

Cultural Competency in Disaster Recovery: Lessons Learned from the Hurricane Katrina Experience for Better Serving Marginalized Communities

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The awareness of federal, state and local governments of the potential for levees in New Orleans to fail and decimate poor neighborhoods of the city was widely reported following the hurricane Katrina disaster. Demographics in the areas likely to incur the most severe damage were known to be neighborhoods of predominately poor, black residents. In addition to understanding the likely geographical impact of the impending disaster, the federal government was aware of the extensive social science and legal challenges detailing the likelihood of minority citizens to experience the worst consequences and slowest recovery from natural disasters. Studies dating back to the 1950s and numerous reports of the Red Cross support this conclusion. FEMA itself was sued in federal court for its inadequate response to marginalized communities during hurricane Andrew in 1992. While the federal government may not be held legally responsible for its discretionary policies within the disaster relief context, the horror of hurricane Katrina surely calls for a long overdue re-thinking of the federal approach to assisting marginalized communities in disaster recovery. Social science, the practical problems raised within legal challenges, as well as successful strategies from other disasters and even within the Katrina tragedy offer numerous opportunities for such reform.

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I. Introduction:

Following the great earthquake and fire of 1906, Chinese residents of San Francisco found themselves shunted to a far corner of the city, denied relief assistance afforded the white population, and arrested for attempting to re-enter their homes in Chinatown.¹ San Francisco's ruling elite took advantage of an opportunity to reclaim Chinatown for white business interests, and formulated a plan to move the refugee Chinese population south of the city to Hunter's Point.² In the wake of Hurricane Andrew, the Red Cross placed ethnic minority populations within ghettoized districts of tent cities where Latino victims encountered taunting and hostility from other ethnic groups.³ We may lament these events as falling within a familiar pattern of America's failed poverty policy in the same vein as our welfare and housing systems. Yet, the disaster context presents unique, discrete situations wherein government at all levels may actually find an opportunity to respond directly to the position of marginalized populations, potentially transforming their experience of our social safety net.

In this paper, I argue that FEMA, in coordination with state governments, should decentralize long term recovery efforts and better utilize locally based government and community social services organizations. In order to create real cultural empathy within the bureaucracy, providers of relief must have substantial connections with the impacted community. Although immediate rescue and evacuation responses to disasters must also integrate cultural competency strategies, this paper focuses instead on the long term recovery efforts which follow the first few weeks of a disaster and continue for the following year. This aspect of recovery is aimed at

¹ National Park Service, "Presidio of San Francisco: Chinese Displacement," available at <http://www.nps.gov/prsf/history/1906eq/chinese.htm> (last visited April 27, 2006).

² Id.

³ Kevin A. Yelvington, "Coping in a Temporary Way: The tent cities," in Hurricane Andrew: Ethnicity, gender and the sociology of disasters, 103-05 (Peacock, Morrow & Gladwin Ed., 1997).

returning victims to relative financial security, stable housing and access to services for health and general welfare. For purposes of definition, the marginalized populations as discussed in this paper refer to a broad spectrum of citizens who live lives dependent on social services, are often surviving below the poverty line, with disabilities, lack of English language proficiency, depressed social standing due to lack of education or job opportunity.⁴ “Cultural Competency” refers to a high level of sophistication within organizations’ interactions with diverse populations; it is “a set of values, behaviors, attitudes, and practices...that allows people to work effectively across cultures.”⁵

Part II of this article reviews social science findings regarding marginalized populations in disaster recovery and the demographics of New Orleans which exacerbated Katrina victims’ experience after the hurricane passed. Part III examines the traditional recovery system after Katrina as it has served middle class recovery yet failed to move poor and marginalized communities towards long term stability. Part IV suggests reforms to create cultural competency within government recovery efforts. Finally, Part V concludes the discussion with a brief look at the legal obstacles to needed reform.

II The Problem

Well before hurricane Katrina made landfall in August 2005, the geography and demography of New Orleans placed its poor and minority populations in a state of “social

⁴ California Governor’s Office of Emergency Services (OES), “Meeting the Needs of Vulnerable People in Times of Disaster: *A Guide for Emergency Managers*,” at 3, available at [http://www.oes.ca.gov/Operational/OESHome.nsf/PDF/Vulnerable%20Populations/\\$file/Vulnerable%20Population.s.PDF](http://www.oes.ca.gov/Operational/OESHome.nsf/PDF/Vulnerable%20Populations/$file/Vulnerable%20Population.s.PDF), (last visited April 27, 2006) (hereinafter “California OES”).

⁵ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), *Cultural Competence in Disaster Mental Health Programs: Guiding Principles and Recommendations* (2003) at 12, available at http://www.mentalhealth.samhsa.gov/media/ken/pdf/SMA033828/CulturalCompetence_FINALwithcovers.pdf (last visited April 27, 2006).

vulnerability” leaving them at severe risk from the impact of a natural disaster.⁶ In Louisiana, 21.4% of the population impacted by the storm was below the poverty line in a state where 19.6% of the total population live below poverty level (compared to 12.4% of the total US population).⁷ Poverty conditions are even more endemic in New Orleans, where 28% of people live in poverty; 84% of these are African-American.⁸ Thus, a significant portion of those impacted by the hurricane were African-American citizens living below the poverty line.

New Orleans’ history of racial division meant that modern African-American communities were segregated in certain portions of the city. Segregation led to the phenomenon of “public housing ... invariably located in the most undesirable areas—along major transportation corridors, on reclaimed land, or next to industrial facilities.”⁹ Apart from public housing woes, the lowest lying areas of New Orleans most likely to be inundated by water were neighborhoods like the Lower Ninth Ward where 98% of the population was African-American.¹⁰ Homeownership has proved to be a key factor aiding recovery from the disaster.¹¹ Sadly, the areas most severely impacted by Katrina had a low proportion of homeowners; only 55% compared to the national average of 66%.¹² Despite their inability to buy homes, renters of

⁶ See Susan Cutter, “The Geography of Social Vulnerability: Race, Class and Catastrophe,” in SSRC, available at <http://understandingkatrina.ssrc.org/Cutter/pf> (last visited January 22, 2006). Cutter explains that in addition to housing and financial concerns social vulnerability involves intangible elements, many of which social scientists studying disasters have noted and are discussed infra at 5. Cutter includes within this intangible list, “the basic provisions of health care, the livability of places, overall indicators of quality of life...capital, and political representation.”

⁷ Congressional Research Service (hereinafter “CRS”), Hurricane Katrina: Social-Demographic Characteristics of Impacted Areas, RL33141, (November 4, 2005) at 14-15.

⁸ Center for Progressive Reform, “An Unnatural Disaster: The Aftermath of Hurricane Katrina,” CPR Publication #512, September 2005.

⁹ Cutter at 2.

