth Ward, still lay in

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The Authors dedicate this work to all the families who struggle every day in New Orleans to re-build their lives devastated by Hurricane Katrina and those who remain dispersed and displaced in the Katrina Diaspora (the Diaspora comprises the cities and regions across the nation to which several hundred thousand residents of New Orleans were evacuated, and where tens of thousands still remain in temporary or perhaps permanent displacement).

1. See John McQuiaid, *Katrina Trapped City in Double Disasters*, TIMES-PICAYUNE (New Orleans), Sept. 7, 2005, n.p., available at 2005 WLNR 14616487; David Oshinsky, *Hell and High Water*, N.Y. TIMES, July 9, 2006, at 71.

2. See Bob Warren, *Revised Tribute to Storm Victims to Debut: New St. Bernard Slab Fixes Names, Spelling*, TIMES-PICAYUNE (New Orleans), Aug. 24, 2008, at 1, available at 2008 WLNR 15928834 (noting that the State "Department of Health and Hospitals has put Katrina's death toll in Louisiana at 1,464").

3. See Oshinsky, *supra* note 1 (noting that the storm's surge led to 80% of the city being under water).

4. Compare Matt Scalian, *Orleans Population Surpasses 300,000*, TIMES-PICAYUNE (New Orleans), Mar. 19, 2009, at 1, available at 2009 WLNR 5172708 (noting that "Orleans continued a strong growth . . . for a 2008 total of 311,000 residents"), with Paul Rioux, *St. Bernard Rebound Tops Census: Fastest-growing Parish in Nation Swells by 43%*, TIMES-PICAYUNE (New Orleans), Mar. 20, 2008, at 1, available at 2008 WLNR 5381322 (noting a pre-Storm population in New Orleans of 450,000).

ruins.⁵

These unprecedented events precipitated a massive and destructive impact on the people of New Orleans and the surrounding parishes. Importantly, this situation is not over or “fixed”—it very much continues today. While much has been written about the social cost of Katrina and the floods,⁶ sparse attention has been given to the Storm’s particular impact on women, children, and families. This Article directly addresses the impact that the Storm has had on the families of New Orleans and particularly examines the role of family law, and the local family law courts in attempting to remedy many of the needs and challenges faced by these families.

As attorneys and legal activists who have been working in post-Katrina New Orleans, we have witnessed the impact that the Storm has had on the families of this devastated city. We have seen the physical, social, and economic trauma of families who have returned and those still displaced in cities and rural areas across the nation, in what we call the “Katrina Diaspora.” We have interviewed Orleans parish family law judges, advocates for children and families, and talked with and advocated on behalf of dozens of women and children impacted by the Storm. Each day we see the ruins and destruction of this shattered city, the open wounds as evidence of the physical devastation, and the painful, agonizingly slow, uneven rebuilding and recovery process.

Our recognition of the extreme, unprecedented consequences of the Storm on families and family law is therefore based on our experiences, observations, and the personal empathy generated by our living in this post-Katrina reality. This Article is culled from these experiences, observations, and our own advocacy service in post-Katrina New Orleans.

Specifically, the Article discusses the family related legal issues raised by this tragedy, the effect and response of Louisiana family law, and the need for family law reform and protections in the recovery process. While this discussion and exploration is important for all states, parishes, and municipalities impacted by Katrina,⁷ the focus of this Article is on the city of New Orleans. From the start, we note with a caution that our work is limited by a paucity of recent official reports, government measures, and statistics that document the relief and

5. See AMY LIU ET AL., BROOKINGS INST. METRO. POL’Y PROGRAM & GREATER NEW ORLEANS CMTY. DATA CTR., *THE NEW ORLEANS INDEX, JANUARY 2009: TRACKING THE RECOVERY OF NEW ORLEANS & THE METRO AREA* 6, 23 (2009) (noting both a continued “widespread destruction” from Katrina and that the largest demolitions taking place in the “hard hit Lower Ninth Ward neighborhood”).

6. See, e.g., DOUGLAS BRINKLEY, *THE GREAT DELUGE: HURRICANE KATRINA, NEW ORLEANS, AND THE MISSISSIPPI GULF COAST* (2007); Mollyann Brodie et al., *Experiences of Hurricane Katrina Evacuees in Houston Shelters: Implications for Future Planning*, 96 AM. J. PUB. HEALTH 1402 (2006); James R. Elliott & Jeremy Pais, *Race, Class, and Hurricane Katrina: Social Differences in Human Responses to Disaster*, 35 SOC. SCI. RES. 295 (2006); Carl F. Weems et al., *The Psychosocial Impact of Hurricane Katrina: Contextual Differences in Psychological Symptoms, Social Support, and Discrimination*, 45 BEHAV. RES. & THERAPY 2295 (2007).

7. Katrina directly impacted Florida, Louisiana, Mississippi, and Alabama.

recovery process as it relates to women, children, and families, as well as the extent of the physical devastation, injuries, and loss of life, specifically of women and children, wrought by the Storm.

However, what we know is that the most vulnerable members of the community—children and minors—have likely suffered the most egregious and life-altering harms since August 29, 2005.⁸ Children entered the Storm at-risk and endure the aftermath at greater risk. The long-term consequences of Katrina on these children will likely be unprecedented in nature and scope and continue through their lifetimes. It also is likely that women survivors of the Storm, many single parents, poor, and African-American, have played the most enduring and forceful role in reuniting and re-settling their families, and in re-building their communities. Post-Katrina, women kept their family structures together during the dispersal and forced migration from New Orleans in the wake of the Storm.⁹ This is consistent with the role that women and mothers have historically played in holding together the social fabric of family and community.

Yet, post-Katrina women and mothers have also been marginalized from decisionmaking in the recovery process and have been victimized by increased domestic violence.¹⁰ They have been largely left to fend for themselves in securing and protecting the welfare of their children, most often without resources, services, and housing all in the worst of circumstances.¹¹ When women suffer and are victimized, the entire family is affected—children, grandparents and other kinship care providers, siblings, and spouses. Therefore, this Article addresses the current impact and long-term consequences of Katrina on families and family law through the perspective of Katrina's impact on women and children.

Part I of this Article addresses the complex and unique contextual and demographic setting that defined New Orleans when the Storm hit and the changes that have occurred in the Storm's aftermath. First, we posit that the overlay of this analysis must be rooted in viewing Katrina disaster family law as a social justice issue. Next, we present the demographics and social structure of affected families living in the city before the Storm. We also explore the particular role of women—mothers, grandmothers, aunts, and other female kinship caregivers—from the time Katrina hit through to the current recovery period.

8. Olivia Golden, *Young Children After Katrina: A Proposal to Heal the Damage and Create Opportunity in New Orleans*, in *AFTER KATRINA: REBUILDING OPPORTUNITY AND EQUITY INTO THE NEW NEW ORLEANS* 37, 37-39 (Margery Austin Turner & Sheila R. Zedlewski eds., 2006) (discussing the severe and varying impacts on New Orleans' children).

9. See, e.g., Press Release, Ms. Found. for Women, *Stories of Women's Hope, Activism and Leadership Across the Gulf Coast* (Aug. 28, 2006), available at <http://www.ms.foundation.org/wmspage.cfm?parm1=375>.

10. See Pamela Jenkins & Brenda Phillips, *Domestic Violence and Disaster*, in *KATRINA AND THE WOMEN OF NEW ORLEANS* 65, 65-68 (Beth Willinger ed., Dec. 2008) (noting the post-Katrina rise in domestic violence and the decrease in available services for women affected by such a rise).

11. *Id.* at 68.

In Part II of the Article we discuss the various key ways in which *traditional* family law issues and the civil justice system have helped and hindered families affected by the Storm. Part II addresses the role of family law in each of the Storm's four successive episodes.¹² The key traditional family law issues we address are the post-Katrina dramatic rise in divorces, the escalation of domestic violence, and the myriad legal issues affecting children. These issues include relocation matters, post-Katrina evaluation of prior custody orders, and the need to educate parents on the use of medical consent and other powers-of-attorney type documents. In addition, we evaluate and discuss progressive Louisiana statutes in place pre-Katrina that provide for protections, services, and benefits to kinship care providers of minors. Part II also addresses the question of whether the Louisiana State legal system and the collaborative social service agencies supported the traditional kinship care arrangements so prevalent in New Orleans pre-Katrina.

Part II further discusses the temporary displacement of children amidst the chaos of Katrina, the trauma children experienced while in the torrid, chaotic, and physically dangerous conditions of the Superdome and the Convention Center during the Storm, and the inter-agency conflicts across state, local, and federal jurisdictions that hampered authorities in immediately protecting every single child of the Storm. We also address Child Support enforcement and the ability of the courts to deal with modification of orders based on the changed circumstances of so many persons impacted by the storm, as well as relocation matters stemming from displacement of so many families and parents.

Finally, we turn to the less traditional and evolving family law issues and the lessons learned from the Storm's impact on non-traditional family law issues. These include family law protections in the face of disasters for same-sex couples and same-sex headed families with children.

As we address in turn the issues of divorce, domestic violence, child custody and collateral issues, and non-traditional family arrangements, we analyze the following questions for each area of law: (1) Was there a rise or decline in this type of case and how did the existing Louisiana State Civil Code help or hinder families post-Katrina?; (2) In what ways have the courts and judges been flexible in applying existing laws after the Storm and did the legislature revise or adopt any new family laws to meet the legal needs and challenges post-Katrina?; (3) What further law reform is needed and, in particular, what legal mechanisms and rights should be created to support both those displaced families who want to return to New Orleans and also those who decide not to return?

In this way, this Article argues that it is a priority of the recovery process for the legal system, Louisiana State law, and the courts to affirmatively protect those families with children who still are displaced in the Katrina Diaspora. These displaced families need special and unprecedented assistance and advocacy so that they can return to New Orleans, *if that is their choosing*, to

12. The four successive episodes of the Storm are: (1) the hurricanes and the subsequent flooding, (2) the forced migration out of New Orleans (the Katrina Diaspora), (3) the post-Storm "relief," and (4) the current "recovery." See *infra* Part I.B.

rebuild their lives and their homes, and to secure a safe, healthy, and secure future for their children. To ultimately accomplish this also will require federal intervention in the form of financial assistance, additional legal protections, and federally led recovery efforts that are not yet realized.

Although this Article focuses primarily on the disaster of Katrina and its aftermath, throughout the Article we offer proposals for all jurisdictions to consider in preparing for and mitigating the extreme loss, trauma, and displacement of families caused by both natural and unnatural disasters, as experienced by families in New Orleans. With emergency preparedness plans and policies in place, courts and judges will be in a better position to play a positive role in minimizing family disruption and trauma both during and after a disaster like Katrina. This approach challenges the traditional notions of the role of family law and family courts as guardians of the status quo within an essentially adversarial paradigm. Indeed, the system of family law, including the courts, social services, the law, and public policy, has a unique and compelling role to play as a support network and catalyst for families who survive a disaster to reunite, regroup, and rebuild together. Indeed, family law can and should serve as a part of the healing and restorative process for the families discussed in this Article—in the recovery and in bringing families a measure of social justice in the face of this unprecedented disaster.

This is easier espoused than accomplished, particularly if the lessons of Katrina, as it affected the justice system itself, are not embraced in jurisdictions around the nation. Katrina, in nearly destroying the city of New Orleans, also had a profound effect on the judicial system itself and the functioning of the *rule of law*. The courts, the judges, their ongoing proceedings and trials, the prisoners, petitioners, and defendants all were deeply affected. Court buildings and the Orleans Parish Jail were flooded, and some structures and court records were severely damaged or destroyed.¹³ While the civil and criminal systems are functioning at this point, nearly four years after the Storm, the judicial system still faces numerous challenges.

In short, Katrina affected the state and parish court systems in unprecedented ways creating a total and prolonged judicial state of emergency. As one Orleans Parish judge said, “Nothing on this scale has ever happened in this country—unlike the terrorist attacks in New York and Washington, D.C. on September 11, 2001—Hurricane Andrew and other huge disasters, like Katrina, the authority to fix the disaster was itself in the disaster.”¹⁴ Judges themselves had to evacuate the city, many for weeks and months, many lost their homes and all possessions, their children’s schools were closed. One judge even was stranded on his rooftop during the storm and its aftermath for over four days.¹⁵ Yet they struggled to maintain the rule of law, manage the courts and judicial system, and protect peoples’ rights in the face of the disaster, total chaos, and

13. Interview with the Honorable Madeleine Landrieu, Judge, Orleans Parish Civil Dist. in New Orleans, La. (May 16, 2008) [hereinafter Judge Landrieu Interview].

14. *Id.*

15. *Id.*

dislocation.

Surely, court administrators, judges, and corrections officials around the nation have much to learn from the lessons culled by the authorities of Louisiana and, in particular, those of Orleans Parish. Therefore, while our focus in this Article is on Louisiana family law and the domestic law courts in Orleans Parish (the city of New Orleans), most of the family law issues of relocation, custody, foster care, and domestic violence, among others, are universally applicable to other jurisdictions across the country.

Our hope in shedding light on what we call “disaster family law,” as understood from Katrina’s almost incalculable impact, is that other jurisdictions will now evaluate and reform their family law procedures, practices, and codes to meet the enormous challenges of disasters that may occur in the future. Emergency preparedness planning by the courts and judicial system is indeed a pressing matter in order for the rule of law to survive intact during future disasters wherever they may occur. There is also a compelling need for every State to examine and, if necessary, reform its parental kidnapping and jurisdiction laws. Nationally applicable model acts will also require examination and reform so that they help to protect families and children in the face of future disasters and family displacements.

I. THE BACKSTORY: NEW ORLEANS—THE CITY THAT CARE FORGOT¹⁶

A. *Bringing Families Home to New Orleans—Katrina Disaster Family Law as a Social Justice Issue*

Analyzing the Storm’s impact and the legal needs of the families of New Orleans—specifically focusing on families with children—is best understood in the context of the overall challenge to rebuild the city and to have its former residents return home. From this viewpoint, the impact of Katrina—the storm and its aftermath—on families presents one of the most compelling social justice issues of our time. Closely tied to this crisis are the historic roles of race, poverty, and gender disparities and discrimination in New Orleans, as described in the following sections. A true test of the effectiveness of the law and the judicial system as they have responded to the family law issues raised by the Storm must be measured against the pre-Katrina status and needs of the underserved, under-represented, and basically disenfranchised populations in New Orleans.

Today, there are few measures or consistent estimates of how the city will look in the next decade and beyond. There is no single definitive report on how

16. See DR. JOHN AND THE LOWER 911, *City That Care Forgot*, on CITY THAT CARE FORGOT (BMI Records 2008) (“Been blown down to New Orleans/On the winds of despair/Where music and laughter/Once filled the air/I saw the great vacant ghost/Of a politician's stare/In the City that care forgot/Everything sacred been strung up and shot/In the City that care forgot/Uptown everything looks fine/When you head downtown/You see the water line so high/When you get down to the Lower 9/The smell of Death still hangs/On the honeysuckle vine/Magnolias lie in the streets/In the City that care forgot.”)

long the recovery and rebuilding process will take and how much of New Orleans' pre-Katrina population will return to their city. We write this article in the midst of great uncertainty and widely conflicting reports, approaches, and projections about the future of this once vibrant and culturally diverse city. However, we believe that the future of the city and, more specifically, whether or not families will return to New Orleans depends on a variety of factors that are essentially measures of social justice.

