

**“Dishonour, Dispersion, and Dispossession:
Race and Rights in 21st-Century North America,
A View from the Lower Ninth Ward”¹**

The mood was subdued at the temporary meeting place of Jerusalem Baptist Church in Central City, New Orleans on August 29, 2010. It was not until the benediction that Hurricane Katrina was even acknowledged. In an understated voice, the usually ebullient Pastor Aldon Cotton began his supplication, “God, I still don’t understand,” followed by a long pause. “I’m just letting you know.” He went on to plead for God’s special presence to be felt by the mother whose child was murdered by police officers on the Danziger Bridge on September 4, 2005,² for church members still stranded “abroad,” and for all of those who lost community as a result of Hurricane Katrina’s aftermath and the government’s militarized deportation of African Americans to random, distant corners of the United States.³

I interviewed Pastor Cotton as part of an oral history documentation project of human rights violations, entitled “The Saddest Days Oral History Project.”⁴ From September 2005 through September 2010, I conducted at least one (and as many as seven follow-up) interview(s) with a total of 290 Katrina survivors, overwhelmingly African Americans originally from New Orleans, from a wide variety of educational,

¹ An abridged version of this essay is forthcoming in *Remembering War, Genocide and Other Human Rights Violations*, ed. by Steven High, Edward Little and Ry Duong (Toronto: University of Toronto, 2011). New Orleans’s Ninth Ward originated as a voting district, and includes half of Pontchartrain Park, all of New Orleans East, the Upper Ninth Ward and the Lower Ninth Ward. The last two are separated by the Industrial Canal. For research support, I thank the Amistad Research Center (ARC) at Tulane University, the Association of Black Cardiologists, the Benjamin Hooks Institute for Social Change at the University of Memphis, Jerusalem Baptist Church, the Institute for the Study of Human Rights at Columbia University, the Dart Society: Journalists Who Cover Violence, Loyola University New Orleans College of Law, the Southern Institute for Education and Research at Tulane University, and Jim Blythe, Tom and Kathy Brady, Mary Marshall Clark, Rick Greenberg, and Ben Hooks. Intellectually, I am indebted to Andrea Armstrong, Michael Bagneris, Amy Cahn, Bernadette Capehart, Tim Cox, Beverly Cross, Mitchell Crusto, Olúgbémiga Ekúndayò, Mindy Fullilove, Heather Godwin, Parnell Herbert, Lance Hill, Johanna Kalb, Frank Ochberg, Linda Shopes, and Abe Louise Young.

² Sarah S. Vance, “Justice after Disaster – What Hurricane Katrina Did to the Criminal Justice System in New Orleans,” *Howard Law Journal*, 51 (2007-2008): 621-41.

³ Penner Field Notes (PFN), New Orleans, August 29, 2010. On Cotton, see D’Ann R. Penner and Keith C. Ferdinand, eds., *Overcoming Katrina: African American Voices from the Crescent City and Beyond (Overcoming)* (NY: Palgrave Macmillan, 2009), 181-90.

⁴ On my methodology, see D’Ann Penner, “Assault Rifles, Separated Families, and Murder in Their Eyes: Unasked Questions after Hurricane Katrina,” (“Assault Rifles”) *Journal of American Studies*, 44/3 (Aug. 2010): 580-3.

socioeconomic, religious, and family backgrounds. All of the African Americans shared a history of institutionalized slavery, indelibly inscribed in the United States' Constitution.⁵

I am a New Orleanian by choice and a “witness by adoption,” the term Geoffrey H. Hartman, an expert on Holocaust narratives, used to describe Gentiles who document the Holocaust.⁶ “For the testimonial process to take place,” Yale psychiatrist Dori Laub insists, “there needs to be a bonding, the intimate and total presence of an *other* – in the position of one who hears.”⁷ My emotional investment in these issues began as the child of German-American tenant farmers in an Illinois village, where we were outsiders. I was drawn to books about slave narratives, African-American firsts, and Black Power manifestos I found in the local libraries that spoke to my feelings of rootlessness while teaching me how to fight injustice. These authors and their subjects modeled endurance and resistance, lessons that were instrumental in my own struggle to overcome a personal history of trauma and moral injury.