¹⁰ Center for Progressive Reform at 35.

¹¹ See discussion infra, on middle-class solutions including FEMA’s blue roof program and trailer allocation which has allowed homeowners to establish stability sooner than their counterparts. However, working class homeowners are less likely to reap these advantages, as they have “acquired some of the trappings associated with economic success, they may lack the ‘defense in depth’—the economic security, political and social influence, and personal power of the professional classes which can be especially crucial in times of disaster.” Betty Hearn Morrow, “Stretching the Bonds: The families of Andrew,” at 152-54 in Peacock, Morrow & Gladwin (see supra note 3).

¹² CRS at 23.

single family homes in the Lower Ninth Ward had long term ties to the area, with many renting the same property for more than a decade.¹³ These citizens who were certainly part of and contributed to the community still held no tangible property rights in the neighborhood. At the end of August 2005, New Orleans' significant population of underprivileged African-American families were living at a dangerous intersection of housing discrimination, economic disadvantage and weak interests in real property.

A. Cultural Difference in the Disaster Context: Perspectives from the Social Sciences

Marginalized populations are not only more likely to be vulnerable to disasters due to self-evident problems of geography and resources, but are also considerably disadvantaged by less obvious social and cultural phenomena. Social scientists studying minority populations within modern disaster recovery efforts have amassed a substantial literature detailing the outcomes of federal programs seeking to aid these groups.¹⁴ W.G. Peacock notes that the United States has adopted a largely “market-based approach” to disaster recovery wherein individuals are expected to rely upon private insurance payments and financial reserves, with government and charity funds potentially “filling in some of the gaps.”¹⁵ Government responses rooted in assumptions of market-based recovery “tend to magnify the consequences of these conditions [poverty, discrimination and other cultural factors], placing minority households at greater risk of failing to recover.”¹⁶

¹³ CRS at 24.

¹⁴ See Fothergill, Maestas & Darlington, Race, Ethnicity and Disaster in the United States: A Review of the Literature, 23 *Disasters* 156 (1999).

¹⁵ Walter Gillis Peacock with A. Kathleen Ragsdale, “Social Systems, Ecological Networks and Disasters: Toward a socio-political ecology of disasters,” in Peacock, Morrow & Gladwin Ed. Hurricane Andrew: Ethnicity, gender and the sociology of disasters, (Routledge, 1997) at 26.

¹⁶ Id. at 27.

At risk citizens are likely to have had experience previous to a disaster with the social welfare system, yet this practice may not aid them in navigating the massive federal bureaucracy in charge of provisioning aid following a disaster; instead negative associations may impede their willingness to approach with government authorities.¹⁷ Perhaps due to this skepticism of government bureaucracy, non-white victims of disasters are “more likely than whites to cite churches and the Red Cross as helpful sources of information during recovery.”¹⁸ Despite minority groups’ cynicism of such signals of government authority, during the Katrina recovery FEMA continued to operate information and processing sites such as Disaster Relief Centers (“DRCs”) with khaki-clad private security guards outfitted with weapons and sporting unfortunately named “Blackwater” security T-shirts.¹⁹ In a New York Times study of recovery seven months after the hurricane, about half of all black evacuees surveyed “called race a major factor in the government’s slow response.”²⁰

The Hurricane Andrew experience in 1992 taught federal agencies and charities alike that maneuvering the aid process requires education, time, and skill that poor families simply do not possess.²¹ Numerous South Florida families never entered the relief system, and were living with the effects of the disaster long after the deadline to register for FEMA assistance had

¹⁷ Ronald W. Perry & Alvin H. Mushkatel, *Minority Citizens in Disasters* (University of Georgia Press, 1986) at 154, “Another aspect of cultural differences is that some minority members perceive authority figures—particularly uniformed government representatives – differently from majority group members. Amongst members of some urban/ethnic racial minority groups in the United States, public safety personnel...are not necessarily viewed in positive terms or as sources from whom to expect help and protection.”

¹⁸ Fothergill at 163.

¹⁹ Griff Witte, “Private Security Contractors Head to Gulf,” *The Washington Post* (September 8, 2005) A14. Many of Blackwater USA’s personnel who worked in DRCs following Katrina had recently returned to the United States from security work in Iraq.

²⁰ Shaila Dewan, Marjorie Connelly and Andrew Lehen, “Evacuees’ Lives Still Upended Seven Months After Hurricane,” *The New York Times*, March 22, 2006. (337 respondents were selected randomly from a Red Cross Katrina victim database). Contrasting black perspectives on the government response, “almost three-quarters of the white evacuees said race was not a factor at all.”

²¹ Betty Hearn Morrow, “Stretching the Bonds: The families of Andrew,” at 152-54 in Peacock, Morrow & Gladwin (see supra note 3).

passed.²² In contrast, upper-middle class victims are generally more likely to understand how to navigate the government system and are better able to perform bureaucratic tasks such as filling out forms and providing relevant information to disaster personnel.²³ Consequently, marginalized populations are less likely to receive federal disaster aid.²⁴

Social networks also play a key role in disaster recovery, as victims are able to rely upon neighborhood, workplace and kinship ties for temporary housing, emotional support and access to other practical resources such as transportation and communication.²⁵ Most residents of poor urban areas tend to have limited social networks with limited resources and are thus disadvantaged from accessing a variety of non-government safety nets.²⁶ New Orleans' tradition of voluntary organizations (such as the Mardi Gras tribes) and multi-generational families within the same neighborhoods might have made Katrina victims' social networks a potential strength in disaster recovery. Yet, after hurricane Katrina, indigent victims likely had a much more difficult time staying connected with these potentially critical social networks due to lack of communication resources, and the population's wide dispersal across the United States through evacuation efforts.²⁷ Future efforts at disaster recovery should be sensitive to maintaining underprivileged families' social networks to the extent practicable by allowing victims to stay closer to home and facilitating contact amongst those who must be displaced.²⁸

²² Id.

²³ Fothergill at 165.

²⁴ See discussion *infra* at 11.

²⁵ Jeanne S. Hurlbert, John J. Beggs, Valerie A. Haines, "Bridges Over Troubled Waters: What are the Optimal Networks for Katrina's Victims?" available at <http://understandingkatrina.ssrc.org> (last visited March 2006).

²⁶ Id.

²⁷ Id.

²⁸ See discussion *infra* on Catholic Charities' "Operation Starfish" program at 21.

III. The Long Road to Recovery: Marginalized Groups Fall Further Behind

"The vast majority of debris on public property has been removed. Most of the remaining debris is on private property, in yards or inside houses that need to be gutted or demolished. To get the debris, the residents need to give permission, in most cases, to the local authorities. They need to get back to their houses, so they can decide what to keep and what to remove."²⁹ -- President George W. Bush

On a visit to New Orleans in March 2006, President Bush reflected the ignorance of the federal government to the unique position of marginalized communities in disaster recovery. While touring the Lower Ninth Ward, the President implored black residents to return home, demonstrating an utter lack of understanding of the situation of former residents of the neighborhood, many of whom were hundreds of miles away without the ability to hop into their cars and speed back to New Orleans upon the President's call.

