

Law 224.9
*Disasters and the Law: The Legal Implications
of Hurricane Katrina*
(Spring 2006)

Units: 3
CCN (2Ls/3Ls): 49552
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Location: 105 Boalt
Time: Mondays 3:20-6:00

Course Description:

Recent hurricanes and other natural disasters demonstrate serious gaps in the legal system's ability to respond to events of this magnitude. Innovative policies are needed if society is to deal effectively with the aftermath of these disasters and the risk of future ones. federal, state, and local government collaboration in disaster response and reconstruction. Society also needs more effective preparation and better protection in vulnerable locations, and a more effective system for spreading risks and compensating victims. This seminar will probe the legal dimensions of disaster response, prevention, and mitigation strategies.

Texts:

Reading materials will be available on-line at:
www.law.berkeley.edu/library/disasters.html

Syllabus

Class 1 – January 9

Introduction

An Unnatural Disaster: The Aftermath of Hurricane Katrina. This report, spearheaded by University of Texas law professor Thomas O. McGarity, may also be downloaded through the CPR's website.

Class 2 – January 19

Katrina “Charette”

This will be a day-long brainstorming session about what went wrong and where we should go from here. Participants will include law faculty, lawyers, engineers specializing in flood control and levees, and emergency response experts.

Class 3 – January 23

Federalism and Emergency Response Issues

Congressional Research Service, The Use of Federal Troops for Disaster Assistance: Legal Issues

Congressional Research Service, Hurricane Katrina-Stafford Act Authorities and Actions by Governor Blanco and President Bush to Trigger Them

Readings for class:

1. Hadley Blake, Guess Who's Coming to Dinner: Federal Disaster Relief for Undocumented Aliens (Heinonline). Washington University Journal of Urban & Contemporary Law, v.48 (Summer 1995) pp.217-38.
2. Susan L. Cutter, *The Geography of Social Vulnerability: Race, Class, and Catastrophe*, <http://understandin&atrina.ssrc.or~Cutterl>
3. Arloc Sherman & Isaac Shapiro, Center on Budget and Policy Priorities, Essential Facts about the Victims of Hurricane Katrina (September 19,2005)
4. CRS Report on evacuation issues, http://www.fas.org/sgp/crslmisc/RS2223_5.pdf
5. Keith Bea, Congressional Research Service, Disaster Evacuation and Displacement Policy: Issues for Congress (September 2,2005)

Class 4 – January 30

Mitigation, Compensation, and Risk Spreading

Report of Association of Flood Plains Managers

Readings for class:

1. <http://www.floods.orn/PDFIASFPM HurricaneKatrina Whitepaper 090905.pdf>
2. Daniel D. Barnhizer, Givings Recapture: Funding Public Acquisition of Private Property Interests on the Coasts (Heinonline) Harvard Environmental Law Review, v.27, no.2 (2003) pp.295-375.
3. Charles T. Griffith, The National Flood Insurance Program: Unattained Purposes. Liability in Contract, and Takings William & Mary Law Review, v.35, no.2 (Winter 1994) pp.727-65.
4. Robert L. Rabin & Suzanne A. Bratis, Financial Compensation for Catastrophic Loss in the United States pp. 40-54
5. Catastrophe Risk: U.S. and European Approaches to Insure Natural Catastrophe and Terrorism Risks, GAO-05-199, February 28, 2005.

Class 5 – February 6

Moving Forward: Rebuilding and Future Threats

Readings for class:

1. Robert Esworthy et al., Congressional Research Service, Cleanup after Hurricane Katrina: Environmental Considerations (October 13,2005)
2. Edward L. Glaeser, Should the Government Rebuild New Orleans, or Just Give Residents Checks?, Economists' Voice, v.2, no.4 (Sept. 2005)
3. <http://www.findarticles.com/p/articles/mi~mJ0KB/is-15-11/ai-686428051pg-1>
4. <http://www.nola.com/hurricane/index.ssf?washingaway/futureofcoast1.html>
5. Linda Luther, Congressional Research Service, NEPA and Hurricane Response, Recovery, and Rebuilding Efforts (September 28,2005)Center for Health and the Global Environment, Harvard Medical School, Climate Change Futures: Health, Ecological and Economic Dimensions (November 2005)
6. Influenza Pandemic: Challenges in Preparedness and Response, GAO-05-863T, June 30, 2005

Class 6 – March 10

Environmental Justice and Katrina.

This is sponsored by the Environmental Law Society, and will probe the social justice dimensions of Katrina. Some seminar students may be involved in the event.

Class 7 – April 10

Paper Presentations

Class 8 – April 17

Paper Presentations

Class 9 – April 24

Paper Presentations

Class 10 – April 25

Paper Presentations

Class 11 – May 11

Final papers due

The author of each paper should identify five policymakers as target recipients for that paper (and provide contact information). Be as specific as possible - for example, try to identify key members of legislative committees or of the committee staff, members of the executive branch, reporters who have covered your specific issues, etc.

Paper Topics

A list of suggested topics is given below. You are free to choose other topics after discussion with me.

Suggested Paper Topics

1. Compensation mechanisms for fatalities of catastrophic events, such as a 911 1-type fund.
2. Modifications of wetlands development policies to retain buffer areas.
3. Modifications of river channeling and flood control methods to replenish buffer areas
4. Improving the flood insurance program to reduce incentives for unwise development
5. The role of NEPA - Did it help cause this disaster? Could we help prevent future disasters by requiring more consideration of catastrophic risks in impact statements?
6. Potential tort liability for defective design, construction, and maintenance of levees.
7. The President's authority to use military and other federal agencies without the consent of a state's governor -- assess current law and proposed changes. Might cover other potential catastrophes such as an avian flu pandemic.
8. Insurance coverage issues for hurricane claims, drawing on the experience with Hurricane Andrew and elsewhere. Could be combined with an examination of regulatory actions against insurance companies for claim denial.
9. Dispute resolution mechanisms for handling the very high volume of anticipated post-Katrina/Rita disputes over insurance coverage and valuation.
10. Possible policy initiatives to maintain the availability of flood insurance, such as tax benefits for insurance companies and support for reinsurance markets.
11. Activities of police forces during catastrophic events.
12. California levee vulnerability and potential responses.
13. Preparedness and emergency response issues for projected California earthquakes.
14. Implications of global climate change for disaster prevention policy.
15. Anti-discrimination provisions relevant to disaster response and rebuilding efforts. Includes antidiscrimination claims under the Stafford Act and civil rights statutes such as Title VI.
16. Methods of ensuring public participation in rebuilding decisions, particularly by poor and minority communities.
17. The Precautionary Principle and other methods for making decisions about possible catastrophes.
18. Lessons from other disasters, such as rebuilding Kobe, Japan.
19. What went wrong with the priority and budgeting system for flood control prior to Katrina? Should the Office of Management and Budget have played a more constructive role?
20. International mechanisms for coping with disasters, focusing on the tsunami recovery efforts.