Components of the social goal of rebuilding and revitalization include: (1) how the city's infrastructure, including perhaps most importantly, how the levees are rebuilt; (2) whether schools and housing are rebuilt and revitalized; (3) what types of jobs and employment are made available to potential residents; (4) what financial and social service support systems and incentives governments will provide. At the same time, the pre-Katrina social, economic, and racial barriers¹⁷ must be addressed. The goal is clearly not to have people return to the pervasive poverty, unemployment, substandard and blighted housing, failing schools, and racial segregation that in large part characterized pre-Katrina New Orleans.¹⁸ Yet, this was a city that people loved and were committed to in ways that are unique in the American experience. The people—and families—who lived in New Orleans pre-Katrina and were displaced by the Storm must have both the *right* to choose whether to return or not to New Orleans, and the *ability* to return and re-build their homes and lives in this city, if they so choose.

The bottom line is that there will be no real recovery unless and until the families of New Orleans—families across the social, economic, and racial spectrums¹⁹—can and do safely return to the city. If large numbers of families do not return because they cannot return, the city will exist, but it will not be the same New Orleans. In other words, the city will be a tourist destination, a convention and casino center, but not a diverse and growing American urban center of the twenty-first century. The protections of family law and the courts are an important part of this framework for recovery, that is, of making the *right to return* a reality for the families of New Orleans.

B. New Orleans Families—Family Life Pre-Katrina and During the Disaster's Four Stages

Hurricanes Katrina and Rita, coupled with the levee breaches, triggered four episodes of trauma and destruction. All four episodes are actually essential components of the Storm itself, which is of an evolving and ongoing nature, rather than a one-time determinative occurrence. That is, in fact, how the people of New Orleans, both those who have returned and those still displaced

17. For a discussion and overview of the pre-Katrina social, economic, and racial barriers, see Sheila R. Zedlewski, *Pre-Katrina New Orleans: The Backdrop*, in *AFTER KATRINA: REBUILDING OPPORTUNITY AND EQUITY INTO THE NEW NEW ORLEANS* 1, 1-7 (Margery Austin Turner & Sheila R. Zedlewski eds., 2006).

18. *See id.* (discussing the City of New Orleans pre-Katrina).

19. *See id.* (providing a cross-sectional view of the demographics in New Orleans before Katrina).

elsewhere, experience these historic and transformative events.

First was the initial period of natural and unnatural disasters themselves, that is hurricanes Katrina and Rita and the breaking of the levees, followed by the massively destructive flooding of New Orleans²⁰—the Storm. This was immediately followed by the creation of the Katrina Diaspora when over a million people were immediately forced from their homes and prevented from re-entering the city and the surrounding parishes.²¹ Following the immediate destruction and dispersal of the population was the period of post-storm relief. This period of post-Storm relief led to the current recovery, itself a halting and seriously flawed process that by some estimates will likely continue for several decades.²²

During each of these four inter-related Katrina episodes—Storm, Diaspora, relief, and recovery—the city’s most vulnerable populations suffered the most serious and ongoing impact. These highly impacted groups included children, the elderly and disabled, women, and institutionalized persons housed in prisons, nursing homes, and hospitals when the Storm hit.

This reality reflects the ways in which other social crises have affected society’s most vulnerable. The AIDS epidemic, drug addiction, crime and gun violence, imprisonment and, in other countries, war and military invasion, have devastated these targeted populations that can least protect themselves in similar ways.²³ However, in the case of New Orleans, the Storm’s devastation also exacerbated the long-term effects of existing social injustices caused by decades of urban blight and neglect, a failed public school system, and concentrations of extreme urban poverty.²⁴ By the time Katrina hit the city, the reality of life for the majority of its residents—primarily poor African Americans—was marked by deeply embedded poverty, racial discrimination, and segregation that had long

20. See McQuaid, *supra* note 1 (noting the “double disaster” of storm surge waters followed by the breaking of the levees); Oshinsky, *supra* note 1 (noting that “Katrina’s storm surge overwhelmed the levees”).

21. BRUCE KATZ ET AL., BROOKINGS INST. POL’Y PROGRAM, HOUSING FAMILIES DISPLACED BY KATRINA: A REVIEW OF THE FEDERAL RESPONSE TO DATE, Nov. 11, 2005, at 1 (citing Blaine Harden & Shankar Vedantam, *Many Displaced by Katrina Turn to Relatives for Shelter*, WASH. POST, Sept. 8, 2005, at A1).

22. See Joel Eagle, Note, *Divine Intervention: Re-examining the “Act of God” Defense in a Post-Katrina World*, 82 CHI.-KENT L. REV. 459, 487-88 (2007) (noting that the environmental cleanup alone may take years if not decades).

23. For discussion of the ways in which these social crises have affected society’s most vulnerable, see Justin Brooks & Kimberly Bahna, “*It’s a Family Affair*”—*The Incarceration of the American Family: Confronting Legal and Social Issues*, 28 U.S.F. L. REV. 271, 277-85 (1994) (noting the effects of incarceration and crime on families, especially the impact on children); Nancy Kelly, *Gender-Related Persecution: Assessing the Asylum Claims of Women*, 26 CORNELL INT’L L.J. 625, 625-34 (1993) (discussing the effects of war on women); Susan L. Waysdorf, *Families in the AIDS Crisis: Access, Equality, Empowerment, and the Role of Kinship Caregivers*, 3 TEX. J. WOMEN & L. 145, 177-88 (1994) (discussing the impact of AIDS).

24. For a picture of pre-Katrina New Orleans, see generally Zedlewski, *supra* note 17.

defined the social structure and fabric of the city.

1. *Family Demographics in Pre-Katrina New Orleans.*—The pre-Katrina social fabric for families in New Orleans was set within the context of one of America's most culturally unique and diverse cities. New Orleans was known to be rich in a heritage of music, architecture, languages, food, and celebrations. Its economy was based on the tourism industry that brought thousands to the city each year for conventions, music festivals, and Mardi Gras celebrations. However, at the same time, New Orleans was one of the poorest and most racially segregated cities in the United States.²⁵ Before Katrina, New Orleans had an extremely high poverty rate, high unemployment, and completely failed and decrepit schools.²⁶

Due to a long history of racism running through the heart of its urban development, most of the city's poorest and most heavily African-American communities were situated below sea level,²⁷ vulnerable to hurricanes and a flawed levee system. This endemic poverty, unemployment, and systemic segregation had the greatest impact on families with children. Viewed in this context, the need for government agencies and political and civic leaders to do everything possible in order for families to return safely to the city—to quality housing, good-paying jobs, health care, and schools—is a major priority.

Most of the city's population was forced out of the city by the Storm.²⁸ Floodwaters unleashed by the breaking of the levees, in the immediate wake of Katrina's storm surge, "destroyed the majority of housing in New Orleans and uprooted over 80% of its [pre-Katrina population of approximately] 450,000 citizens."²⁹ Almost four years after the Storm, just over two-thirds of the city's pre-Katrina population has returned.³⁰

While several primarily white and middle to upper-class neighborhoods were devastated by the floods, the majority of the destroyed neighborhoods were disproportionately populated by poor or low-income and African-American people, most notably in the Ninth Ward, Lower Ninth Ward, Gentilly, Mid-City, as well as the African-American working and middle-class neighborhood of New Orleans East.³¹ Katrina and the floods destroyed thousands of homes, businesses,

25. See WILLIAM H. FREY & DOWELL MYERS, POPULATION STUDIES CTR., RACIAL SEGREGATION IN U.S. METROPOLITAN AREAS AND CITIES, 1990-2000: PATTERNS, TRENDS, AND EXPLORATIONS 11-17 (Apr. 2005), available at <http://www.psc.isr.umich.edu/pubs/pdf/tr05-573.pdf> (discussing the racial segregation present in New Orleans).

26. Zedlewski, *supra* note 17, at 1.

27. See *id.* at 3 (noting the racial make-up of New Orleans and showing in figure 1.1 the flooded areas as coupled with deep poverty).

28. *Id.* at 1 (noting that the flood "uprooted over 80[%] of [New Orleans's] 450,000 citizens").

29. *Id.*

30. See *supra* note 4 and accompanying text.

31. THOMAS GABE ET AL., CONG. RESEARCH SERV., HURRICANE KATRINA: SOCIAL-DEMOGRAPHIC CHARACTERISTICS OF IMPACTED AREAS 16 (2005) ("The hurricane's impact on New Orleans also took a disproportionate toll on African Americans. An estimated 310,000 black people

and jobs, along with many of the city's schools, hospitals, and community assets. Structures that were not destroyed sustained serious damage.

Before Katrina, the city consisted predominately of poor, African-American persons—comprising 68% of the population, compared to whites at 28% of the population.³² A majority of the city's children were living in single-mother households; in 2004, a year before the Storm, “[62%] of New Orleans' children lived with a single parent . . . , compared with . . . 31[%] of all children in the United States.”³³ At the same time, “70% of all births in the [year before Katrina] were to unmarried women, compared with 47[%] in Louisiana and 29[%] in the United States.”³⁴ Relative to the rest of Louisiana and the nation, however, New Orleans had a lower percentage of families with children. “Only one-quarter of the city's households had children under age [eighteen], compared with about one-third of households in the state and the nation.”³⁵

Pre-Katrina, New Orleans poverty was pervasive and severe for a majority of the population, largely African-American.³⁶ In the decades immediately prior to Katrina, the city experienced white flight to the suburbs, increased unemployment rates, and lowered population overall.³⁷ The child poverty rate in New Orleans “was the highest in the nation.”³⁸ The general poverty rate in New Orleans ranked it eighth nationally among cities of its size.³⁹ The total family income in New Orleans was 67% of that for the United States generally; for families with children in New Orleans the annual income was only 58% of the national average.⁴⁰

All of these factors—the high percentage of single-parent families, high unemployment, and very low family incomes—added up to the city's overall very high poverty rates. The impact on families with children was particularly acute. Pre-Katrina, 38% of children under age eighteen lived in poverty in New Orleans—twice the national average.⁴¹ Child poverty was also highly concentrated in certain geographically defined areas, such as the Lower Ninth

were directly impacted by the storm largely due to flooding in Orleans Parish. Blacks are estimated to have accounted for 44% of storm victims.”).

32. Census Bureau 2000, State & County Quick Facts: New Orleans, <http://quickfacts.census.gov/qfd/states/22/2255000.html> (last visited Aug. 20, 2009).

33. Zedlewski, *supra* note 17, at 3.

34. *Id.*

35. *Id.*

36. *See id.* at 5-7.

37. *See* BRINKLEY, *supra* note 6, at 28 (noting “massive ‘white flight’” beginning in the 1960s); *see also* Harold A. McDougall, *Hurricane Katrina: A Story of Race, Poverty, and Environmental Injustice*, 51 HOW. L.J. 533, 540-44 (2008) (discussing the racial factors involved in the problems before and after Katrina including the decades of “white flight”).

38. Zedlewski, *supra* note 17, at 3 (citing ANNIE E. CASEY FOUND., 2005 KIDS COUNT DATA BOOK: STATE PROFILES OF CHILD WELL-BEING 95 (2005)).

39. *Id.* (citation omitted).

40. *Id.* at 4-5.

41. *Id.* at 6, tbl. 1.3 (noting poverty statistics derived from the 2000 Census).

Ward.⁴² Before the Storm hit New Orleans, approximately 39,000 children under the age of six lived in New Orleans and of these almost 40% lived in poverty.⁴³ In the high-poverty communities, the average household income was approximately \$20,000 and “four out of five children were being raised in single-parent families.”⁴⁴ Moreover, in these areas, “two in five working-age adults were jobless.”⁴⁵ In fact, “[a]lmost half of the poor households in New Orleans [pre-Katrina] lived in these high-poverty [neighborhoods].”⁴⁶

Due to this extreme poverty, families with children also had very few assets. So many families did not own or have access to cars—fully one-third of African-American residents⁴⁷—that they were unable to evacuate the city on their own.⁴⁸ As a result, they likely ended up in the now infamous squalor and life-threatening conditions of the New Orleans Superdome and Convention Center. Eight percent of poor families in New Orleans did not have telephone service so they could not call out to seek help or make evacuation plans.⁴⁹ The fact that local, state, and federal agencies abandoned these families, which included many children and elderly, by not caring for or undertaking their evacuation is now a part of the infamous legacy of the Storm.

Commonly, the greatest asset and largest investment for most people across the nation is ownership of their homes.⁵⁰ Home ownership is also an indication of the family’s overall financial stability and strength and serves as a tie to the community.⁵¹ Overall, the rate of home ownership in pre-Katrina New Orleans was relatively low, compared to the rest of the nation, and some of the areas most heavily damaged by Hurricane Katrina had a lower than average proportion of homeowners.⁵²

The realities of home ownership and the dynamics of race and poverty in pre-Katrina New Orleans were characterized by a complex set of factors. Estimates indicate that 55% of 278,000 households impacted by Katrina were owner

42. See Susan J. Popkin et al., *Rebuilding Affordable Housing in New Orleans*, in *AFTER KATRINA: REBUILDING OPPORTUNITY AND EQUITY INTO THE NEW NEW ORLEANS* 17, 18-19 (Margery Austin Turner & Sheila R. Zedlewski eds., 2006) (noting the demographics of the Lower Ninth Ward including, as show in table 3.1, a 41% child poverty rate).

43. Golden, *supra* note 8, at 37.

44. Zedlewski, *supra* note 17, at 5.

45. *Id.*

46. *Id.*

47. Alan Berube & Steven Raphael, Brookings Inst. Metro. Pol’y Program, *Access to Cars in New Orleans*, tbl. 3 (2005), available at <http://www.brookings.edu>.

48. See *id.*; see also MAYA WILEY ET AL., *CTR. FOR SOC. INCLUSION, TRIUMPH OVER TRAGEDY: LEADERSHIP, CAPACITY AND NEEDS IN ARKANSAS, ALABAMA, GEORGIA, LOUISIANA, AND MISSISSIPPI AFTER HURRICANES KATRINA AND RITA* 7 (2007); Zedlewski, *supra* note 17, at 7.

49. Zedlewski, *supra* note 17, at 7.

50. GABE ET AL., *supra* note 31, at 22.

51. *Id.* at 22-23.

52. *Id.* at 23.

occupied.⁵³ However, in some of the city's poorest neighborhoods, such as the Lower Ninth Ward, homeownership rates actually were higher than the national average.⁵⁴ The relatively high homeownership rates were a uniquely New Orleans characteristic of life, especially for the large sector of the African-American population that lived in deep poverty. Across the city, the percentage of home owners who lived in their homes and carried mortgages in the years just before the Storm was relatively low—65%.⁵⁵

In addition, pre-Katrina homeownership data indicate that many owners had lived in their homes for many years.⁵⁶ This reflects the uniquely New Orleans emphasis on strong community ties and generational continuity, especially within some of the city's poorest neighborhoods. More than 50% of all homeowners in pre-Katrina New Orleans lived in their homes for twenty years or more compared to only 42% nationally.⁵⁷ Just under 33% had lived in their homes for thirty years or more compared to only 22% nationally.⁵⁸ Even among renters in pre-Katrina New Orleans, strong community ties were evident “with 29% having lived in their [rented] homes for [10] years or more” compared to only 23% nationally.⁵⁹

Yet, despite the relatively low transient rate and high home ownership rates in neighborhoods of high-poverty concentration, poor families with children experienced dire, if not extreme, economic hardship. Among poor families, one in five suffered from food insecurity and hunger.⁶⁰ Economic hardship was coupled with poor housing, lack of quality early education programs, quality health care, and other factors that placed the majority of New Orleans' children at high risk.⁶¹ These children were growing up with only one parent, usually their mother, or with a kinship care provider, like their grandmother.⁶² They lived in fear of crime, had few, if any, social and financial supports, lived in substandard, blighted housing in segregated neighborhoods, lacked sufficient health care, and went to school in one of the nation's worst and failing school systems.⁶³

Before Katrina, Louisiana ranked forty-ninth overall in a national survey assessing the well-being of children.⁶⁴ This assessment was based on a variety

53. *Id.* at 24.