A. On the Ground: Practical Middle Class Solutions Fail Marginalized Communities

A comparison of recovery between the Lower Ninth Ward versus the upper-middle class Lakeview neighborhood and working class St. Bernard Parish provides a lens for evaluating the effectiveness of ongoing government response to the plight of underprivileged victims of hurricane Katrina. Since the initial deluge, the three communities have moved in starkly different directions; two steadily towards recovery while third's future existence remains a question mark. A look at these communities reveals that their divergent paths following the hurricane are the result of an interplay between socio-cultural reactions to disaster and government's inability to adequately serve marginalized populations. Solutions such as SBA loans, blue roofs and trailer programs though well intentioned, only work effectively for middle class communities with private resources, stable social networks, and a firm hold on property rights.

²⁹ Quoting President Bush, Pear, "Bush Visits Gulf Region as It Struggles to Rebuild," The New York Times, March 8, 2006.

Black survivors surveyed in a March 2006 *New York Times* study “were having the most difficulty returning” to New Orleans, and were also “more likely to have had their homes destroyed or to have lost a close friend or relative.”³⁰ In contrast, whites were far more likely to have returned to the area and kept their old jobs or found new ones.³¹ In the Lower Ninth Ward, where comparatively low numbers of residents owned homes (yet most rental properties were black-owned), Louisiana ACORN and other local organizations had to fight in court to stop bulldozing scheduled without notice or consultation with residents and homeowners.³² Despite FEMA’s stated desire, “We want to keep you as close to your home and as comfortable as possible,”³³ the agency has found it impossible to locate travel trailers for black families within wealthier neighborhoods of New Orleans.³⁴ Neither has the federal government made any concerted effort to clean up, restore basic services and move trailers into the Lower Ninth Ward and other black neighborhoods to facilitate the return of black citizens to New Orleans.

St. Bernard Parish, a close knit working class community was the hardest hit Parish outside of Orleans. An estimated 65,000 residents (97% of the Parish’s total population) were impacted by flooding and a portion of the Parish was exposed to toxic floodwaters from the Murphy Oil Refinery spill.³⁵ Despite this extensive damage, within the few months of the disaster the Parish was humming with construction activity. Numerous St. Bernard homeowners were living in front of their damaged homes, working to rip out rotted material and begin

³⁰ See Dewan, Connelly & Lehren *supra* at note 20.

³¹ *Id.*

³² “9th Ward ACORN Members Win Bulldozing Settlement,” available at ACORN website; www.acorn.org (last visited March 17, 2006).

³³ FEMA, “Katrina Recovery Times,” (Vol. 1, October 7, 2005) Available at www.fema.gov/txt/rt/rt_1604_100705.txt (last visited April 4, 2005).

³⁴ See Andrew Martin, “Hitches show in FEMA trailer plan; \$2 billion program for hurricane homeless moving slowly, critics say,” *Chicago Tribune*, November 6, 2006. “Ten weeks after Hurricane Katrina..[FEMA] has delivered just 15 percent of the travel trailers that it hurriedly purchased for temporary housing.”

³⁵ CRS Report at 7.

structural repairs.³⁶ A backdrop of stronger individual financial resources, coupled with the response of citizen groups such as the St. Bernard Citizens Recovery Committee has allowed the community to move forward quite rapidly.³⁷ Contrasting the situation in the Lower Ninth Ward, the local government has stepped back and allowed the community influence how it will rebuild without the threat of bulldozers though a majority of the land mass in St. Bernard Parish is reclaimed and below sea level.³⁸

The Lakeview neighborhood of Orleans Parish is also on a fast track to recovery, even though the area was subject to massive flooding from a breach of the 17th Street Canal levee.³⁹ Overwhelmingly white and middle class, “an estimated 400 to 500 families have moved back...most are living in government-issued trailers while gutting their homes.”⁴⁰ FEMA’s “blue roof” program which installed heavy duty plastic coverings also allowed many Katrina victims to stay in their moderately damaged homes during the recovery period.⁴¹

Readily available FEMA programs such as blue roofs and trailers have thus allowed the middle class able to stay *within* the community and rebuild while the most of the indigent community remains far from home, unable to even begin the process of reconstructing their lives.⁴² Louisiana legislators have urged FEMA to re-work their trailer system so that “parish

³⁶ See “Louisiana Speaks” Website, (Louisiana Speaks is the public relations arm of the Louisiana Recovery Authority), St. Bernard Parish Recovery information is available at <http://www.louisianaspeaks-parishplans.org/IndParishHomepage.cfm?EntID=13> (last visited April 20, 2006).

³⁷ Karen Turni Bazile “St. Bernard gets recovery going: Council gives nod to planner’s big ideas,” The Times-Picayune, March 22, 2006.

³⁸ Id.

³⁹ David Zucchini, “In Katrina’s Ruins, a Land of Opportunity; Residents, new buyers and real estate agents await a neighborhood’s rebirth.” Los Angeles Times, March 2, 2006.

⁴⁰ Id.

⁴¹ Following hurricanes Katrina and Rita, the 82,000 blue roofs were installed in Louisiana. The blue roof program was administered by FEMA, but the U.S. Army Corps of Engineers operated the program on the ground, hiring contractors, and volunteers. FEMA, “Blue Roof Program Reaches Lofty Goals,” at FEMA website, available at www.fema.gov/news/newsrelease.fema?id=24103, (last visited April 25, 2006).

⁴² Id.

residents are given priority for housing in FEMA trailers located within their parish.”⁴³ Senator Sharon Broome introduced a resolution urging FEMA as well as the U.S. Department of Housing and Urban Development to consider providing funds for modular housing, recognizing the need to “move people out of shelters and into longer term housing...that would allow families the privacy needed to re-establish some sense of normalcy.”⁴⁴ As of mid-February 2006, approximately 27,000 families remained displaced in hotel rooms across the nation, facing imminent eviction.⁴⁵

Marginalized victims of disasters are in much more need of federal financial assistance as they are often uninsured and without significant financial reserves, yet peculiarly, government aid programs are more likely to be successfully accessed by middle and upper class victims. Minority populations are often ineligible for SBA loans and unsuccessful obtaining other federal grant funding from FEMA.⁴⁶ Amongst the key variables explaining differences in economic recovery between black and white victims of disasters, Robert Bolin noted nearly twenty years before Katrina struck that SBA loans “figured prominently among the white subsample but not among blacks. This reflects the fact that many blacks could not qualify for SBA disaster loans.”⁴⁷ While federal disaster recovery programs may not be able to immediately address the

⁴³ The Louisiana legislature recognized the importance of on site housing to maintaining the viability of New Orleans’ local black communities by passing at least three resolutions in the First Extraordinary Session of 2006; House Concurrent Resolution No. 39 specifically cites the importance of “allow[ing] parish residents to reestablish themselves in or near their own communities, to return to their jobs, and to settle their children back into their schools.” House Concurrent Resolutions Nos. 3 & 39, Senate Concurrent Resolution No.7 (First Extraordinary Session of 2006). Available at www.legis.state.la.us (last visited March 18, 2006).

⁴⁴ Id. Senate Concurrent Resolution No. 7.

⁴⁵ Id.

⁴⁶ Walter Gillis Peacock, Betty Hearn Morrow & Hugh Gladwin, Hurricane Andrew: Ethnicity, gender and the sociology of disasters, (Routledge, 1997) at 221. In south Florida, middle class Homestead fared significantly better than the town of Florida City, many of who’s residents live in poverty. In Homestead, 20% of homeowners were approved for SBA loans, compared to only 5.5% of in Florida City. The difference also extended to Individual Assistance (IA) and Individual Family Grants (IFG); in Homestead, 88.1% of these were approved as opposed to only about 30% in Florida City.

⁴⁷ Bolin, Robert, “Disaster Impact and Recovery: A comparison of Black and White Victims,” in International Journal of Mass Emergencies and Disasters, 4(1) p. 35-50, (1986).

underlying factors aggravating minority communities' experiences in disasters such as limited financial resources and weak social networks, federal authorities are more than aware of these problems as they re-appear in disaster after disaster. The United States government does have the ability to respond to marginalized victims in manner that helps rather than hinders their access to financial and housing relief intended to fill the gaps in our market recovery system.

B. Maneuvering a Disastrous Bureaucracy: the Importance of Information and Appropriate Financial Assistance mechanisms

Although conventional wisdom might suggest that minority citizens would be loathe to rely upon government information, Ronald Perry and Alvin Mushkatel's extensive work on minority citizens' reactions to disasters suggests that official information is relied upon across ethnic boundaries.⁴⁸ Considering this reliance coupled with marginalized populations' educational disadvantages, the capacity of the federal government to adequately communicate information to victims becomes crucial.

In late 2005, residents of New Orleans displaced by the hurricane and the Lawyers Committee for Civil Rights brought suit against FEMA for injunctive relief to force the agency to clarify its procedures towards survivors regarding housing benefits, the relation of FEMA awards to SBA loans, and the "single-household rule" for applying for benefits.⁴⁹ The plaintiffs argued in federal district court that FEMA had failed its mandate under the Stafford Act and also violated hurricane survivors' due process rights by denying benefits and misleading survivors as to how to obtain funds.⁵⁰ Though the court did not find any due process violations and held that sovereign immunity precluded many of the plaintiffs' claims, it did find that FEMA violated

⁴⁸ Perry & Mushkatel at 83.

⁴⁹ *McWaters v. Federal Emergency Management Agency*, 408 F.Supp. 2d 221 (E.D. Louisiana, 2005).

⁵⁰ *Id.* at 224.

mandatory requirements regarding information and that its decisions to cut off housing aid were arbitrary and dangerous.⁵¹ More significantly, the case reveals a pattern of mis-information, changing information, and abrogation of responsibility which continues to exacerbate the position of hurricane Katrina victims.

McWaters v. FEMA was a class action suit, composed of thirteen named plaintiffs who as late as November 10, 2005 had received no disaster assistance whatsoever from FEMA despite having lost their homes in the hurricane.⁵² The suit told the story of Katrina victims who had received a preliminary payment of \$2358 but were not adequately informed that the money was restricted to use for housing, and had spent the funds on other necessities, thereby becoming ineligible for further FEMA benefits.⁵³ In a similar vein, FEMA officials at Disaster Relief Centers confused potential beneficiaries and likely left many without benefits by requiring victims to register for Small Business Association loans (“SBA loans”) before receiving FEMA benefits, contrary to the explicit language of the Stafford Act.⁵⁴ Here, the court found the agency had “violated a mandatory duty through the mis-communication or inartful communication of the protocol for receiving Temporary Housing Assistance.”⁵⁵

Under the single-household rule, Katrina victims were required to file for FEMA benefits as members of a household rather than as individuals. Numerous disaster victims were denied FEMA assistance because they “shared the same address or phone number as another

⁵¹ Id. at 232-35.

⁵² Id. at 225-26.

⁵³ Id. at 226. FEMA issued a Memorandum allowing beneficiaries who had spend the fund on non-housing needs to fill out forms requesting to be “recertified” for benefits. FEMA’s waiver of the restriction was not widely distributed nor the process for recertification clearly defined.

⁵⁴ Though SBA loans may be an ineffective avenue of relief for marginalized communities, federal agencies through their shifting of the rules and miscommunications, made it even worse for Katrina victims, see discussion on efficacy of SBA loans supra at p. 11.

⁵⁵ Id. at 232.

applicant.”⁵⁶ The rule ignored the social reality of many Katrina victims who lived in multiple family or multi-generational units, as well as considerations of gender inequality wherein single mothers supporting children had to battle their estranged husbands for benefits.⁵⁷ Adding to the frustration of victims, FEMA attempted to change the rule to accommodate families separated during the evacuation process. Even the federal court in *McWaters* could not ascertain the actual rule in place until after “systematically questioning the parties in several conferences.”⁵⁸ Due in part to agreement between the parties for future information dissemination, the court found that FEMA’s actions regarding the single household rule were not severe enough to overcome sovereign immunity.⁵⁹ Critics charge that the system still fails to protect those most vulnerable: people who’s claims are still pending because the federal bureaucracy has not yet been able to reach them.⁶⁰ A combination of FEMA’s poorly envisioned financial aid programs and its capacity for under-informing and misinforming disaster victims has thrown up major roadblocks to recovery for underserved populations.

⁵⁶ Id. at 226. FEMA issued a directive on September 19, 2005 allowing members of the same household who had been separated in the midst of evacuation to obtain benefits; however this new rule was not clearly articulated throughout the agency.

⁵⁷ See Kevin A. Yelvington, “Coping in a Temporary Way: The tent cities,” in *Hurricane Andrew* (see supra note 3) Studying the Hurricane Andrew disaster recovery process for minority victims, the author noted “given the complex ethnic, cultural, and class makeup of South Dade, official policies often did not match the realities of victims’ lives.” (at 109-110) Advocacy groups responding to the disaster similarly bemoaned the single household rule, “Maria Escobar, with the South Dade Immigration Association, said, ‘The reality is that the households are not Mom and Dad and three kids. These people rent rooms and part of rooms.’” (Id.)