54. Zedlewski, *supra* note 17, at 6-7 (noting 60% homeownership).

55. GABE ET AL., *supra* note 31, at 23.

56. *Id.* (noting that half of homeowners had lived in their homes for twenty or more years).

57. *Id.*

58. *Id.*

59. *Id.* at 23-24.

60. Zedlewski, *supra* note 17, at 7 (citing MAXIMUS, INC., REPORT TO THE STATE OF LOUISIANA: COMPREHENSIVE NEEDS ASSESSMENT OF LOW-INCOME FAMILIES IN LOUISIANA (2002)).

61. *See id.*

62. *See id.* (noting that “[m]ost young children were growing up with only one parent”).

63. *See id.*

64. Golden, *supra* note 8, at 37 (citing ANNIE E. CASEY FOUND., *supra* note 38, at 95).

of factors from birth through adolescence.⁶⁵ Among these factors, Louisiana was tied for the worst in infant mortality rates.⁶⁶ In addition, before the Storm on a state-wide basis social programs such as health care, childcare, nutrition programs, and early childhood education—for example Head Start and Early Head Start programs—were all severely lacking.⁶⁷

Within this very bleak landscape of life in pre-Katrina New Orleans, a unique and vibrant arts and music culture, much of which stemmed from these same impoverished African-American communities, not only thrived, but received wide-spread recognition. Indeed, this special legacy brought fame, appreciation, and respect to the city from people around the nation and the world. This was the reality when Katrina hit the city on August 29, 2005.⁶⁸

2. *Families Struggle to Stay Intact as Katrina Hits and the City Floods—The Post-Storm Evacuation and Creation of the Katrina Diaspora.*—The deadly and catastrophic hurricane, the unprecedented flooding of the city, and official government negligence⁶⁹ left many of New Orleans' poorest and most vulnerable in the dire and dangerous conditions of the Superdome and Convention Center. Thousands of the city's most unfortunate were left starving, frantic, traumatized, and even dying at these chaotic, dangerous sites.⁷⁰ One result of the botched evacuation, the failure of local and federal agencies to protect the city's residents, and the resulting massive fiasco at the Superdome was that some children, including young children and infants, were separated from their parents or caregivers during the chaos.

The Kaiser survey reported that 40% of those interviewed upon arrival at the Houston Astrodome were separated from immediate family members (but knew their whereabouts), and 13% were actually separated and did not know the missing family members' whereabouts.⁷¹ Of adults with children, 22% of those surveyed said that none of their children were with them in the shelter.⁷² Only estimates exist as to the total number of children who were separated from their parents or caregivers during the chaos of the flawed evacuation process, the

65. *Id.* (citing ANNIE E. CASEY FOUND., *supra* note 38, at 95).

66. *Id.* (citing ANNIE E. CASEY FOUND., *supra* note 38, at 95).

67. *See id.* at 37-38.

68. McQuaid, *supra* note 1; Oshinsky, *supra* note 1.

69. For perspectives and discussion of the government's negligence, see generally Faith J. Jackson, *A Streetcar Named Negligence in a City Called New Orleans—A Duty Owed, a Duty Breached, a Sovereign Shield*, 31 T. MARSHALL L. REV. 557 (2006); Tarak Anada, Comment, *The Perfect Storm, an Imperfect Response, and a Sovereign Shield: Can Hurricane Katrina Victims Bring Negligence Claims Against the Government?*, 35 PEPP. L. REV. 279 (2008).

70. *See* Adam Nossiter, *2 Million Flee Hurricane's Path; GOP Cuts Convention Events: A Historic Exodus*, N.Y. TIMES, Sept. 1, 2008, at A1 ("There was no sign that the disaster of 2005—when thousands were left stranded in misery for days and 1,600 people were killed, many of them elderly—would be repeated.").

71. WASH. POST, KAISER FAMILY FOUND. & HARVARD UNIV., SURVEY OF HURRICANE KATRINA EVACUEES 9 (2005).

72. *Id.* at 16; *see also* Golden, *supra* note 8, at 39.

shelter experience, and the final evacuation out of the city. Some number of children who were separated from family became wards of the receiving states' child welfare agencies.⁷³

Clearly, children were profoundly affected, along with their parents and other family members, in ways that will take years to fully evaluate. Certainly, the effects will continue to be felt for many years to come. Despite the enormity of the disaster, official documentation of what actually happened to families during the Storm is sparse. There exists scant documentation of the exact numbers of evacuees, those in the Superdome and abandoned at the Convention Center, and the numbers and locations of persons who were ultimately displaced outside of the city. Yet the numbers are undoubtedly historic for displacement within the borders of the United States. Within a week after Hurricane Katrina and the floods, more than one million Gulf Coast residents had been displaced from their homes.⁷⁴ Of the displaced, some 378,000 were from New Orleans⁷⁵ and up to 645,000 people were from areas throughout Louisiana.⁷⁶

There also are few reports as to the specific numbers of children who were stranded on rooftops; drowned in the floods; separated from their parents, kinship care providers, or foster parents; brought to the Superdome and the Convention Center; and ultimately dispersed into the Katrina Diaspora.⁷⁷ However, in order to fully understand the family law issues now facing these families, the following estimates and conclusions are instructive.

Some experts have suggested that young children from poor families were likely a disproportionately high component of those who spent time in the Superdome under the now infamously horrendous and dangerous conditions.⁷⁸ These were children whose caregivers at the time the Storm hit were least likely to have been evacuated before the flood and who lacked the financial means and ability to leave the city on their own.⁷⁹ Quite simply, the city's poorest children were left behind in Katrina's wrath. In the Superdome and at the Convention Center, children likely witnessed violent crimes, got hurt themselves or took ill, and lacked food, water, and sanitation; in the chaos, many also were separated from their families and other caregivers.⁸⁰

The Federal Emergency Management Administration (FEMA) estimates that approximately 200,000 to 270,000 evacuees from across the Gulf Coast region,

73. Golden, *supra* note 8, at 39.

74. Katz et al., *supra* note 21.

75. Peter Whoriskey, *Katrina Displaced 400,000 Study Says: New Orleans Becomes Whiter, Mississippi Coast More Diverse*, WASH. POST, June 7, 2006, at A12.

76. GABE ET AL., *supra* note 31, at 1 (noting in the summary an estimate of 645,000 displaced residents from Louisiana).

77. A detailed reporting of the numbers of families sheltered and thorough coverage of the effects on those families, particularly those families with children, is beyond the scope of this Article.

78. Golden, *supra* note 8, at 38.

79. *Id.*

80. *See id.*

including New Orleans, were likely living in large shelters during the height of hurricanes Katrina and Rita.⁸¹ Estimates vary as to the number of persons who were in the Superdome, but likely 20,000 to 27,000 people were “housed” in the Superdome at the height of Hurricane Katrina and the flooding of the city.⁸² If the combined evacuee population of these shelters from across the Gulf Coast contained the same percentage of young children (under the age of six) as the general population living in poverty pre-Katrina, then “about 20,000 children under the age of [six] spent time in a shelter after the [S]torm.”⁸³

If older children between the ages of six and eighteen are added to this estimate, then the number of total minors who may have been in the combined Katrina shelters across the Gulf Coast would likely double to 40,000, or more. The full impact of this disaster experience on minors is yet to be fully studied or reported. However, child welfare experts like Olivia Golden conclude that shelters, and particularly the Superdome/Convention Center experience, have posed particularly damaging, highly-dangerous, and long-lasting effects on children of all ages.⁸⁴

The Kaiser Family Foundation surveyed the direct health impact on adults who experienced the dangerous conditions at the Superdome and other large Katrina shelters in New Orleans.⁸⁵ Infectious diseases, such as TB and HIV infection, mental health challenges, and other immediate and longer-lasting health conditions likely resulted from these conditions.⁸⁶ One can conclude that the extreme trauma, as well as the health threats and conditions of these shelters, had an even harsher impact on the most vulnerable, the children, elderly, and

81. *Id.*

82. Despite the historic proportions of the catastrophic events at the Superdome, sparse official reporting or documentation of what occurred has been released. Estimates vary as to the actual number of persons who were in the Superdome from the start of the Storm to the final evacuation of the Dome, after the flooding occurred. Some have reported that at the height of Hurricane Katrina itself some 10,000 people initially took shelter in the Superdome. Then, once the levees broke and the city flooded, more than 20,000 people with no other recourse or assistance made their way through the floodwaters to the arena and crammed into the Superdome. Judge Landrieu Interview, *supra* note 13; *see also* *When the Levees Broke: A Requiem in Four Acts* (HBO documentary and Spike Lee Joint 2006). For a range of numbers in the Superdome, *see*, for example, DAVID L. BRUNSMAN ET AL., *THE SOCIOLOGY OF KATRINA* 100-01 (2007) (citing Joanne Nigg et al., *Hurricane Katrina and the Flooding of New Orleans: Emergent Issues in Sheltering and Temporary Housing*, 604 ANNALS AM. ACAD. POL. & SOC. SCI. 113-28 (2006)); *cf.* BRINKLEY, *supra* note 6, at 275 (noting range of 10,000 to 25,000).

83. Golden, *supra* note 8, at 38.

84. *Id.* at 38-39.

85. WASH. POST, *supra* note 71, at 10 (asking survey participants if they had experienced health problems as a result of the Storm and the severity of such problems).

86. *See, e.g.*, Ctrs. for Disease Control and Prevention, *Tuberculosis Control Activities After Hurricane Katrina—New Orleans, Louisiana, 2005*, 296 J. AM. MED. ASS'N 275, 275-76 (2006) (discussing the TB outbreak concerns caused by Katrina).

disabled.⁸⁷

3. *Families Struggling for the Right to Return—Rebuilding and Reuniting Families In Post-Katrina New Orleans.*—For tens of thousands, post-Katrina life, after the shelters and evacuation, meant living in the now infamous and toxic FEMA trailers.⁸⁸ In the first months following the Storm, people and families were housed temporarily in Red Cross shelters, subsidized hotel rooms, and even cruise ships.⁸⁹ For many families, stability has not returned and children continue to experience the extreme anxiety, frustration, anger, and depression experienced by their parents. In July 2006, nearly a year after the storm, 73,214 FEMA trailers were in use throughout Louisiana.⁹⁰ The number has steadily decreased since then, as FEMA has been reclaiming the 250 square foot trailers.⁹¹ In addition, while many suspected the ill effects of these trailers, the U.S. Centers for Disease Control finally released evidence that the trailers were toxically contaminated by formaldehyde.⁹²

By December 4, 2008, 5769 FEMA trailers still remained in use throughout Louisiana.⁹³ FEMA set an end date of May 1, 2009 for reclaiming all trailers in the group sites.⁹⁴ Surely, this development will dramatically increase the number of people who are homeless, already an epidemic, throughout the surrounding parishes and the Gulf Coast, but particularly in New Orleans. The stark, yet obvious, reality is that when families become homeless, as many have post-Katrina, the children in that family become homeless as well. For months in 2008, many families lived in the Tent City under the I-10 over-pass,⁹⁵ and others have been squatting in the ruins of former houses destroyed by the Storm.⁹⁶

The issue of housing families displaced by Katrina and the floods, as discussed further below,⁹⁷ remains a critical humanitarian, social, economic, political, and legal problem today, nearly four years after the Storm. A myriad of complex public policy and legal questions which affect these families have arisen from the aftermath of Katrina. Such issues include (1) whether low-

87. See Golden, *supra* note 8, at 38-39.

88. See LIU ET AL., *supra* note 5, at app. 25, tbl. 22 (noting that by July 2006, approximately 76,000 people were living in travel trailers or mobile homes, many of which were FEMA trailers).

89. See *id.* at 2-3.

90. *Id.* at app. 25, tbl. 22.

91. See *id.* (noting only 5769 travel trailers active in December 2008).

92. See CTRS. FOR DISEASE CONTROL AND PREVENTION, FINAL REPORT ON FORMALDEHYDE LEVELS IN FEMA-SUPPLIED TRAVEL TRAILERS, PARK MODELS, AND MOBILE HOMES (2008).

93. LIU ET AL., *supra* note 5, at app. 25, tbl. 22.

94. Press Release, Fed. Emergency Mgmt. Agency, FEMA Temporary Housing Program Ending for Families fo Hurricanes Katrina and Rita (Apr. 7, 2009), available at <http://www.fema.gov/news/newsrelease.fema?id=47936>.

95. See *Katrina Survivors Deserve Better Than Mattresses Under I-10*, USA TODAY, June 17, 2008, at 8A [hereinafter *Katrina Survivors Deserve Better*].

96. See Anne Rochell Konigsmark, *Crime Takes Hold of New Orleans: Murder Rate Soars as Violence Creeps into Upscale Neighborhoods*, USA TODAY, Dec. 1, 2006, at 1A.

97. See *infra* Part II.A.

income housing is built, what will become of the thousands who, pre-Katrina, had been long-term residents in the federally subsidized housing projects which have now been demolished and (2) whether public schools will be rebuilt and staffed. While a full treatment of these issues is beyond the scope of this Article, it is important to note that their resolution will largely determine whether and under what circumstances households—particularly families with children—will be able to return to New Orleans, and live safe and healthy lives.

II. KATRINA'S CHALLENGES TO FAMILY LAW: THE LEGAL ISSUES

Given the extreme and widespread dangerous conditions, and the catastrophic trauma and experiences described above, it will take concentrated efforts from the health, educational, social services, child welfare agencies, as well as the legal system to begin to remedy these effects. To recover, children—and their parents—will need special and prioritized attention from state, local, and federal agencies, to get back in school, fed, clothed, and into quality housing, while also ensuring that all of the related educational, physical, and mental health aspects remain intact.

This is the case whether families return to New Orleans, or resettle from within the Katrina Diaspora. Children—and parents—who are survivors of Katrina will require specialized, highly skilled, and committed service providers and educators. Generally, these needs—nearly four years after the Storm—are not being met for many families with minor children. Legal advocacy, and the family and juvenile law justice systems must play a strong and central role in advocating for the special needs of Katrina family survivors, protecting these children's rights, and ensuring that they are no longer left behind.

However, family law is tailored traditionally to the nuclear, middle-class family, and applied usually to a single-change situation—such as a parental divorce or a parental relocation. When disaster hits, and the effects of multiple, highly damaging trauma are experienced, traditional family laws are more fractured and less effective. This has been the case since Katrina and the flooding of New Orleans dealt unprecedented disruption and displacement on an already highly vulnerable population—poor women, children, and their family units.⁹⁸ As a result, the Storm has stretched existing family structures, traditional family law, domestic policy, the public health establishment, the family courts, and the foster care and child welfare systems to new boundaries.

Family law in New Orleans, particularly the laws of custody, guardianship, adoption, foster care, and child welfare, as well as the laws of divorce and domestic violence, is necessarily undergoing change brought on by the Storm and its ongoing aftermath. New areas of law and legal practice have emerged to meet the challenges of families in the post-Katrina reality. As a result, public law and policy affecting families and children, and their access to the courts, to health care, public education, and other public services, deserve serious attention. The following areas of family law and family-related law reflect the myriad of ways that the Storm, its aftermath, and the ongoing “recovery” process has affected

98. See *supra* Part I.B.1.

women, children, extended kinship relations, and family units.

A. *Family Unity, the Home, and Homelessness*

The future of New Orleans's families—and the law's impact on determining the outcome—is based on normative and long-standing principles of family law and policy. First, the family is a basic unit of society and second, the adult family head or heads have certain rights to self-identify, to define the borders of their family's inclusiveness, and essentially to decide who is a family member and who is not.⁹⁹ Finally, a home is the orbit around which a family moves and the site or shelter within which a family organizes itself. A home is the organizational basis and the structure for the family unit.

Most, but not all, families live together at one time or another and together a family occupies a home. This is the case whether the family rents the home or owns it, has lived in it for many years or lives in the home temporarily, or returns to it periodically. Hurricane Katrina and the flooding of the city transformed this baseline reality for hundreds of thousands of families. First, by destroying or seriously damaging over 80% of the homes in New Orleans,¹⁰⁰ Katrina and the floods devastated and immediately disrupted the core of family life in the city. The destruction threw family life routines into chaos, left the children without schooling (and schools were also largely destroyed),¹⁰¹ and in many ways shattered the safety and health (physical and mental) of family members. Second, almost all residents had to leave their homes for some period of time immediately before and after the hurricane and floods whether or not their homes were damaged. While many returned within several months after the Storm and the flood waters receded, many more have taken a year or more to return. Additionally, thousands of homes still lay abandoned and in ruins throughout the city, with their former residents living elsewhere—in many cases outside of the city and the Gulf Coast area.¹⁰²

Under the dire, dangerous circumstances, families left homes unoccupied for weeks, months, or in many cases years. Electricity, sewage, water and other public utilities were damaged and cut off for weeks or months; in some

99. See *Moore v. City of East Cleveland*, 431 U.S. 494, 503-06 (1973) (permitting the family members to define their family and rejecting strict adherence to a nuclear definition); see also Sally F. Goldfarb, *Disasters, Families, and the Law*, 28 *WOMEN'S RTS. L. REP.* 35, 41 (2007) (discussing the "functional method" of defining a family).

100. See Popkin et al., *supra* note 42, at 17 (noting that 39% of "owner-occupied" and 56% of "rental units" were flooded).

101. See Paul Hill & Jane Hannaway, *The Future of Public Education in New Orleans*, in *AFTER KATRINA: REBUILDING OPPORTUNITY AND EQUITY INTO THE NEW NEW ORLEANS* 27, 27 (Margery Austin Turner & Sheila R. Zedlewski eds., 2006) ("Katrina destroyed most of New Orleans's public education system.").

102. LIU ET AL., *supra* note 5, at 22; see also GREATER NEW ORLEANS CMTY. DATA CTR., *NATIONAL BENCHMARKS FOR BLIGHT: HOW DOES NEW ORLEANS COMPARE TO OTHER CITIES IN TERMS OF UNOCCUPIED RESIDENTIAL ADDRESSES?* (Mar. 31, 2008), available at <http://gnocdc.s3.amazonaws.com/reports/BlightBenchmarks.pdf>.

neighborhoods these services remain off today, almost four years after the Storm. Neighborhood blight has been rampant throughout the city, even as the fourth anniversary of Katrina approaches. As neighborhoods are unevenly rebuilt with little to no city-wide planning, direction, or funding, families who have rebuilt and returned home may sit within view of their neighbors' still unoccupied and ruined homes. The neighboring ruins, rodent infestation, garbage, and wreckage¹⁰³ present serious mental and physical health dangers to the neighborhood for both children and adults alike. Many city streets and sidewalks await City repair—dilapidated and rotted from the floods and Storm¹⁰⁴—thus presenting further obstacles and hazards to returning residents.

It is not surprising, therefore, that after the Storm the first family-related legal matters that came before the local courts in large numbers were not per se family law issues, but rather were housing issues, specifically cases involving evictions, successions, and homelessness.¹⁰⁵ A full review and analysis of the housing issues precipitated by Hurricanes Katrina and Rita is beyond the scope of this Article; however, these issues deeply impacted, and continue to affect, most families in New Orleans.

The Storm and its aftermath raised different housing-related legal issues and challenges for affected families, depending on whether a family owned their home or were renting, pre-Katrina. For many homeowners, particularly poor, African-American homeowners, the issue of succession, or gaining clear legal title, was the first challenge. It is estimated that some 8000 families whose homes were destroyed did not have a clear title at the time Katrina hit the area.¹⁰⁶ Many homes had been passed informally through the generations without the benefit of the legal process of title passing.¹⁰⁷ As family members passed away, the next generation lived in the house without changing the recorded owner.¹⁰⁸ Ownership of the property was still officially listed as, perhaps, the original purchaser two, three, even four generations ago. In other cases, records were destroyed or lost—many in the floods themselves.

Over the years, family members had paid taxes and even taken out and paid for insurance policies on these houses. Yet, after the Storm, FEMA would not accept claims for subsidies and assistance without proof of titled ownership.¹⁰⁹ Moreover, homeowners could not successfully file insurance claims without clear

103. For a detailed report on the post-Katrina blight and its impact, see GREATER NEW ORLEANS CMTY. DATA CTR., *supra* note 102.

104. See LIU ET AL., *supra* note 5, at 6 (noting that “[h]undreds of streets are still in disrepair”).

105. Judge Landrieu Interview, *supra* note 13; Interview with the Honorable Sonia Spears, Judge, in New Orleans, La. (May 19, 2008) [hereinafter Judge Spears Interview].

106. Judge Landrieu Interview, *supra* note 13.

107. Zedlewski, *supra* note 5, at 7; see also Kenneth A. Weiss, *Clearing Title in Katrina's Wake*, PROB. & PROP., Sept.-Oct. 2006, at 42, 42 (discussing the general process of succession which was prevalent in New Orleans pre Katrina).

108. See Weiss, *supra* note 107, at 42 (noting that many home “‘owners’ [of record] have been dead for years”).

109. See *id.* (noting that for FEMA to accept claims title had to first be cleared).

title.¹¹⁰ Later, when the State of Louisiana started the Road Home Program,¹¹¹ pursuant to the powers delegated to States under the Federal Stafford Act,¹¹² in order to receive a Road Home grant, homeowners needed to show clear title.¹¹³ Through the process of “succession,” the method of passing title after death which is characteristic of the civil law system of Louisiana,¹¹⁴ homeowners could legally establish clear title. For families that could afford attorneys, they enlisted their family law attorneys to represent them in this process. Indeed, these succession and clear title actions were frequently the first type of legal matter that many family law attorneys engaged in post-Katrina.¹¹⁵ For the thousands who could not—and still cannot—afford attorneys, legal services attorneys have been representing such parties in navigating this legally cumbersome process of succession in hopes of resolving at least partial title to their homes.¹¹⁶ The filing of succession cases has been an ongoing process since the Storm.¹¹⁷

Families who rented their homes—apartments, houses, and buildings in the housing projects—before the Storm faced equally, if not more, daunting legal challenges to secure their former housing or its equivalent after the Storm. Most renters had to evacuate their flooded and damaged rentals during the hurricane and floods, leaving most of their possessions, furniture, and personal items in place.¹¹⁸ The rental side of the housing spectrum, for families returning or trying to return to the city, has manifested itself in a massive number of eviction proceedings.¹¹⁹ The numbers are indeed staggering and confounding at once,

110. *Id.*

111. Governor Kathleen Blanco announced the start of the Road Home Program on August 22, 2006. Press Release, The Road Home, The Road Home Opens Ten Housing Assistance Centers Statewide (Aug. 22, 2006), *available at* http://road2la.org/news_releases/HACs-082206.htm.

112. Robert T. Stafford Disaster Relief and Emergency Assistance Act § 322, 42 U.S.C. § 5165(c)-(e) (2006).

113. THE ROAD HOME, LA. RECOVERY AUTH., THE ROAD HOME HOMEOWNER PROGRAM POLICIES: VERSION 6.2, at 14 (2009), *available at* http://road2la.org/Docs/policies/Homeowner_Program_Policies_v6.2_4.13.09.pdf (noting that applications are accepted despite clouds on titles but “[p]rior to closing title issues must be cleared up”).

114. Judge Landrieu Interview, *supra* note 13.

115. *Id.*

116. For an overview of the New Orleans Legal Assistance Corporation, see generally Southeast Louisiana Legal Services, About SLLS, <http://www.nolac.org/AboutUs.cfm?pagename=AboutUs> (last visited May 31, 2009). For more information on The Pro Bono Project, see generally The Pro Bono Project, <http://www.probono-no.org> (last visited May 31, 2009).

117. Judge Landrieu Interview, *supra* note 13.

118. See Sue Kirchoff, *Rebuilding After Katrina to Take Monumental Effort*, USA TODAY, Oct. 6, 2005, at 1B (noting that according to the “National Low Income Housing Coalition . . . more than half the housing destroyed by Katrina was rentals”).

119. For a discussion of the reality of the post-Katrina evictions, see William P. Quigley, *Obstacle to Opportunity: Housing that Working and Poor People Can Afford in New Orleans Since Katrina*, 42 WAKE FOREST L. REV. 393, 399-403 (2007) [hereinafter Quigley, *Obstacle to Opportunity*] (discussing the pre- and post-Katrina rental eviction picture); William P. Quigley,

raising the question why an eviction would be a fair or necessary legal action if the housing had been severely damaged or destroyed in the catastrophe. Yet, in the months following Katrina, landlords, backed by state and parish eviction laws historically harsh to tenants,¹²⁰ and eager to raise rents or raze their properties for profitable redevelopment, sought eviction actions in order to free their property of prior, now displaced, tenants.¹²¹

Immediately following Katrina, the Orleans Parish Civil Court heard upwards of one hundred eviction cases a day, most with no tenants present.¹²² Even three years after the Storm, the court still heard twenty to thirty eviction cases a day, releasing the properties of former tenants, many of whom were never even given an opportunity to return for their possessions.¹²³ At the same time, former tenants of the now demolished housing projects never had a chance to regain the possessions they had left behind, nor the due process rights of an eviction hearing.¹²⁴

Increasingly, families are finding themselves homeless as they return to New Orleans. Both former homeowners and tenants alike face the grim prospect of homelessness in New Orleans should they decide to return to the city. Many families have returned to find their formerly rented homes in ruins, re-developed as higher rent housing, or demolished—as in the case of the housing projects razed by the city and federal housing authorities.¹²⁵ Increasingly, individuals and families have been forced to crowd in with friends and relatives, squat in the ruins of houses and apartments, live in shelters and trailers,¹²⁶ and, at one point, may have had no recourse but to live in the Tent City under the I-10 underpass at Claiborne and Canal Streets.¹²⁷ Some have returned to New Orleans only to leave again when faced with homelessness and all the collateral social, health, and safety issues that accompany such a situation.

Homelessness, perhaps more than any other factor, defines the reality of the

Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again, 81 TUL. L. REV. 955, 992-95 (2007) [hereinafter Quigley, *Thirteen Ways*] (discussing the post-Katrina eviction reality). In addition, Judge Spears also noted the dramatic increase in eviction actions she has seen in the courts, post-Katrina. Judge Spears Interview, *supra* note 105.

120. See Quigley, *Obstacle to Opportunity*, *supra* note 119, at 401; Quigley, *Thirteen Ways*, *supra* note 119, at 993 (both noting that Louisiana eviction law permitted notice of eviction by “tacking” notice to the door of the rental property).

121. Judge Spears Interview, *supra* note 105.

122. *Id.*

123. *Id.*

124. *Id.*

125. For discussion of the loss of housing post-Katrina, see generally Davida Finger, *Stranded and Squandered: Lost on the Road Home*, 7 SEATTLE J. FOR SOC. JUST. 59 (2008) (discussing the fact that the devastation from Katrina persists in the failure to provide housing for those returning); Quigley, *Obstacle to Opportunity*, *supra* note 119, at 393-418 (discussing the lingering problems in the housing market as it existed in 2007).

126. See Konigsmark, *supra* note 96.

127. See *Katrina Survivors Deserve Better*, *supra* note 95.

ongoing disaster and the enormous, perhaps incalculable, impact the Storm has had on peoples' lives. Thousands of former residents, including many families with children have found themselves homeless in the post-Katrina New Orleans reality. Homelessness is dramatically diminishing the possibility for many families to make a permanent return to a safe and family-appropriate setting back home in New Orleans.

B. "Katrina Divorces"—The Challenge of Increased Marital Dissolutions Within the Framework of Disaster Family Law

The stress of dealing with the Storm, its aftermath, and the protracted recovery has overwhelmed many current and former residents. At least one report has noted that while the city's population nearly four years after the Storm is approximately two-thirds of its size before the Storm, divorces have increased nearly 35% from pre-Storm divorce rates.¹²⁸ Stress and other factors have contributed to this significant increase in divorce filings in Orleans Parish. It is important to note that this does not account for divorces that are filed outside of New Orleans in places where the dislocated and displaced residents have settled.

The Storm's emotional aftermath—the stress it inflicted on people and their relationships—pushed many couples to the breaking point. Stress research indicates that divorces are likely to increase following a disaster.¹²⁹ The problems present in New Orleans post-disaster are connected and synergistic; they magnify and amplify each other.¹³⁰ Individuals struggle with the hostile landscape of everyday life in New Orleans during the attempted recovery. Personal struggles impact the entire family and as family stress increases it impacts the individual. For example, increased financial strain caused by a negative response, or lack of response, from a FEMA agent fuels already existing anger and frustration. The anger and financial frustration is redirected at one's spouse causing arguments and strain on the relationship. Instead of being a source of support, the family becomes another source of conflict and stress. Systemic frustration, combined with the incredibly slow and bureaucratic recovery from the disaster, stress on family systems, and stress on the individual

128. Maria Barrios, *Matrimoney: Pre- and Postnuptial Agreements Gain in Popularity*, NEW ORLEANS CITY BUS., available at <http://www.neworleanscitybusiness.com/viewFeature.cfm?recID=924> (noting that "New Orleans population is down 35[%] from 460,000 before Hurricane Katrina to about 300,000 now. Likewise, divorces increased about 35[%] between 2003 and 2006, according to the Orleans Parish Clerk of Court").

129. See Catherine L. Cohan & Steve W. Cole, *Life Course Transitions and Natural Disaster: Marriage, Birth, and Divorce Following Hurricane Hugo*, 16 J. FAM. PSYCHOL. 14, 19-20 (2002).

130. See, e.g., J. Steven Picou & Brent K. Marshall, *Introduction: Katrina as a Paradigm Shift: Reflections on Disaster Research in the Twenty-First Century*, in THE SOCIOLOGY OF KATRINA: PERSPECTIVES ON A MODERN CATASTROPHE 1, 13 (David L. Brunson et al. eds., 2007) ("For example, experiencing a death in the family, displacement, the destruction of your home, the breakdown of family relationships, and losing neighborhood and familial social networks are associated with cycles of anger, domestic violence, loss of trust, mental health problems, and spirals of resource loss that result in new threats, warnings, and impacts through the postdisaster period.").

all cycle back on one another causing extraordinary levels of dissatisfaction with life in the city.