⁵⁸ Id. at 230.

⁵⁹ Id. Working outside of the courtroom, lawyers for survivors agreed to tracking codes, so that FEMA would be able to create system to better evaluate survivors’ housing needs, and this system was finally rolled out in early January 2006.

⁶⁰ Kimberly Thomas Rapp, Equal Justice Society, Presentation at “Apres Le Deluge: Rebuilding a Sustainable City After Katrina, A Legal Charette,” (Jan. 19, 2006).

IV. Responding to Crisis: Examples and Opportunities for Reform

A. A Problem the Courts cannot solve

Legal remedies such as the discretionary action and due process claims rejected in *McWaters*, as well as disparate impact claims are unlikely to solve the problems inherent within the structure of the federal government's provision of aid to marginalized communities. Sovereign immunity constitutes the most significant roadblock to reforming FEMA through courtroom action. The district court in *McWaters* analyzed FEMA's responsibility under the language of the Stafford Act which specifically excludes liability where an employee creates harm by action or inaction while performing "a discretionary function or duty...in carrying out the provisions of this chapter."⁶¹ Relying upon a 1988 Supreme court case where a plaintiff sued the National Institutes of Health and the Food and Drug Administration after contracting polio from a tainted lot of vaccines, the court found that FEMA was immune from acts which were discretionary in nature.⁶² Thus, the Plaintiffs' claims which survived the sovereign immunity bar were those that were the most obvious and direct violations of statutory requirements. Excepting rare circumstances where a statute speaks specifically to notice and other procedural requirements, agencies' habitual patterns of misinformation cannot be addressed through these claims. While plaintiffs may succeed in obtaining ad hoc injunctions correcting agency action, they are unlikely to achieve the deeper structural reforms necessary to improve provision of recovery services.

Likewise, disparate impact claims seeking relief under section 1981 of the Civil Rights Act on behalf of hurricane victims would have to overcome the intent doctrine as expressed in

⁶¹ The Stafford Act, 42 U.S.C. § 5148 (2000), *McWaters* at 228-29.

⁶² *McWaters* at 229; the court cited *Berkovitz v. United States*, 486 U.S. 531 (1988) (Justice Marshall writing the opinion of the court in *Berkovitz* concluded that the FDA could be held liable if the petitioner could prove that the agency's policy left "no room for an official to exercise policy judgment in performing a given act." *Berkovitz* at 546-47).

Washington v. Davis.⁶³ Thus far the court has been extremely hesitant to invalidate law regardless of its disproportionate impact on racial groups where a statute is otherwise race neutral on its face.⁶⁴ While civil rights groups are looking to overturn the intent doctrine in general, the disaster context may be one of the most difficult arenas to undertake such a movement in the law.⁶⁵ Such claims arising out of hurricane Katrina may rely upon allegations that a combination of racial segregation, the federal government's failure to maintain levees in black neighborhoods, and denial of flood insurance resulted in effective discrimination on the basis of race.⁶⁶ Though such claims may work to highlight the social policies which culminated to produce such discrimination within the context of hurricane Katrina, they are likely to fail in court. Even if disparate impact claims were to succeed, the remedies provided within a courtroom would only be able to address problems at the macro level rather than where service providers' lack of cultural competency meets marginalized populations' distinct needs.

B. Structural reforms will better address the needs of marginalized communities

The response of local charities, particularly those with long-standing relationships within the community were able to better serve marginalized communities during the disaster. The methods of de-centralized organizations including Catholic Charities and other community based organizations responded directly to social science calls for greater sensitivity to the particular needs of minority and poor populations. The success of these groups suggests a larger role for them in disaster response, their integration into disaster response plans, or the adoption of their

⁶³ The Civil Rights Act, 42 U.S.C. § 1981 (2000), *Washington v. Davis*, 426 U.S. 229 (1976) (finding that a qualifying test for police cadets which had a disproportionate negative impact on black officers was not applied in a manner so invidiously as to evince intentional discrimination where the police department had otherwise sought to recruit and encourage minority employment).

⁶⁴ *Id.*

⁶⁵ Thomas Rapp.

⁶⁶ *Id.*

methods by government entities. Each of these opportunities is tempered by the reality of government bureaucracy and legal concerns.

1. Federally managed charitable operations: Coordination and the Red Cross

The National Response Plan (“NRP”) does attempt to integrate the efforts of local charities with those of the federal government and FEMA, yet in its heavy handed efforts federal management has spoiled some of the very elements it sought to encourage. For example, during hurricane Katrina, National Voluntary Organizations Active in Disaster (“VOAD,” a an umbrella group for charities formed under the NRP in 1992) commenced conference calls which purported to coordinate the efforts of the Red Cross and FEMA with smaller organizations.⁶⁷ Yet, charity representatives complained that the conference calls were ineffective, with more than 40 groups on the calls, the conversations “often ran long or dealt with issues that may not have been of interest to the whole group.”⁶⁸

Although top-down coordination from the government served to smother the creative energy of small, flexible organizations, only the federal government has the ability to coordinate information on a mass scale- a service critical to meeting the needs of marginalized populations. Both information gathering and information dissemination are critical to citizens who are under-educated and have difficulty navigating the bureaucracy of complex organizations. After 9/11, the General Accounting Office (GAO) advised FEMA to encourage information sharing amongst charitable groups.⁶⁹ In the aftermath of Katrina, charities did use the “Coordinated Assistance Network” (CAN) to share information about clients, reducing the need for victims to give the

⁶⁷ Government Accountability Office, Statement of Cynthia Fagnoni, Managing Director, Education, Workforce and Income Security Issues, “Hurricanes Katrina and Rita: Provisions of Charitable Assistance,” Testimony before the Subcommittee on Oversight, Committee on Ways and Means, House of Representatives (Dec. 13, 2005) GAO-06-297T. (hereinafter “GAO”).

⁶⁸ GAO at 8-9.

⁶⁹ Id at 6.

same information again and again to different groups.⁷⁰ Charities reported that although the input of data into the computer database was costly in terms of time and often did not function where disaster relief sites lacked electricity or stable internet connections, officials in charge of the CAN program emphasized its usefulness for longer term recovery efforts.⁷¹ While the CAN project may yet need time to develop and evolve, the program does directly address the essential position of marginalized citizens lacking information resources and savvy.