A door-to-door survey conducted in New Orleans from September 12 to November 13, 2006 found 22% of respondents “said that the Storm and its aftermath had caused some level of stress in their ‘marriage or other serious relationship.’”¹³¹ Five percent of respondents in Orleans Parish said that their marriage or relationship ended as a result of the stress following the storm.¹³² Life in the Big Easy has been anything but easy in the four years since the Storm. Families are still dislocated; some spouses are separated by long distances. Some families still crowd into small FEMA trailers triggering extreme pressure between spouses and exacerbating already existing stressors and problems.¹³³ The average FEMA trailer is only 256 square feet and has one bedroom and one bathroom.¹³⁴ Some trailers are even smaller¹³⁵ leading to potential physical and mental health problems and, in some cases, violence and suicide.

Many families are still trying to juggle work, school, family, and community obligations¹³⁶ while rebuilding¹³⁷ and refurnishing their homes. Added to that has been the stress of diminished resources—many New Orleanians lost their jobs after Katrina¹³⁸ and the cost of living in New Orleans is significantly higher than

131. KAISER FAMILY FOUND., GIVING VOICE TO THE PEOPLE OF NEW ORLEANS: THE KAISER POST-KATRINA BASELINE SURVEY 13 (2007), available at <http://www.kff.org/kaiserpolls/upload/7631.pdf>. This survey was conducted in New Orleans. *Id.* at 5. “Those in Orleans Parish reported more marital problems—with nearly one in four (22 percent) saying this has been a problem since the storm.” *Id.* The survey did not measure the impact of the Storm on displaced residents living *outside* of New Orleans at the time the survey was conducted. These numbers could be significantly higher if all current and former residents who were impacted by Katrina were surveyed.

132. *Id.* at 13.

133. See *supra* notes 90-93 and accompanying text.

134. FED. EMERGENCY MGMT. AGENCY, DEP’T OF HOMELAND SEC., ALTERNATIVE HOUSING PILOT PROGRAM: GUIDANCE AND APPLICATION KIT 7 (2006), available at http://www.fema.gov/pdf/government/grant/ahpp_guidance.pdf.

135. Assoc. Press, *Tight Squeeze: Life Inside FEMA Trailer*, CBS NEWS, Mar. 25, 2006, available at <http://www.cbsnews.com/stories/2006/03/25/ap/national/mainD8GISR882.shtml> (discussing the story of Gus McKay, his wife, and two teenage daughters who lived in a FEMA trailer for more than a year after the Storm; their trailer was 180 square feet).

136. Interview with the Honorable Paulette Irons, Judge, New Orleans Civil District Court, in New Orleans, La. (May 20, 2008) [hereinafter Judge Irons Interview]. Judge Irons reported that she sees parties in her court room that are experiencing the same issues as prior to the Storm but the problems are now exaggerated due to the difficulty of navigating the post-Katrina landscape of everyday life and this is leading to increased mental health issues. *Id.*

137. The number of contract disputes between contractors and homeowners has risen dramatically in the past two and one-half years adding to the stress of families who are rebuilding. Deon Roberts, *State Officials Fear Surge in Contractor Fraud Cases*, NEW ORLEANS CITYBUSINESS, available at <http://www.neworleanscitybusiness.com/ViewFeature.cfm?recid=716> (last visited July 7, 2009).

138. See GULF RECONSTRUCTION WATCH, INST. FOR S. STUDIES, BLUEPRINT FOR GULF

before the Storm.¹³⁹ Many families likely continue to pay the mortgage on their damaged or destroyed property in New Orleans and at the same time pay rent for temporary housing elsewhere. A number of families are still awaiting their Road Home¹⁴⁰ grant. Furthermore, personal frustrations and overcrowded conditions have been exacerbated by the city's broken infrastructure. Many families cannot even get health and mental health care because there are fewer doctors and health care facilities in New Orleans.¹⁴¹ The public transportation system operates fewer routes since the storm¹⁴² and some public schools do not own buses¹⁴³ making just getting to school and work frustrating. The frustrations add up and sometimes tear families apart.¹⁴⁴

Other factors also likely contribute to the increase in divorce filings. In New Orleans it is not uncommon for spouses who desire divorce to live as if divorced but without actually obtaining a legal division. In some cases, spouses have probably not seen each other in years. Louisiana, though, is a community property state—assets owned by one spouse are, in most cases, treated under the law as property owned by both spouses.¹⁴⁵ Because of this, tremendous amounts of community property are jointly owned by people who no longer have a social connection to each other. When a disaster occurs, finding a long lost spouse, a

RENEWAL: THE KATRINA CRISIS AND A COMMUNITY AGENDA FOR ACTION 4 (“There are 100,000 fewer jobs available in New Orleans today than before the 2005 storms.”); *see also* Harry J. Holzer & Robert I. Lerman, *Employment Issues and Challenges in Post-Katrina New Orleans*, in *AFTER KATRINA: REBUILDING OPPORTUNITY AND EQUITY INTO THE NEW NEW ORLEANS* 9, 10 (Margery Austin Turner & Sheila R. Zedlewski eds., 2006) (“Average displaced workers lose 15 to 20% of prior earnings once reemployed—commonly more if they are older or less educated.”).

139. *See* LIU ET AL., *supra* note 5, at 12 (noting that in January 2009 rents were 52% higher in New Orleans than they were prior to the Storm).

140. Road Home is grant funding provided through HUD's Community Development Block Grant (CDBG) Program and administered by the State that offers “up to \$150,000 to certain eligible homeowners whose primary residences were destroyed or severely damaged following Hurricanes Katrina and Rita.” Press Release, U.S. Dep't of Housing and Urban Dev., Jackson Approves Louisiana's \$4.6 Billion “Road Home Program”: Calls for Quick Congressional Approval of Additional \$4.2 Billion for Louisiana (May 30, 2006), *available at* <http://www.hud.gov/news/release.cfm?content=pr06-058.cfm>.

141. LIU ET AL., *supra* note 5, app. at 56, tbl. 42 (showing that in December 2008 only 57% of the state-licensed hospitals that were open in July 2005 were open).

142. *Id.* app. at 54-55, tbl. 41 (noting that the New Orleans Regional Transit Authority operated 50% fewer routes in November 2008 than it operated in July 2005).

143. *NEW ORLEANS PARENTS' GUIDE TO PUBLIC SCHOOLS* (3d ed. 2009), *available at* <http://www.nolaparentsguide.org/Parents'%20Guide%20March09.pdf>. Of the ninety-six public schools that state a method of transportation, seven provide RTA tokens and six provide no transportation. *Id.*

144. For an excellent description of attempting to perform typical daily functions while also rebuilding the legal community, *see generally* Michael J. Vitt, *After the Storm: Gulf Coast Lawyers Rebuild*, 63 *BENCH & B. MINN.* 22 (Mar. 2006).

145. *LA. CIV. CODE ANN.* art. 2340 (2009) (noting a presumption of community property).

lawyer (or two), and navigating the divorce process is one more significant source of stress.

In most cases, divorcing couples with minor children must live separate and apart for 365 days prior to obtaining a divorce judgment and couples without children must wait 180 days.¹⁴⁶ During the 180- or 365-day waiting period, spouses create informal arrangements regarding property and children. If those arrangements are working when the waiting period ends, the spouses often do not see the need to expend resources to finalize the legal process. Due to Hurricane Katrina, those informal arrangements stopped working and triggered the need for parties to formally file for a divorce.

Katrina became a catalyst for divorce in large part because disaster and recovery laws and programs typically treat the nuclear family and the marital unit as the legal recipient of disaster benefits and other relief.¹⁴⁷ For example, after the Storm, even though in some cases spouses had not lived together for years, homeowner's insurance, flood insurance, and Road Home checks were made payable to both spouses as a marital unit because property was owned jointly.¹⁴⁸ Suddenly, the spouse who remained living in the marital home was faced with serious, if not totally daunting, obstacles in order to collect disaster benefits and payments. First, they had to locate the other spouse and, then, they had to gain that other spouse's cooperation in negotiating the checks.

Due to the widespread dislocation of New Orleans's residents after the Storm, finding any person was a major challenge. Finding someone with whom there has been no contact for several years was even more difficult. Next, gaining cooperation to use the checks solely for repair of property from someone with whom there may previously have been an acrimonious relationship could be impossible. As a result, some spouses use the divorce process as a method of settling property issues and forcing the other spouse's cooperation to use the insurance and/or Road Home funds to repair the property. For many people, post-Katrina disaster and insurance benefits were likely a family's greatest, or only remaining, asset, particularly if the marital home had been damaged or destroyed.

Under Louisiana State divorce law, one method of using the divorce process to "gain" the other spouse's cooperation is to petition for divorce, include the disaster relief and insurance check(s) as community property, and then request that the court divide the check(s) appropriately.¹⁴⁹ However this could lead to both spouses obtaining only a portion of the disaster relief, leaving insufficient

146. LA. CIV. CODE ANN. art. 103.1 (Supp. 2009).

147. See Goldfarb, *supra* note 99, at 41-42 (noting the problems seen through the 9/11 Victims Fund in terms of how benefits are paid to family members).

148. See, e.g., The Road Home, Frequent Questions, <http://www.road2la.org/homeowner/faqs.htm> (noting that when property is owned by husband and wife as community property that both spouses must sign the covenants and "will jointly receive benefits unless legal documents direct [otherwise]").

149. See LA. CIV. CODE ANN. art. 2374 (2009) (providing for the separation of community property upon the petition for dissolution of marriage).

funds to repair the property.¹⁵⁰ The remaining sole owner of the damaged property then must either try to find financing to repair the property or sell the flooded house and hope to receive enough funds to cover the remaining mortgage by supplementing it with insurance proceeds.

A second method of utilizing the divorce process to “gain” the other spouse’s cooperation in obtaining and using disaster relief and insurance funds to repair the property is to file for divorce and partition property *prior* to filing an insurance or Road Home claim. This method has circumvented joint payee checks altogether. The property would be divided, usually by one party buying-out the other party. Then the spouse with sole ownership would file the insurance and/or Road Home claim and, once compensated, could use all of the funds to repair the property. Only parties with sufficient assets to buy out the other party have had this option. Also, only parties who had sufficient time prior to filing insurance or Road Home claims had this option. However, this approach often is not possible for low-income families due to a lack of resources to buy the other spouse out of his/her share of the property.

In the aftermath of Hurricane Katrina, the need to have a legally recognized division of community property caused a surge in court filings.¹⁵¹ This post-disaster legal phenomenon clogged the courts, consumed valuable attorney time, and added one more significant challenge to the already daunting list of things returning and displaced New Orleanians had to do.

Furthermore, the number of spouses living apart at the time of the disaster would most likely have not been so high if divorcing couples with minor children had not been required under Louisiana divorce law to live separate and apart for 365 days¹⁵² prior to obtaining the divorce. The long length of time that spouses are required to live apart prior to obtaining a divorce encourages spouses to create informal mechanisms for dealing with what would have otherwise been handled through the legal process. This also encourages chaos when those informal mechanisms no longer work. This time, chaos in divorce court happened to coincide with chaos in the rest of the city.

C. Post-Katrina Domestic Violence as a Family Law Issue

Since the disaster, there has been a widely reported upsurge of criminal activity in New Orleans¹⁵³ due to a variety of factors. One of the most visible

150. See The Road Home, Home Page, <http://www.road2la.org/homeowner/default.htm> (last visited Aug. 20, 2009). Homeowners who receive a compensation grant are not required to use the money to repair the property. At the time the grant recipient receives his/her money, he/she must sign a covenant stating that the property will be repaired within three years. If the homeowner chooses to use different money or the homeowner does not use all of the money, the homeowner is not required to return the money. *Id.*

151. See Weiss, *supra* note 107, at 43 (noting Louisiana community property law as one reason for an increase in title issues and court filings to clear title post-Katrina).

152. See LA. CIV. CODE ANN. art. 103.1(1) (Supp. 2009).

153. See Jeff Adelson, *Burglaries, Thefts Rise in 2008 but Other Crimes in Tammany Fell*,

developments has been a marked increase in domestic violence cases, largely attributed to the stress of living in post-Katrina New Orleans.¹⁵⁴ A full treatment of domestic violence, with all of its complex social factors, including mental health issues, is beyond the scope of this Article. However, it is important to recognize the specific impact that Storm stress and a frustrating, agonizingly slow, and uneven recovery process have had on family and spousal relations.

The increase in domestic violence—triggered in part by economic distress, frustration, stress, indignity, and abandonment by the government—is a marked characteristic of family relations in post-Katrina New Orleans.¹⁵⁵ Domestic violence has been fueled by living in the cramped and dire living conditions in tiny FEMA trailers and made more allowable in both the post-Storm disarray of life and the city's civil justice infrastructure.¹⁵⁶ In short, the stress of living in post-Katrina New Orleans has increased the occurrences of domestic violence.¹⁵⁷

The normal stressors that contribute to domestic violence have been exponentially exacerbated by the social disarray, chaos, and trauma generated by the Storm. The economic and general disempowerment and frustration that often induces domestic violence has been particularly present in post-Katrina New Orleans.¹⁵⁸ Furthermore, studies have shown that women may be at increased risk of domestic violence after a catastrophe or disaster such as Katrina.¹⁵⁹ In disasters, and their aftermaths, families may suffer from isolation, stress, loss, and disruption of support mechanisms and begin to take such stresses out on one another.¹⁶⁰ Moreover, the lack of housing and shelters and an unwillingness to deal with government bureaucrats and agencies can leave a battered woman no choice but to stay with her batterer.¹⁶¹

Further, FEMA regulations governing their government-issued trailers and

TIMES-PICAYUNE (New Orleans), Jan. 30, 2009, at 1, *available at* 2009 WLNR 1778835; Konigsmark, *supra* note 96.

154. Konigsmark, *supra* note 96.

155. See Robert R.M. Verchick, *Katrina, Feminism, and Environmental Justice*, 13 CARDOZO J.L. & GENDER 791, 798 (2007) (noting “soaring reports of domestic violence”).

156. *See id.*

157. Konigsmark, *supra* note 96 (“And while [Orleans Parish Police Superintendent] Riley reports that 70% of murders are drug-related, there’s an upswing in a new kind of crime: brutal, domestic violence that he attributes to the stress of living in post-Katrina New Orleans.”).

158. Alison Fensterstock, *Network Difficulties*, GAMBIT WK. (New Orleans), Mar. 21, 2006, n.p., *available at* <http://bestofneworleans.com/gyrobase/PrintFriendly?oid=oid%3A35852> (reporting that “[o]nly 4 percent of battered women ever seek refuge in a shelter, and after many have already dealt with multiple shelters and bureaucracies, the last thing they want is to encounter another one. Going through a tiresome legal process to hold their batterers accountable, or even blocking out the time . . . in the face of so many other exhausting imperatives—the insurance adjuster, getting FEMA on the phone, getting the kids in schools—is only a must-do if the victim makes it one”).

159. See Goldfarb, *supra* note 99, at 37.

160. *Id.*

161. *Id.*

the claimant process for financial assistance and benefits have added to the stressors.¹⁶² Women have been forced to negotiate with their batterer over who gets the FEMA check or the trailer because only one member of a household can make the claim or get assigned the trailer.¹⁶³ For example, FEMA regulations allow the issuance of only one trailer per household and, similarly, only one application per household for FEMA assistance.¹⁶⁴ This limitation reduces the possibility that a battered woman who wants to leave her abusive spouse that has already received FEMA assistance will get her own FEMA housing, forcing her to stay with her abuser. Clearly, reform of FEMA's regulations is essential in order to protect a battered spouse in the face of future disasters.