Much more successful within the Katrina context was the dissemination of information through coordinated non-governmental effort. While victims often complained about busy FEMA information lines, and the problematic dissemination of accurate information by the government, a little known program made some headway. The 2-1-1 program, coordinated by the United Way began in 1997 in Atlanta, and is now operating in 38 states.⁷² Analogous to 4-1-1 directory and 5-1-1 traffic information systems, the 2-1-1 system is focused on providing social services information.⁷³ Although the system was not fully operational in Louisiana when hurricane Katrina arrived, the system fielded a fair number of calls; the United Way reports that calls to the Texas system rose from 2,000 to about 18,000 per day in the weeks following Katrina.⁷⁴ As centralized repositories of information, volunteers at the 2-1-1 centers were able to assist Katrina victims facing multi-layered dilemmas. One circumstance is illustrative,

“Caller needed medication, didn’t have prescriptions, but did have empty medicine bottles. I called the local Walmart Pharmacy, verified that they would supply meds for evacuees in this situation...the caller, who was very grateful...said ‘I’ve been calling for three days and you’re the first live person I’ve spoken with.’”⁷⁵

⁷⁰ Id at 8.

⁷¹ Id at 9.

⁷² 2-1-1 website, <http://www.211.org/status.html> (last visited April 11, 2006).

⁷³ Id.

⁷⁴ Brian Gallagher’s Web Log, http://national.unitedway.org/katrina/BAGweblog_2.cfm (last visited April 11, 2006).

⁷⁵ 2-1-1 California Partnership, Business Plan, October 2005 “2-1-1 Across California by 2010,” PDF report at p. 102, full text available at www.211california.org (last visited April 8, 2006).

In other situations callers turned to the call center for FEMA information. Volunteers acting as advocates were able to respond nimbly to their requests.⁷⁶

Under the NRP, the American Red Cross is responsible for coordinating federal services during a disaster including mass care, housing, and human services in coordination with FEMA.⁷⁷ Though the Red Cross is an NGO, it is also a government chartered instrumentality which is heavily relied upon to deliver disaster services. The Red Cross was widely critiqued by Louisiana politicians, local service providers, and rather forcefully in Congress' final Katrina report.⁷⁸ Louisiana Representative Jim McCrery described numerous situations in which local churches and ad hoc relief groups took on responsibilities when the Red Cross was unable to provide staff, supplies or management.⁷⁹ He also noted that, “[w]hile the Red Cross could barely manage its own network of shelters, the organization offered little assistance to struggling independent shelters.”⁸⁰

The Red Cross explained that although it is the only NGO included directly in the government's emergency planning, its absence in New Orleans was due to its own procedure; which demanded that the Red Cross not staff refuges “of last resort,” including the Superdome.⁸¹ The organization also agreed with federal officials not to enter the City until it was safe.⁸² Working largely with the federal government, the Red Cross also faced severe criticism that it

⁷⁶ “A woman called looking for a list of services- she asked for information about unemployment, storage, FEMA and basic needs. I listened to her requests and took her through the available resources as well as suggesting the best course of action in each circumstance.” Id.

⁷⁷ GAO.

⁷⁸ Congressional Reports: H. Rpt. 109-377, A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, available at <http://www.gpoaccess.gov/serialset/creports/katrina.html> (last visited April 27, 2006).

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id at 350.

⁸² Id at 351.

failed to coordinate its efforts with local charities and religious groups, and is now planning to share funds and training with these groups.⁸³

Despite its similar nationally based organization, the Salvation Army was comparatively well regarded by hurricane survivors for its appropriate, and timely response. Observers on the ground noted that the Salvation Army was able to respond to individual problems rather than being overly burdened by programmatic planning.⁸⁴ The organization was also willing to coordinate with other service providers and the government.⁸⁵ The failure of the Red Cross in hurricane Katrina suggests that federal partnership with only one large bureaucratic nationally based charity cannot adequately serve the needs of marginalized victims of disasters. A more nimble approach utilizing the skills of local charities and social service providers may provide some much needed relief to this problem.

2. The local NGO approach to disaster recovery: *“Our long-term goal is raise the family above prior conditions and not rebuild poverty.”*⁸⁶

In contrast to the performance of the Red Cross, Catholic Charities, another national organization, was far more effective delivering services to populations impacted by Katrina. Catholic Charities has the critical advantage of a local angle on the problems facing Orleans Parish. Since the group’s primary organization is at the local level, it has experience and an entrée into the community. In the months following the storm, Catholic Charities set up shop within Disaster Relief Centers, allowing the group to access clients where they were seeking help most immediately from FEMA and other agencies. The organization provided services ranging

⁸³ Editorial, “Rescuing the Red Cross,” Christian Science Monitor, April 5, 2006.

⁸⁴ Telephone Interview with Jamie Campbell, Managing Attorney at Southeast Louisiana Legal Services, Covington, LA (April 18, 2006). (hereinafter “Campbell Interview”)

⁸⁵ Id.

⁸⁶ “Local Agency Recovery Efforts in Response to Hurricanes Katrina and Rita,” Catholic Charities USA, <http://www.catholiccharitiesusa.org/news/katrina/agencies.cfm> (last visited March 22, 2006).

from mental health care and crisis counseling to financial and material assistance as well as housing help and assistance negotiating the FEMA bureaucracy.⁸⁷

More significant than their position in the community is Catholic Charities' willingness to meet marginalized communities where they are in their unique cultural needs. Recognizing the importance of empowering individuals with the ability to navigate difficult bureaucratic systems, the group offered trainings to church parishes on how to assist victims with on post traumatic stress and FEMA assistance.⁸⁸ Catholic Charities' "Operation Starfish" responded directly to cultural differences recognized by social scientists that African American and Latino populations tend to rely on family members for shelter and support whereas white families may rely on friends on co-workers to a greater degree.⁸⁹ Understanding the importance of re-establishing social networks in disaster recovery, "Operation Starfish" coordinated and paid for over 1,500 evacuees to be flown or driven to stay with relatives around the country.⁹⁰ Key to Catholic Charities' success in Katrina was its ability to stay responsive and flexible, as its local groups were able to reorient their focus to recovery efforts, "The relief and response activities of Catholic Community Services have varied week-to-week, day-to-day, based on a changing landscape."⁹¹

3. Recommendations for Creating Cultural Competence

i. Structural Reforms

The effectiveness of Catholic Charities and other small charity groups suggest that a decentralized, flexible organization located within the community may be the best opportunity to

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ See Perry and Mushkatel.

⁹⁰ See supra note 86, Catholic Charities (Catholic Services of Houma-Thibodaux, LA). Catholic Charities also made an effort to limit shelters to less than 100 people.

⁹¹ Id. (Catholic Community Services of Baton Rouge, LA).

properly serve marginalized populations. Congress' report on the failures of FEMA highlighted the agency's inability to respond to situations on the ground in ad hoc manner due to structural inefficiencies. One example was the urgent need to disperse funds yet FEMA workers were often without access to such authority because "the FCO [federal coordinating officer], by doctrine, is the individual that is supposed to be in charge of all federal response operations, and only the FCO has the authority to obligate federal funds."⁹² Structural reforms proposed by the bipartisan Senate report urge that FEMA be scrapped entirely, and replaced with a "National Preparedness and Response Authority" which would include "a stronger national preparedness system with regional coordinators."⁹³ Congress should re-work the structure of FEMA or another disaster response agency in its place to devolve decision-making authority to regional and local workers to encourage flexibility and creativity in the rapid response time necessary during a disaster. Yet, the extent to which government bureaucracies may be so reformed is limited, while on the ground solutions may be equally effective and more easily achieved.

a. Contracting with local Non-Profit Organizations

FEMA contracts with numerous non-profit organizations in addition to the Red Cross to provide hurricane relief services, yet these services are not always most effectively targeted to impact communities at the local level. One example from Katrina is FEMA contracts with legal services groups. It took Southern Louisiana Legal Services (SLLS) over a week to be admitted to serve clients in FEMA Disaster Relief Centers, even though the group is partially funded by the federal government and has extensive experience working with disadvantaged citizens.⁹⁴ SLLS had to engage in a long process of negotiation with FEMA due in large part to FEMA's

⁹² Failure of Initiative at 189.

⁹³ Spencer S. Hsu, "Senate Report Urges Dismantling of FEMA: A New Agency, With More Funding and Authority, Would Be Built in Homeland Security Department," The Washington Post, (April 27, 2006) available at www.washingtonpost.com (last visited April 27, 2006).

⁹⁴ Campbell Interview.

pre-existing contract with the American Bar Association's young lawyers program.⁹⁵ FEMA had not accounted for the possibility that none of the ABA lawyers would be available on the heels of the disaster as many had evacuated themselves and the agency was unable to adjust to the availability of SLLS lawyers.⁹⁶

The preceding example is one of many which highlights the need, and indeed ease with which FEMA can contract with multiple non-profits and should seek to establish such contracts at the most local level possible before a disaster. FEMA, state and local authorities can establish relationships with NGOs and compose contracts which specifically guarantee the provision of services during a disaster and reimbursement following an event.⁹⁷ California's Office of Emergency Services (OES) suggests utilizing current contracts which local governments may have with providers to supplement programs such as social services and include within those agreements clauses ensuring participation during disaster recovery.⁹⁸

b. Drawing from internal strengths

While the federal government may seek greater cooperation with groups already on the ground, a more significant opportunity for reform may exist within government social services. The effectiveness of Catholic Charities' various service providers was born out of their experience with the needs of the community, yet the same experience exists within government agencies. If within the context of disasters charitable organizations and churches are able to transform themselves nearly overnight into emergency response organizations, why not ask the same of the federal government's social services? Under this proposal, FEMA could essentially "deputize" local federal (and potentially state) social security, veterans' affairs, housing, welfare,

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ California OES at 23.

⁹⁸ Id.

healthcare, and other social service workers. These agencies and their experienced staff could be empowered to provide to local populations services in their range of expertise. Where appropriate, professional social workers could be transferred from their branch offices to work at Disaster Relief Centers dealing with the public directly.

The current practice of FEMA is to commandeer federal workers with little social service background or within disasters on the scale of Katrina, to take out advertisements in the want ads. Louisiana Attorney Jamie Campbell, who has worked at FEMA DRCs for the past eight months met border patrol agents working to provision FEMA benefits to survivors, as well one data entry clerk from Dallas with no prior federal or social service background who had answered an advertisement in the local newspaper.⁹⁹ Campbell emphasizes the need for training of employees who provision FEMA benefits. She notes that the comfort level of contract FEMA workers was higher with middle class Katrina victims, yet they were less able to empathize with the lower class victims of Katrina who needed the most help.¹⁰⁰ While FEMA and state agencies should emphasize training programs for all contract employees, these are often simply not workable in the midst of an emergency. Thus the ability of FEMA to contract with NGOs and deputize government social workers may be the only means by which to provide effective and empathetic assistance to disadvantaged communities.

c. Pre-planning with community leaders

Charity representatives reported to the GAO that despite the FEMA's attempts to coordinate charity efforts, such "systems were not as important to coordination efforts as pre-

⁹⁹ Campbell Interview.

¹⁰⁰ Id. Campbell suggests the important skills for social workers in disaster contexts include the ability to ask the right questions of poor victims, be sensitive to unique family and economic conditions which may persist in such populations, and manage inter-personal relations during times of crisis when empathy is at a premium.

existing relationships.”¹⁰¹ California’s OES suggests that in addition to contracting with NGOs, government at all levels must involve them in pre-disaster planning, willingly take advice from local groups, and include them in disaster exercises.¹⁰² Jamie Campbell of SLLS likewise urges from her Katrina experience the establishment of a “culture where community based organizations are listened to,” and FEMA officials on the ground feel comfortable working with them as partners.¹⁰³

In addition to formal contract relationships, FEMA and coordinating governments should network with community leaders and neighborhood organizations in order to facilitate cooperation in an emergency, but more importantly, to develop cultural competency.¹⁰⁴ Following the 1989 Loma Prieta earthquake, the Watsonville Red Cross recruited members of the local community to undergo Red Cross training, and also had its own employees join local Latino organizations.¹⁰⁵ Such “inter-organizational cooperation fostered awareness, reduced friction, and created a pool of trained personnel for the next disaster.”¹⁰⁶ Interactions like these emphasize the strengths of local minority communities, and allow disaster recovery officials to access networks with which they might otherwise have no contact. Even the Red Cross is following suit. Under fire for failing to work effectively with minorities, the organization “hired

¹⁰¹ GAO at 9.

¹⁰² California OES at 10-11.

¹⁰³ Campbell Interview.

¹⁰⁴ See note 5 supra. SAMHSA’s guide notes at p. 27, “Cultural competence training programs work particularly well when they are provided in collaboration with community based groups that offer expertise or technical assistance in cultural competence or in the needs of a particular culture. Involving such groups not only enables program staff to gain firsthand knowledge of various cultures, but also opens up the door for long-term partnerships.”

¹⁰⁵ Phillips, Brenda, “Cultural Diversity in Disasters: Sheltering, Housing and Long Term Recovery,” in International Journal of Mass Emergencies and Disasters 11(1): 99-110 (1993).

¹⁰⁶ Id.

a vice president of diversity who should see to it that more minorities- including Spanish speakers- work the front lines.”¹⁰⁷

ii. The missing role of the advocate

The General Accounting Office noted that charities providing survivors with “case managers” in New York and Washington, DC following September 11 was one of the most effective ways to “help survivors find out what assistance is available and ease their access to that aid through a central, easy-to-access clearinghouse of private and public assistance.”¹⁰⁸ This model suggests that FEMA workers in disaster recovery should re-orient their interactions with clients from the that of disinterested processors of applications to advocates for obtaining maximum aid for eligible survivors. The advocacy role is key to filling the information gap into which so many underprivileged survivors fall due to language, cultural and social patterns. Sensitivity to such differences is “not sufficient...service providers must have the knowledge, skills, attitudes...needed to offer support and care that is responsive and tailored to the needs of culturally diverse population groups.”¹⁰⁹ Legal services providers often act in this role, yet they are unable to staff every disaster recovery center continuously. Though it may be contrary to the government’s interest preventing fraud to act in an advocacy role, some FEMA supervised employees, or at least a sizeable contingent of contract organizations should be directed to act strictly as advocates during disaster recovery.