D. Children of the Storm—Child Custody Law in the Face of Disaster

As discussed previously,¹⁶⁵ the impact of Katrina on the young children of New Orleans, the great majority of whom were already living in poverty and highly at-risk, will be felt for years to come.¹⁶⁶ Children lost their physical possessions, connection to their culture, friends, and support systems, all in an instant.¹⁶⁷ When forced to evacuate to locations all over the country, children were separated from and deprived of the care that they received from primary caregivers prior to the Storm.¹⁶⁸ Some children remained separated from their primary caregiver for more than a year after the Storm and from non-primary parents many years after the Storm. A case in point is that of a three-year-old boy whose parents had separated a few months before the Storm.¹⁶⁹ While separated in New Orleans, both parents provided equal care for the child. When the Storm approached, the mother and child evacuated to Georgia and the father

162. *Id.* at 37-39 (discussing the inadequacy of FEMA regulations to support battered women and the fact that such regulations actually increased family stressors). The FEMA regulations that are most applicable are contained in 44 C.F.R. § 206 (2008).

163. For the applicable FEMA regulation, see FEMA Federal Disaster Assistance, 44 C.F.R. § 206.117 (2008); *see also* Memorandum in Opposition to Plaintiffs' Request for Preliminary Injunctive Relief at 4-5, Ass'n of Cmty. Orgs. for Reform Now v. FEMA, 463 F. Supp. 2d 26 (D.D.C. 2006) (No. 06-CV-1521-RJL), *available at* <http://citizen.org/documents/FEMAopp.pdf>.

164. Goldfarb, *supra* note 99, at 38. For the FEMA regulation, see FEMA Federal Disaster Assistance, 44 C.F.R. § 206.117 (2008); *see also* FED. EMERGENCY MGMT. AGENCY, *supra* note 134, at 19.

165. *See supra* Part I.B.2.

166. *See* Golden, *supra* note 8, at 39 (noting that "Katrina deprived young children all at once of their homes, their familiar neighborhoods, and at least some of their close caregivers").

167. *See id.*

168. Forty-seven percent of people polled said that at some point they were separated from family members they were living with at the time of the Storm. Jeffrey M. Jones & Joseph Carroll, *Katrina Survivors Still Face Difficulties One Year Later: Conditions Are Improving in Some Areas*, GALLUP NEWS SERV., Aug. 29, 2006; *available at* www.gallup.com/poll/24286/Katrina-Survivors-Still-Face-Difficulties-One-Year-Later.aspx. One year after the Storm, ten percent of respondents were still separated from family members they lived with at the time of the Storm. *Id.*

169. This scenario is based on a case brought to The Pro Bono Project in New Orleans.

went to Los Angeles. Neither parent moved back to New Orleans; each settled in the city to which s/he had evacuated. The little boy now lives with his mother in Georgia, rarely sees his father, and the mother is a single parent. Parents and courts are struggling to make custody and relocation decisions in these unprecedented circumstances.

In Louisiana, child custody can be allocated within the divorce process;¹⁷⁰ however, it is frequently handled as a stand alone matter for three reasons. First, as mentioned, in most cases, divorcing couples with minor children must live separate and apart for 365 days prior to obtaining a divorce judgment.¹⁷¹ During the one-year waiting period, many parents create informal agreements regarding child custody. By the end of the waiting period, if the parties have a working agreement, they often do not see the need to expend resources on the legal divorce process, especially low-income families. Second, there is no statutory requirement that custody be allocated at the time a judgment of divorce is granted. Instead, in the petition the parties may request a determination of custody, visitation, and support or they may reserve the right to request these at a later date.¹⁷² Third, most children in New Orleans are born to unmarried parents;¹⁷³ thus, no divorce proceeding is necessary. Post-Katrina, however, families requested court intervention to help them resolve disputes that occurred as a result of the Storm and its aftermath.

The evacuation occurred on a weekend, a time that many children likely spend with their non-custodial parents, and the Storm hit on Monday morning.¹⁷⁴ Thus, many children evacuated before or after the Storm with their non-custodial parent.¹⁷⁵ In the chaotic days following the storm, many lawyers, judges, and families attempted to determine where children were and where was the best place for each child to be.¹⁷⁶ Amid the chaos, flexibility among social service

170. LA. CIV. CODE ANN. art. 131 (1999) (“In a proceeding for divorce . . . the court [may] award custody of a child in accordance with the best interest of the child.”).

171. LA. CIV. CODE ANN. arts. 103(1), 103.1(2) (Supp. 2009).

172. LA. CIV. CODE ANN. art. 105 (1999) (“In a proceeding for divorce *or thereafter*, either spouse may request a determination of custody, visitation, or support of a minor child; support for a spouse; injunctive relief; use and occupancy of the family home or use of community movables or immovables; or use of personal property.”) (emphasis added); *see also id.* art. 131 (“In a proceeding for divorce *or thereafter*, the court shall award custody of a child in accordance with the best interest of the child.”) (emphasis added).

173. *See Zedlewski, supra* note 17, at 3 (noting that 70% of all births in 2004 were to unmarried women).

174. *See* Michael J. Vitt, *After the Storm: Gulf Coast Lawyers Rebuild*, BENCH & B. MINN., Mar. 2006, at 22, 24 (“Many children were visiting noncustodial parents when the hurricane hit over a weekend.”).

175. *See id.* (labeling such action as “custody by Katrina”).

176. *See* Steven J. Lane, *Jurisdictional and Practical Problems in Family Law Following Hurricane Katrina*, 69 TEX. B.J. 438, 442 (2006) (quoting Anthony Hayes, who formed Operation Reunite, a non-profit organization dedicated to bringing separated families back together in the days following Hurricane Katrina, as declaring, “We faced an acute custody crisis”).

agencies and child welfare agencies was essential. Parents also needed to be flexible to ensure the welfare of the child—whether the child’s best interest was served by being with the custodial parent, non-custodial parent, or someone else. In addition, Judges needed to exercise flexibility in creating plans for children who were now all over the country displaced within the Katrina Diaspora.¹⁷⁷

After the waters of Lake Pontchartrain flooded the city,¹⁷⁸ family law cases flooded the courts.¹⁷⁹ Some families requested initial custody determinations because the informal agreement under which they had been operating was no longer possible.¹⁸⁰ Some families presented the court with relocation issues.¹⁸¹ As the days and weeks following the hurricane turned into months and years, determining which parent could best serve the child’s best interest and where the child should live became more and more difficult. Two areas of law that have greatly impacted families during and after the Storm are modification of custody orders¹⁸² and relocation issues.¹⁸³ In addition, courts in Louisiana and across the country have increasingly been faced with jurisdictional issues.

1. *Family Dislocation Leads to Custody and Visitation Modifications.*—After the Storm, life as New Orleanians knew it was gone. Residents were unable to be in their homes, employment and schools were uncertain or non-existent, and mental health was stretched to the limits. Elements that create stable environments for families and children were not only gone but were far out of the grasp of parents and caretakers and no one knew how long it would continue. Factors that had been used to make existing custody determinations no longer existed, generating increased numbers of modification cases whose facts have been uniquely Katrina-driven in nature. Orleans Parish family law judges have been faced with the challenges of applying traditional modification standards to these new types of Katrina custody and visitation modification cases.

Louisiana has two different standards for modification of child custody orders.¹⁸⁴ To prevent unjustified litigation and to promote stability in living conditions and the custodial arrangement, custody determinations made after a judge evaluates each parent’s fitness (in Louisiana called “considered” custody determinations)¹⁸⁵ cannot be changed unless the parent seeking the change demonstrates that the present custody is so “deleterious to the child as to justify

177. Judge Landrieu Interview, *supra* note 13.

178. For an account of the flooding, see McQuaid, *supra* note 1.

179. See Lane, *supra* note 176, at 439 (noting that while the full effect of the Storm on family law is “not yet fully known, the disputes between custodial and non-custodial parents are beginning to flood the courts”).

180. Judge Irons Interview, *supra* note 136.

181. Judge Landrieu Interview, *supra* note 13.

182. Judge Irons Interview, *supra* note 136.

183. *Id.*; Judge Landrieu Interview, *supra* note 13.

184. See *Evans v. Lungrin*, 708 So. 2d 731, 738 (La. 1998) (discussing and describing the rules for a “considered decree” and a “stipulated judgment” custody order).

185. See *id.* (citing *Hensgens v. Hensgens*, 653 So. 2d 48, 52 (La. Ct. App. 1995)).

a modification of the custody decree, or of proving by clear and convincing evidence that the harm likely to be caused by a change of environment is substantially outweighed by its advantages to the child.”¹⁸⁶ However, to modify a stipulated custody order (one in which the parties consent to a custodial arrangement and no evidence of parental fitness is presented to the court), the law mandates a more flexible standard with a lowered burden of proof on the party seeking modification.¹⁸⁷ In these cases, the petitioner must “prove that there has been a material change of circumstances since the original custody decree was entered and that the proposed modification is in the best interest¹⁸⁸ of the child.”¹⁸⁹

For most people, the Storm caused a “material change in circumstances”—forced evacuation, dislocation, and sometimes joblessness and homelessness. And in some circumstances, it is clear that a continuation of the child living with the custodial parent is deleterious and that the advantages of a change of “environment” substantially outweighed the harm. However, in many situations the answer is not clear. Determining the nature of the change in circumstances, the deleteriousness of the new environment, and applying the best interest factors is complicated because the conditions that caused the change in circumstances were imposed, not freely chosen by the parent, and were imposed on a very wide scale. Judges first had to determine how long the change in circumstances would last.¹⁹⁰ Perhaps a family’s evacuation would be short lived and they would

186. *Bergeron v. Bergeron*, 492 So. 2d 1193, 1200 (La. 1986).

187. *See Evans*, 708 So. 2d at 738 (citing *Hensgens*, 653 So. 2d at 52).

188. The best interest of the child is determined by weighing several factors. LA. CIV. CODE ANN. art. 134 (1999). The Code states that the

court shall consider all relevant factors in determining the best interest of the child. Such factors may include: (1) The love, affection, and other emotional ties between each party and the child. (2) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child. (3) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs. (4) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment. (5) The permanence, as a family unit, of the existing or proposed custodial home or homes. (6) The moral fitness of each party, insofar as it affects the welfare of the child. (7) The mental and physical health of each party. (8) The home, school, and community history of the child. (9) The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference. (10) The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party. (11) The distance between the respective residences of the parties. (12) The responsibility for the care and rearing of the child previously exercised by each party.

Id.

189. *Evans*, 708 So. 2d at 738.

190. *See Bergerson*, 492 So. 2d at 1195 (a pre-Katrina case establishing that before considering the best interests of the child in a proposed modification of custody, the court must

be able to return to their old home or at least their old neighborhood. Examining the child's current environment and the environment to which the child would go if the change of custody was granted was even more difficult if neither parent was in New Orleans at the time the change of custody was requested. The answers to these questions are often impossible to know, but a prediction still has to be made.

Applying some of the best interest factors¹⁹¹ is problematic also. Factors such as the length of time the child has lived in a stable and adequate environment,¹⁹² the mental health of each party,¹⁹³ and the home, school, and community history of the child¹⁹⁴ all have very limited impact on the proposed change of custody. The length of time the child lived in a stable environment and the child's home, school, and community history is irrelevant if the child currently has no stable home, school, or community. The mental health of each party is important but only in the extremes.¹⁹⁵ With the level of stress caused by the hurricane, most New Orleanians' mental health was at its breaking point, thus neither parent's mental health is likely more stable than the other parent's. While examining the statutory best interest factors is important, courts and families need to recognize the limitations of the factors in the face of such unique circumstances.

Many children lost everything to Hurricane Katrina. In some circumstances a change of custody is warranted and necessary for the child. Unfortunately, some parents have exploited the Storm's disruption to unscrupulously seek custody modification. However, the conflict between parents that occurs during custody litigation is yet one more stress that children do not need.

2. *The Katrina Diaspora and Child Custody Relocation Law.*—Relocation cases increased proportionally more than any of the other types of family law or child custody cases that the courts saw in the aftermath of the Storm.¹⁹⁶ As discussed earlier, children were scattered all over the country during the evacuation.¹⁹⁷ Some were separated from their family members and at times were thought to be lost or, perhaps, actually were lost. In one case, a divorced mother evacuated with her five year-old daughter.¹⁹⁸ Her home in New Orleans

consider the "materiality" of the change because the court does not want "to change the child's established mode of living except for *imperative* reasons") (emphasis added).

191. See *supra* note 188.

192. LA. CIV. CODE ANN. art. 134(4) (1999).

193. *Id.* art. 134(5).

194. *Id.* art. 134(7).

195. Compare *Timmons v. Timmons*, 605 So. 2d 1162 (La. Ct. App. 1992) (affirming lower court's award of domiciliary custody to mother despite her substance abuse, depression, personality disorder, and her previous treatment for such problems), with *Bruscato v. Bruscato*, 593 So. 2d 838 (La. Ct. App. 1992) (denying an award of custody when father was tested by a psychiatrist who testified to the father's inability to use "good judgment").

196. Judge Landrieu Interview, *supra* note 13.

197. See *supra* notes 174-77 and accompanying text.

198. Lynette Clemetson, *Torn by Storm, Families Tangle Anew on Custody*, N.Y. TIMES, Apr.

was destroyed by the Seventeenth Street canal breach.¹⁹⁹ She settled in Fort Worth, Texas, enrolled her daughter in school, and planned to stay until the end of the school semester.²⁰⁰ However, her former husband filed an emergency petition for custody and return of the child to New Orleans.²⁰¹ The court informed the mother that she would lose custody of her daughter if she relocated outside of the New Orleans area.²⁰² The mother stated, “I had just lost every single thing I owned, and now a judge was telling me I could lose my child if I didn’t come back It just seemed crazy and unfair.”²⁰³

Louisiana law regulates a custodial (called a “domiciliary parent” in Louisiana²⁰⁴) parent’s ability to relocate with the child.²⁰⁵ The law places a heavy burden upon the relocating parent to demonstrate that the request for relocation is in good faith and that it is in the child’s best interest.²⁰⁶ “Good faith” requires

16, 2006, § 1, at 1.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *See* LA REV. STAT. ANN. § 9:335(B)(2) (2008) (noting that the “domiciliary parent is the parent with whom the child shall primarily reside”).

205. *See* LA REV. STAT. ANN. §§ 9:355.1 to :355.17 (2008 & Supp. 2009).

206. LA REV. STAT. ANN. § 9:355.12 (2008). Factors the court shall consider in determining if the relocation is in the best interest of the child are:

(1) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the nonrelocating parent, siblings, and other significant persons in the child's life.

(2) The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving a good relationship between the nonrelocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct of the parent seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating party.

(6) Whether the relocation of the child will enhance the general quality of life for both the custodial parent seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity.

that the parent seeking relocation is moving for a legitimate reason, such as employment,²⁰⁷ and that the relocation request is not unwarranted or frivolous.²⁰⁸ Traditionally, this burden has not been difficult to satisfy.²⁰⁹ However, in *McLain v. McLain*²¹⁰ a Louisiana court found that Mrs. McLain did not meet the requirement of good faith when she did not return after evacuating for Hurricane Katrina.²¹¹ Prior to the Storm, she and her husband had lived apart for a few years and had an informal custody and visitation agreement in which the parents had joint custody of both children and Mrs. McLain was the domiciliary parent.²¹² Mrs. McLain evacuated with the children and did not return after the

(7) The reasons of each parent for seeking or opposing the relocation.

(8) The current employment and economic circumstances of each parent and whether or not the proposed relocation is necessary to improve the circumstances of the parent seeking relocation of the child.

(9) The extent to which the objecting parent has fulfilled his or her financial obligations to the parent seeking relocation, including child support, spousal support, and community property obligations.

(10) The feasibility of relocation by the objecting parent.

(11) Any history of substance abuse or violence by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

(12) Any other factors affecting the best interest of the child.

LA. REV. STAT. ANN. § 9:355.12 (2008). To see how these factors are applied by courts, see, e.g., *McLain v. McLain*, 974 So. 2d 726, 736-41 (La. Ct. App. 2007).

207. See, e.g., *Pittman v. Pittman*, 653 So. 2d 1211, 1212-13 (La. Ct. App. 1996).

208. LA. REV. STAT. ANN. § 9:355.16 (2008) (providing that the court may sanction a party for an unwarranted or frivolous request); see also LA. REV. STAT. ANN. § 9:355.13 (2008) (providing the relevant burden of proof for the relocating parent as two pronged: “The relocating parent has the burden of proof that the proposed relocation is made in good faith and is in the best interest of the child.”).

209. See, e.g., *Blackburn v. Blackburn*, 836 So. 2d 1222 (La. Ct. App. 2003) (permitting the relocation of the six-year-old son with his mother even though both mother and father were involved and active in the child’s life primarily on the basis that mother fostered a relationship between the father and son and that the child would be moving with his half-sister with whom he had a good relationship). In *Blackburn*, the court also noted that the “trial court is vested with vast discretion in matters of child custody and visitation, and its determination is entitled to great weight and will not be disturbed absent a clear showing of abuse of discretion.” *Id.* at 1223.

210. 974 So.2d 726 (La. Ct. App. 2007).

211. *Id.* at 735.

212. *Id.* at 727-28.

Storm because her home in New Orleans had become uninhabitable.²¹³ Mr. McLain returned to New Orleans shortly after the Storm.²¹⁴ Mrs. McLain found the city to which she had evacuated to be a good place to raise the children and decided to stay there.²¹⁵ However, she had no family, support system, or employment prospects *prior* to relocating; thus, the court determined that her move was not in good faith.²¹⁶ Perhaps, had she secured employment prior to evacuating, the court would have found that she met the good faith element.²¹⁷ But finding a city with functioning schools, affordable housing, and lower crime rates was not a sufficient reason to relocate the children. The court required the children to return to a devastated New Orleans.²¹⁸ Infrastructure that would encourage families to return (affordable housing, schools, city services) needs to be put in place. Until that occurs, systems and social service agencies need to support families in their choice to return *or not return*.

The *McLain* court, though not required, also reviewed whether the move was in the children's best interest.²¹⁹ Examining the twelve statutory factors, the court found that Mrs. McLain had not met her burden of proving that the move was in the children's best interest.²²⁰ Placing the burden of demonstrating that the relocation is in the child's best interest on the relocating parent, as opposed to placing the burden on the non-relocating parent, is fraught with complications in the face of a disaster causing such wide-spread re(dis)location as did Hurricane Katrina.

Upon first reading, this case appears to have an absurd result—requiring children to return to a devastated city after they have been forced to relocate even though the new location offers the child a better standard of living.²²¹ However, the court may have been using denial of relocation as a method of helping to rebuild the city. Repopulating the city was (and still is) a significant part of the rebuilding process. If a judge orders the children to return, then the parents will likely follow. Bringing children and families back to New Orleans is an important goal; however, creating a supportive environment for those families is crucial to increasing their *desire* to return rather than forcing them to return. The trial court judge may have had a larger focus than just “good faith” and the “best interest” of these children. A desire to repopulate and rebuild the city may have shifted the focus of this judge's interest.

In the weeks following the Storm, most residents were not in New Orleans. Many parents were out of the city with children for whom there was no court

213. *Id.* at 728-29.

214. *Id.* at 729.

215. *Id.* at 730.

216. *Id.* at 735.

217. *See id.* (specifically noting that the move was caused by Hurricane Katrina and that the move did not increase the mother's income).

218. *Id.* at 741.

219. *Id.* at 736-41.

220. *Id.* at 741.

221. *Id.* at 735.

order specifying when a child should be with which parent. If a court order did exist, it likely specified a domiciliary parent (primary physical custodian).²²² Only domiciliary parents are subject to the requirements of the relocation law.²²³ In other words, the court does not control or monitor the location or relocation of the non-custodial parent. Traditional relocation law treats the non-custodial parent as free to move out of the area.²²⁴ However, as noted earlier, many children were with their non-custodial parent during the evacuation and continued to stay with that parent weeks, months, and sometimes years after the Storm.²²⁵ In many cases it has been difficult to determine which parent was required to comply with the requirements of the relocation law, as both parents have relocated. The parent who intends to, or eventually does, return to New Orleans can file a petition to have the child returned to New Orleans.²²⁶ However, if neither parent returns to New Orleans, then a Louisiana court could be faced with deciding in which *new* city the child should reside. This has become an increasingly common scenario, triggered by the massive displacement of New Orleanians immediately after the Storm. In these cases, the court must decide with which parent the burden of proving that the relocation is in the child's best interest lies.

In some cases it has been difficult to determine if the action is one for custody determination, modification, or relocation and accordingly with which party the burden of proof lies.²²⁷ This conundrum has been exacerbated since the Storm. For example, Louisiana's relocation laws state that "[p]roviding notice of a proposed relocation of a child shall not constitute a change of circumstance warranting a change of custody."²²⁸ However, "moving *without* prior notice or moving in violation of a court order may constitute a change of circumstances warranting a modification of custody."²²⁹ Applying the statute without flexibility in a post-disaster scenario could trigger this provision. The involuntary move caused by a disaster may instead be treated under the law as a factor in a

222. See LA. REV. STAT. ANN. § 9:335(B)(1) (2008) (noting that when a court issues an order granting joint custody that the court "shall designate a domiciliary parent except when there is an implementation order to the contrary or for other good cause shown"); *Evans v. Lungrin*, 708 So. 2d 731, 737 (La. 1998) ("[W]hen parties are awarded joint custody, the court must designate a domiciliary parent . . .").

223. LA. REV. STAT. ANN. § 355.3(A) (Supp. 2009).

224. See Merle H. Weiner, *Inertia and Inequality: Reconceptualizing Disputes over Parental Relocation*, 40 U.C. DAVIS L. REV. 1747, 1796-97 (2007) (noting that courts frequently modify visitation for a relocating non-custodial parent).

225. See *supra* notes 174-77 and accompanying text.

226. See LA. REV. STAT. ANN. § 9:355.5 (2008) (noting that a relocating party must get a court order before relocating).

227. It is important to note that when the issue of relocation is presented at the initial custody determination hearing, the court applies the same factors as it applies in a relocation hearing to determine if the relocation is in the best interest of the child. *Id.* § 9:355.15.

228. *Id.* § 9:355.11.

229. *Id.* (emphasis added).

modification hearing.

In the face of a disaster such as Hurricane Katrina, courts are called upon to determine what is a relocation, whether a relocation in fact occurred and, if so, when it occurred. Under Louisiana law, if there is a current court order awarding custody, relocation is characterized by the “[i]ntent to establish legal residence with the child at any location outside of the state [or] more than [150] miles from the domicile of the primary custodian at the time the custody decree was rendered.”²³⁰ If there is no court order awarding custody, relocation is characterized by an *intent* to establish legal residence with the child at a distance of more than 150 miles from the other parent.²³¹

Because the statute requires intent, it can be difficult to determine when, or if, a relocation took place. Furthermore, under Louisiana law, relocation standards and requirements only apply to a change in residence that will last longer than sixty days, but does not apply to “a temporary absence from the principal residence.”²³² In addition, relocation statutes do not apply when “[t]he parents of a child have entered into an express written agreement for a temporary relocation of that child’s principal residence, regardless of the duration of the temporary relocation.”²³³ However, with families dependent upon insurance and Road Home funds, which many families still have not received,²³⁴ to rebuild homes and return to the city, it is difficult to determine when the emergency evacuation ends and the *intent* to relocate begins. Nearly four years after the Storm, some parents still intend to return to New Orleans but have been unable to do so. In the aftermath of a disaster, particularly a disaster on the immense and unprecedented scale of Katrina, it is difficult to determine under traditional legal standards when a parent is an evacuee, involuntarily displaced, or when a parent has voluntarily decided not to return to his/her home.

The law also requires the relocating parent to notify the other parent of the *intent* to establish a new legal residence, spelling out strictly regulated notification requirements.²³⁵ After Katrina, judges were flexible in applying

230. *Id.* § 9:355.1(4)(a)&(b) (emphasis added).

231. *Id.* 9:355.1(4)(b). Compare to the Indiana statute stating that relocation is a change in primary residence (presumably any change regardless of distance) of an individual (either parent, custodial or non-custodial). IND. CODE § 31-17-2.2-1 (2009); *see also id.* § 31-14-13-10.

232. LA. REV. STAT. § 9:355.1(4)(c) (2008).

233. *Id.* 9:355.2(C)(1).

234. For statistics on Road Home funds, see generally The Road Home News Room, Weekly Detailed Statistics, <http://www.road2la.org/newsroom/stats.htm> (last visited Aug. 20, 2009) (detailing the number of applicants and number of those receiving funds)).

235. *See* LA. REV. STAT. §§ 9:355.3, :355.4, :355.6 (2008 & Supp. 2009). The law requires that the relocating parent notify the other parent by mail to the last known address of the parent no later than either:

(1) the sixtieth day before the date of the intended move or proposed relocation[; or]

(2) the tenth day after the date that the parent knows [of the relocation] if the parent did not know and could not reasonably have known the information in sufficient time to

these requirements. Generally, Orleans Parish family law judges did not apply sanctions to potentially relocated parents for the failure to notify the other parent of a relocation after the Storm.²³⁶ However, courts must also address the collateral question of whether the requirement to notify the other parent should take effect if the parent intends to return three, five, or even ten years after the storm.

Generally those who evacuated because of the Storm did not *intend*—or had an idea they would be required—to relocate temporarily or permanently. Nearly four years after the Storm, families are still unable to return to New Orleans for reasons beyond their control and do not know whether they will be able to return even if they intend to do so. Therefore, custody relocation laws, standards, and cases, perhaps more starkly than other areas of family law, have been shaken by the mass displacement and dislocation of hundreds of thousands of parents during Katrina. Judges, lawyers, family law experts, and legislators should review this post-Katrina experience and initiate a process of evaluation and reform of these traditional and, at times, conflicting approaches to relocation in custody cases.

3. *Jurisdiction*.—Three years after the Storm, estimates suggested that 196,561 fewer people lived in New Orleans than did prior to the Storm.²³⁷ Issues of jurisdiction over families' custody, visitation, and child support matters will likely be felt in courts in Louisiana and across the country for years to come. Jurisdiction over those cases has been and will increasingly become a difficult issue to resolve. However, since the Storm, the legislature has enacted laws and courts have been flexible in an attempt to decrease that difficulty. At least one family law expert noted that in many of the cases he handled the courts would call courts in other jurisdictions to discuss the realities of the situation.²³⁸ These phone calls were vitally important in determining *where* kids actually were and with whom were they living.²³⁹ The conversations helped judges determine the appropriate jurisdiction for each case.²⁴⁰

Since Katrina, Louisiana adopted a version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).²⁴¹ The Act was introduced in the Louisiana legislature on March 6, 2006, and became effective on August 15, 2007, as a response to the dispersion of Louisiana's citizens after Hurricane

comply with the sixty-day notice, and it is not reasonably possible to extend the time for relocation of the child.

Id. § 9:355.4.

236. Judge Landrieu Interview, *supra* note 13; Interview with S. Guy deLaup, President, La. State Bar Assoc. (2007-2008) in New Orleans, La. (May 21, 2008) [hereinafter S. Guy deLaup Interview].

237. LIU ET AL., *supra* note 5, app. at 3, tbl. 1.

238. S. Guy deLaup Interview, *supra* note 236.

239. *Id.*

240. *Id.*

241. LA. REV. STAT. ANN. §§ 13:1801 to :1842 (2009).

Katrina.²⁴² The Act's goal is to reduce interstate judicial conflict for custody and visitation cases.²⁴³ Prior to the UCCJEA, Louisiana operated under its version of the Uniform Child Custody Jurisdiction Act (UCCJA).²⁴⁴ Under the UCCJA a parent could move to another state, live there with the child for six months, and the new state could then assert jurisdiction forcing the parent who remained in Louisiana to travel to the new state for custody, visitation, and support hearings.²⁴⁵ Thus, in adopting the UCCJEA, Louisiana strengthened its ability to retain jurisdiction over its current and former residents.

Under the model UCCJEA, a state retains jurisdiction under the "home state" element if the child lives in that state at the commencement of the initial custody proceeding or the child lived in Louisiana within six months prior to the commencement of the proceeding and the child is currently absent from the state but a parent continues to live in the state.²⁴⁶ Louisiana adopted this provision.²⁴⁷ In addition, Louisiana wisely added that Louisiana would have jurisdiction if Louisiana

had been the child's home state within twelve months before the commencement of the proceeding and the child is absent from the state because he was required to leave or was evacuated due to an emergency or disaster . . . and for unforeseen reasons resulting from the effects of such emergency or disaster was unable to return to [Louisiana] for an extended period of time.²⁴⁸

Louisiana also has jurisdiction (1) if another state does not have or has declined jurisdiction, the child and at least one parent has a significant connection in Louisiana other than mere physical presence, and substantial evidence is available in Louisiana "concerning the child's care, protection, training, and personal relationships";²⁴⁹ (2) all courts that would have jurisdiction have declined jurisdiction on the ground that a court of Louisiana is the more appropriate forum;²⁵⁰ and (3) no court of any other state would have jurisdiction under the prior two or the "home state."²⁵¹ Moreover, Louisiana retains jurisdiction of existing custody and visitation cases unless a Louisiana court determines that the child and both of his/her parents no longer have a significant connection with Louisiana and that "substantial evidence is no longer available in [Louisiana] concerning the child's care, protection, training, and personal

242. See History: HB60-2006 Regular Session (Act 822), <http://www.legis.state.la.us/billdata/History.asp?sessionid=06RS&billid=HB60> (last visited June 10, 2009).

243. H.B. 60, Reg. Sess., 2006 La. Sess. Law Serv. 822 (West).

244. See *id.* (noting that the Act's purpose is to repeal the UCCJA).

245. See UNIF. CHILD CUSTODY JURISDICTION ACT §§ 3, 13.

246. See UNIF. CHILD CUSTODY JURISDICTION & ENFORCEMENT ACT § 202.

247. LA. REV. STAT. ANN. § 13:1813(A)(1) (Supp. 2009).

248. *Id.*

249. *Id.* § 13:1813(A)(2).

250. *Id.* § 13:1813(3).