C. Serving the community: reforming behavior to attack cultural incompetence

The bipartisan Congressional committee which investigated the failed response to hurricane Katrina aptly entitled its report “A Failure of Initiative,” lamenting that although the

¹⁰⁷ See supra note 83.

¹⁰⁸ GAO at 5.

¹⁰⁹ SAMHSA Report at 12 (see supra note 5).

nation had anticipated the disaster and even planned for it, those who were supposed to implement the plan were unable to do so. Though committee members examined the minutiae of the failed leadership response, they seemed unable to put their finger on exactly what accounted for this lack of leadership, grasping and explaining at one point, “[w]e again encountered the risk-averse culture that pervades big government.”¹¹⁰ The 9/11 report focused on a failure of imagination, but did not similarly find that the United States had failed to marshal its leadership capabilities. Several critics wondered if the difference was not one related to color. Offering an alternative explanation to “risk-averse” government bureaucracy, sociologist Harvey Molotch charges that bureaucratic actors work by a system of “informal rules” which enable them to be flexible, yet that in the context of hurricane Katrina, “a little bit of racism can go a long way.”¹¹¹ Molotch argues that African Americans in New Orleans were “sufficiently outside” white middle-managements’ social milieu to disable any impulse to take extraordinary action outside bureaucratic norms to aid victims.¹¹²

I have thus far argued that federal, state and local government entities may appreciably improve cultural competency in disaster response by de-centralizing their organizational structure to the local level, increasing reliance upon local NGOs, promoting advocacy and networking with local leaders. Yet decisions regarding organization and the allocation of resources also demands the development of cultural competency at higher levels of FEMA and state disaster response agencies. To some extent, comprehensive training programs may address this problem, yet even the most progressive government recommendations rely on obvious solutions such as training employees in religious and ethnic sensitivity and providing language

¹¹⁰ *Failure of Initiative* at 2.

¹¹¹ Molotch, Harvey “Death on the Roof: Race and Bureaucratic Failure,” *Understanding Katrina: Perspectives from the Social Sciences*, available at <http://understandingkatrina.ssrc.org/Molotch/pf/> (last visited March 3, 2006).

¹¹² *Id.*

translators¹¹³ rather than tackling problems such as the deep cultural and economic divide between blacks and whites in the south.

To address these fundamental cultural differences, FEMA and state organizations should make a concerted effort to hire members of minority communities as managers at the regional level.¹¹⁴ At the local level, government has the opportunity within the course of a year long disaster recovery process to employ members of the local community to provide services to their peers. In 1998 Ventura county, California implemented such a program in the wake of severe storms which had produced flooding in migrant worker communities.¹¹⁵ The county hired farm laborers to go into migrant worker camps and communicate with leaders, “these were the first ‘government’ workers in recent memory to be allowed in the farm workers’ camp.”¹¹⁶

V. Conclusion: Legal Issues raised by Proposals for Reform

Critics of de-centralization and government cooperation with non-governmental organizations including religious charities are likely to raise the same legal questions which frequently accompany privatization of government activities. Yet insofar as government contracting has been applied in other contexts (most notably the war in Iraq), and within the hiring of security personnel¹¹⁷ following hurricane Katrina, applying such a solution to the provision of aid to marginalized communities should not be dismissed based exclusively on these concerns. This is especially true where such contracting is not a for profit endeavor by charities, and where the government is able to write in safeguards to ensure proper procedure.

¹¹³ See SAMHSA report (supra note 5), at 34.

¹¹⁴ Id at 32.

¹¹⁵ SAMHSA at 26.

¹¹⁶ Id.

¹¹⁷ See supra note 19.

In the context of disaster relief, First Amendment concerns over the establishment of religion may come into play when religious groups such as Catholic Charities, the Salvation Army and local churches are engaged to provide recovery services.¹¹⁸ In the school funding context, the standard the Court has formulated is a rather generous test to determine if the neutrality of government's purpose allows such programs to pass First Amendment muster where funding does not lead directly to religious indoctrination.¹¹⁹ The sort of contracting I am advocating in disaster recovery is unlikely to fail the Court's test since the provision of tangible services such as housing and financial assistance are more straightforward and thus easier to provide with neutrality than the more difficult problem of education and its attendant values.¹²⁰

The solution to many of these privatization issues is specificity within government contracts with NGOs. Guidelines should be provided regarding the separation of relief funds from funds for religious activities. Where contracting with NGOs may require real time decisions by government officials, disaster plans should include lists of pre-approved organizations which have been vetted for their willingness to adhere to strict separation of religious from social service functions.

Due process concerns may also be raised where the provision of disaster recovery services includes decisions on government entitlements. Likewise, concerns over transparency and public rules regarding notice and access to private organizations' documents will likely be at issue. Again, these problems are those most efficiently addressed within contracts whereby rules

¹¹⁸ *Morning Edition: Faith-Based Groups to Receive Katrina Funds*, National Public Radio broadcast (September 29, 2005) The President's office of "Faith-Based and Community Initiatives" claimed it would only reimburse funds to those churches and religious organizations that had been asked by FEMA to help following the disaster.

¹¹⁹ See *Mitchell v. Thomas*, 530 U.S. 793 (2000), in the social welfare context, the Court has similarly demanded an explicit expression of religious content designed to impress upon social service recipients a religious message, see *Bowen v. Kendrick*, 487 U.S. 589 (1988).

¹²⁰ See also *Lown v. Salvation Army, Inc.*, 393 F. Supp. 2d 223 (S.D.N.Y. 2005), dismissing claims where government contracts with the Salvation Army for the provision of social services were religion-neutral.

for providing information may be modeled after the provisions of the Freedom of Information Act, and due process rules after the Administrative Procedure Act. In this sense, formalizing relationships between government and charity organizations which already cooperate during disaster recovery may actually enhance public law values while at the same time expanding the provision of services to marginalized communities.¹²¹ The balance desired is a delicate one between ensuring procedural safeguards without replicating the problems of bureaucracy that strategies for cultural competence seek to address.

¹²¹ See generally Paul F. Verkuil, “*Public Law Limitations on Privatization of Government Contracts*,” 84 N.C.L.Rev. 397 (2006), see also Professor Freeman’s arguments for the privatization trend’s potential to expand valuable due process and public participation norms to private actors, “*Extending Public Law Norms Through Privatization*,” 116 Harv. L. Rev. 1285 (2003).