251. *Id.* § 13:1813(4).

relationships” or that the child and both of the child’s parents reside outside of Louisiana.²⁵²

Depending upon the location of each parent and the stage of the family’s legal case after Katrina, Louisiana or another state could have jurisdiction over future proceedings. Whether or not a Louisiana court had issued a custody determination prior to the Storm, if both parents return to Louisiana then, of course, Louisiana will have jurisdiction over family law proceedings.²⁵³ In addition, if a Louisiana court had issued a custody determination prior to the Storm and after the Storm, one parent returns to Louisiana, even though the parent with the child does not return to Louisiana, Louisiana will still retain jurisdiction because at least one parent has a significant connection to Louisiana.²⁵⁴ In the preceding two scenarios, change of custody or relocation issues will continue to be litigated in Louisiana. However, if neither parent returned to Louisiana and the child resides in a state other than Louisiana for twelve months then the state in which the child currently lives could exercise jurisdiction regardless of whether or not a Louisiana court had made a custody determination prior to the Storm.²⁵⁵ In another scenario, if a petition for paternity or custody had not been filed prior to the Storm and one parent returns to Louisiana and the parent with the child does not return to Louisiana, then Louisiana retains “home state” jurisdiction as long as a petition is filed within twelve months of the last day the child resided in Louisiana.”²⁵⁶ If the parent does not file a petition within twelve months of the last day the child resided in Louisiana, then the state in which the child currently lives can assume jurisdiction.²⁵⁷

Before the Louisiana legislature enacted the UCCJEA, Louisiana was more likely to lose jurisdiction of family law cases in the face of a disaster causing wide-spread dispersal of residents. The UCCJEA provides better protection for children, especially if enacted pre-disaster, by creating consistency in the legal process and court decisions. A judge who is familiar with the case and the family history can issue rulings which better protect a child than a judge who is unfamiliar with the family history. A judge who has family familiarity can better determine the impact post-disaster circumstances will have on the child. Only when the child and both parents cease to have significant connections to Louisiana does that state lose jurisdiction over a continuing family law case.

E. Child Support

The hurricane caused widespread unemployment.²⁵⁸ Many businesses did not re-open in New Orleans after the Storm. Additionally, most residents

252. *Id.* § 13:1814.

253. *See id.* § 13:1813(A)(1).

254. *Id.* § 1813(A)(1) & (2).

255. *See id.*

256. *See id.* § 1813(A)(1).

257. *See id.*

258. *See* LIU ET AL., *supra* note 5, at app. 31, tbl. 26 (reporting unemployment rates).

experienced some loss of income due to the hurricane.²⁵⁹ Parents who experienced a loss of income and had child support obligations likely had difficulties meeting those obligations. At the same time, parents who experienced a loss of income and receive child support were in need of additional support for the child. In addition to decreased income, many families concurrently experienced an increase in expenses.²⁶⁰ Recalculating child support obligations became a necessary and difficult matter for courts not only in Louisiana but also in other states to which New Orleanians had relocated.²⁶¹

Post-Katrina, the Louisiana courts and legislature tend to be cautious but flexible. The Louisiana legislature held a special session in November 2005.²⁶² During this special session, child support statutes were modified to exclude most disaster assistance benefits from parents' income calculation²⁶³ and to create flexibility in child support calculations by allowing additional deviations from the child support guidelines.²⁶⁴

Courts did not want children to suffer the loss of financial support but also did not want to impose an unreasonable obligation on parents paying child support.²⁶⁵ Judge Madeleine Landrieu stated that she recognized, for some parents, meeting child support obligations caused debt collections issues and even bankruptcy for the payor parent.²⁶⁶

However, the unique circumstances of post-Katrina Louisiana made finding the balance between providing the same pre-Storm standard of living for children

259. *See id.* at app. 48, tbl. 33 (reporting a decrease in personal annual income for 2005).

260. *See supra* text accompanying notes 136-44 and accompanying text.

261. For example, Arkansas responded to the concern that non-custodial parents from hurricane affected areas might not be able to meet their child support obligations by offering to review and modify orders that were issued in Arkansas. *See Lane, supra* note 176, at 440-41 (citing Press Release, Ark. Dep't of Fin. & Admin., Child Support Enforcement Assistance to Those Whose Child Support Services May Have Been Affected by Hurricane Katrina (Sept. 1, 2005), available at <http://www.arkansas.gov/dfa/documents/pr1.DOC>).

262. *See* 2005 1st Extraordinary Legislative Session, <http://www.legis.state.la.us/archive/051es.htm> (last visited June 10, 2009).

263. *See* LA. REV. STAT. ANN. § 9:315(C)(3)(d)(v) (2008) (stating that gross income does not include "any disaster assistance benefits received from the Federal Emergency Management Agency through its Individuals and Households Program or from any other nonprofit organization qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code of 1954, as amended").

264. *Id.* § 9:315.1(B)(2) ("Notwithstanding the provisions of Paragraph (1), as a direct result of either Hurricane Katrina or Rita, the court may deviate from the guidelines set forth in this Part if the application of the guidelines would not be in the best interest of the child or would be unjust, inequitable, or cause undue hardship to the parties. In determining the amount of the child support, the court may also consider that the parties may have been prevented from timely access to the courts for the exercise of their legal rights. However, the amount of the deviation shall not exceed the consideration the court would have given if the party were able to timely access the court.").

265. S. Guy deLaup Interview, *supra* note 236; Judge Landrieu Interview, *supra* note 13.

266. Judge Landrieu Interview, *supra* note 13.

and imposing unreasonable obligations on payors difficult. In *Langley v. Langley*²⁶⁷ a New Orleans court denied a father's request for child support reduction.²⁶⁸ The court ruled that the father, Dr. Langley, was "voluntary underemployed" and could be earning the income that he earned prior to the hurricane.²⁶⁹ Dr. Langley had been a physician at Methodist Hospital in New Orleans prior to the hurricane.²⁷⁰ After the hurricane, Methodist Hospital did not re-open and Dr. Langley obtained a position at a hospital in Beaumont, Texas.²⁷¹

Subsequently, Dr. Langley decided to return to Louisiana and obtained another position at a facility in West Monroe, Louisiana.²⁷² This new position earned Dr. Langley significantly less than he had previously earned both prior to the Storm in Louisiana and after the Storm in Texas.²⁷³ Dr. Langley requested a reduction in his child support obligation based on his actual income and based on the recently enacted statute.²⁷⁴ The statute states that "a party shall not be deemed voluntarily . . . underemployed if he or she has been temporarily . . . forced to take a lower paying job as a direct result of Hurricane Katrina or Rita."²⁷⁵ However, the court held that Dr. Langley's abandonment of a position in Texas did not constitute his being temporarily forced to take a lower paying job as a direct result of Hurricane Katrina.²⁷⁶ Thus, the court imposed not only a specified dollar amount but also appeared to be imposing a location or type of work obligation on the child support payor. Under this court's order, Dr. Langley must find employment earning at least as much as the income he earned prior to the Storm even though his former employer does not exist and is, therefore, not an option as a source of income.²⁷⁷ The Storm caused massive shifts in income and earning potential for New Orleanians. Pre-Storm residents now are struggling with relocation, re-employment, and meeting child support obligations in the post-Storm chaos.

F. The Legal Rights of Non-traditional, Same-sex Families in the Face of Disasters

Non-traditional families, specifically families headed by same-sex couples, and single-parent lesbian or gay families face additional risks and legal complications when disaster strikes. In recent years, state courts and legislatures around the country, responding to public opinion and social pressures from all

267. 982 So. 2d 881 (La. Ct. App. 2008).

268. *Id.* at 887 (affirming the lower court's order not lowering child support).

269. *Id.* at 883.

270. *Id.* at 883-85.

271. *Id.* at 884.

272. *Id.*

273. *Id.*

274. *Id.*

275. LA. REV. STAT. ANN. § 9:315.11(C) (Supp. 2009).

276. *Langley*, 982 So. 2d at 884.

277. *See id.* at 884-85 (noting that a wage earned prior to underemployment is "the best estimate of earning potential").

sides, have been grappling with the question of how the law should treat same-sex couples in committed relationships, as well as their children.²⁷⁸ While a full analysis and survey of these issues is beyond the scope of this Article, it is nonetheless important to include some discussion of this issue within the broader analysis of how Katrina has impacted family law and families.

In the majority of the states, disaster and emergency planning, along with recovery law and policies, are likely to take a traditional view of who is a family and who is not. Legislators will more likely than not rely on a nuclear family model in crafting this area of disaster family law and policy. Furthermore, the federal government does not recognize same-sex relationships for purposes of marriage, nor any government benefits, programs, or taxes.²⁷⁹ This can have a serious and deleterious effect on those families that do not fit the nuclear family mold. Indeed, not only same-sex headed families would be affected by a narrow view of the family unit. Families headed by a single-parent who identifies as heterosexual could also find themselves at risk of legal protections in the face of disaster.

In general, how non-traditional families will fare under disaster recovery and relief programs in the aftermath of a tragedy depends on how the family law of that jurisdiction treated these families and relationships before the disaster. As with all areas of domestic relations, the law differs widely from state jurisdiction to jurisdiction. In those jurisdictions that recognize same-sex civil unions or domestic partnerships,²⁸⁰ relief programs, as well as legal issues concerning children of the relationship likely would provide the greatest protections for the family. On the other side, in those jurisdictions that do not recognize civil unions or domestic partnerships, uncertainty and rejection of familial rights likely will characterize the way in which recovery programs treat the relationship or family. In those jurisdictions where same-sex civil marriage is legally recognized, the families of course will have the greatest protections in the wake of a disaster. In those jurisdictions, same-sex married couples should be treated with the same rights and obligations as in all marital units.²⁸¹ Their children would also be as

278. For a thorough survey and analysis of how same-sex and other non-traditional families have been treated by disaster recovery programs in the wake of a disaster, *see* Goldfarb, *supra* note 99, at 39-43. Goldfarb focuses on the September 11th Victim Compensation Fund of 2001, in the aftermath of the attacks on the World Trade Center and the Pentagon on September 11, 2001. *Id.*

279. *See* Federal Defense of Marriage Act (DOMA), 1 U.S.C. § 7 (2006). Additionally, federal statute alleges that the Constitution's Full Faith and Credit Clause does not apply to state marriage laws recognizing same-sex marriage. Federal Defense of Marriage Act (DOMA), 28 U.S.C. § 1738C (2006).

280. Although now constantly being updated and evolving, for a list of states recognizing same-sex civil unions, *see* D. KELLY WEISBERG & SUSAN FRELICH APPLETON, *MODERN FAMILY LAW* 181 (3d ed. 2006) (noting District of Columbia, Hawaii, and New Jersey as among those states recognizing same-sex civil unions).

281. Currently in the United States, same-sex marriage is expressly recognized in six states. These states are: (1) Massachusetts, *see* *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003); (2) Iowa, *see* *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009); (3) Vermont, *see* S. 115, §

fully protected as possible under the law, should a disaster strike.

An issue of great importance to non-traditional couples in the wake of a disaster is whether relief programs will recognize the surviving partner as the legal spouse for purposes of benefits and other relief. For those couples who have children, issues of child custody relocation, cross-adoption by both parents, and related matters will likely rise to the fore in the wake of a disaster, particularly if one of the adults dies or is severely injured in the disaster. Same-sex couples who did not cross-adopt their minor children before a disaster will face legal obstacles afterwards. If the family is separated, displaced or decides later to dissolve their relationship, they will face additional legal challenges and few protections under the law.

The State of Louisiana does not provide any legal protections or recognition of same-sex couples, nor of children who are being parented by a same-sex couple.²⁸² Louisiana has not adopted domestic partnerships or civil unions, however in some parishes, most notably Orleans Parish, some family law courts have allowed adults in a same-sex committed relationship to co-adopt children.

In Louisiana and other states that provide no legal protections for same-sex couples and same-sex couples with children, these families should make preparations to protect their rights to property and certainly to their children before disaster occurs. Non-traditional families should implement their own disaster preparation planning by utilizing and putting in place available non-marital legal mechanisms. These include powers of attorney, wills and child custody agreements that protect their children and chosen families.

CONCLUSION

The long-term consequences of Katrina on the families of New Orleans, and particularly on the women and children who survived the Storm, surely will last for years and be unprecedented in scope. Concrete statistical data, monitoring, reports, and other analysis of how the families of New Orleans have been affected to date has been woefully sparse. Despite this limitation, we have attempted to describe the current impact and to project what will be the long-term consequences of Katrina on families and family law. We have done this through the perspective of Katrina's impact on women and children first, as they have been the most vulnerable victims of the storm and are the core of the city's social

8, 2009-2010 Leg., Reg. Sess. (Vt. 2009) (to be codified at VT. STAT. ANN. tit. 15, § 8) (legalizing same-sex marriage as of September 1, 2009); (4) Connecticut, *see* *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407 (Conn. 2008); (5) Maine, *see* L.D. 1020, 124th Leg., 1st Reg. Sess. (Me. 2009) (to be codified at ME. REV. STAT. ANN. tit. 19-A, § 650-A) (recognizing same-sex marriage by statute effective in September 2009); and (6) New Hampshire, *see* H.B. 436-FN-LOCAL, 2009 Leg., 1st Reg. Sess. (N.H. 2009) (to be codified at N.H. REV. STAT. ANN. § 457:1) (effective January 1, 2010).

282. *See, e.g.*, *Forum for Equality PAC v. McKeithen*, 893 So. 2d 715 (La. 2005) (holding that the amendment to the state constitution that prohibits same-sex marriage did not itself violate the constitution); *see also* LA. CONST. art. 12, § 15 ("Marriage in the state of Louisiana shall consist of the union of one man and one woman.").

fabric, its life, and certainly its future.

While the Orleans Parish courts did what they could in the face of this all engulfing tragedy, in the future courts and judges across the nation should aim to be deliberate and empathetic in flexibly applying existing family laws in the wake of a disaster. They should plan on closely collaborating with social service and relief agencies during and after the disaster. Legislatures should also plan ahead for such a crisis that necessarily will involve the judicial system. They should prepare now, before a disaster strikes, by promulgating laws that respect family structures and diversity, both traditional and non-traditional. These legal protections should apply to families across a broad and diverse spectrum of familial arrangements.

In addition, courts should be prepared to respond quickly when called upon in the midst of chaos and dislocation of the populace. Family law courts in particular can play a crucial role by being flexible with their pending proceedings, supporting displaced families, and minimizing adversarial stances and communications by encouraging mediation. In an environment of crisis and displacement, where parties are already suffering and traumatized, courts should attempt to encourage family reunification and communication and promote a return to normalcy and rebuilding.

Within this Article, we have challenged the traditional role of family law and the courts as guardians of the status quo within an essentially adversarial paradigm. Instead, we have tried to show that particularly when social support systems fail and become dysfunctional during a crisis, that family law courts can play a unique and important role as a supportive catalyst for families to pull together, rather than pull apart. Indeed, in New Orleans family law and the courts can and should serve as a part of the healing and restorative process for the thousands of families who have returned home to New Orleans, and those who are still in the midst of the recovery process.

Family law and the courts both in New Orleans and the surrounding parishes are facing unique challenges. They are attempting to unravel the complex scenarios that have arisen due to the continued displacement and separation of families, particularly those still in the Katrina Diaspora, located in cities across the country. Louisiana State family law and the family law courts should affirmatively protect the families with children who are still displaced in the Katrina Diaspora. These displaced families need special assistance and advocacy, sensitive to their needs, so that they can return to New Orleans, rebuild their lives and their homes, and secure a safe, healthy, and secure future for their children. To ultimately accomplish this goal will also require federal intervention in the form of financial assistance, additional legal protections, and federally led recovery efforts and programs that do not yet exist. In so doing, disaster family law and the courts can help to bring a measure of social justice to Katrina survivor families in the face of this unprecedented disaster.