During the interviews, I attempted to decenter power to avoid reinforcing “the survivors’ humiliated feelings, instilled by their aggressors, that they are worthless and their stories meaningless,” an inevitable byproduct of emotionless listening, according to Richard Mollica, director of the Harvard Program in Refugee Trauma.⁸ “Survivor testimonies,” to quote Hartman, are important because of the ways they capture “the psychological and emotional milieu of the struggle for survival, not only then but also now.”⁹ “It may well be only through testimony that we can really write the history of such a cataclysm,” Laub concludes after decades of work.¹⁰

Hurricane Katrina’s immediate aftermath in New Orleans shed an internationally televised spotlight on the rudimentary human rights for African Americans in the United

⁵ Thurgood Marshall, “Reflections on the Bicentennial of the United States Constitution,” *Harvard Law Review*, 101 (1987): 2.

⁶ Geoffrey H. Hartman, *The Longest Shadow: In the Aftermath of the Holocaust* (NY: Palgrave Macmillan, 1996), 9.

⁷ Dori Laub, “Truth and Testimony,” in *Trauma*, ed. by Cathy Caruth (Baltimore: Johns Hopkins University Press, 1995): 61-75, here at 71.

⁸ Richard F. Mollica, *Healing Invisible Wounds: Paths to Hope and Recovery in a Violent World* (Orlando, FL: Harcourt, 2006), 111.

⁹ Hartman, 142.

¹⁰ Dori Laub, “From Speechlessness to Narrative: The Cases of Holocaust Historians and of Psychiatrically Hospitalized Survivors,” *Literature and Medicine* 24, 2 (2005): 265.

States.¹¹ Domestically, the issue was whether state resources, ranging from rescue equipment and medical supplies to food and water, could be used in a racially disparate manner to privilege the lives and property of whites over African Americans in the Greater New Orleans Region, without accountability.¹² The United States government, the Army Corps of Engineers, and agents of the State of Louisiana have defended themselves against indirect class action lawsuits, not by justifying their agents' actions, but by claiming sovereign immunity.¹³

However, despite a flurry of initial research and government grants to study poverty, crowd control, and resilience in relation to Hurricane Katrina,¹⁴ there was a dwindling of interest within academia that mirrors the indifference of the larger world.¹⁵ The 2010 “anniversary” coverage that dominated the American news media assured viewers that New Orleans is “flourishing” like never before.¹⁶ In the words of Roy Weiner, associate director of clinical research at Tulane Cancer Center, “I totally believe that New Orleans is and will be a better place in virtually every aspect because of how we have recovered from Katrina.”¹⁷

In August, 2010, I sat with Reverend Mildred Alcorn on her red couch in a small rental unit on Royal Street in the Lower Ninth Ward, only blocks from her former home. Before the storm, the now 58-year-old woman combined ministry with her work as the

¹¹ Adrienne Katherine Wing, “From Wrongs to Rights: Hurricane Katrina from a Global Perspective;” in *After the Storm: Black Intellectuals Explore the Meaning of Hurricane Katrina*, ed. by David Dante Troutt; with a foreword by Derrick Bell and an introduction by Charles J. Ogletree Jr. (NY: New Press, 2006), 130-40.

¹² In addition to Orleans Parish, this area includes the predominantly white parishes of Jefferson, Plaquemines, and St. Bernard.

¹³ Because of the Supreme Court’s interpretation of the 11th Amendment in *Hans v. Louisiana*, decided during Jim Crow, state governments cannot be sued directly, even by their own citizens. *Ex parte Young* provided an exception to the sovereign immunity shield by allowing states to be sued indirectly for injunctive relief through an agent of the state, usually an Attorney General or, in this case, the administrative head of Road Home. A federal court has ruled that the immunity sparing the Corps from accountability vis-à-vis- the levees does not extend to the Mississippi River Gulf Outlet, which was responsible for much of the flood damage in New Orleans East and the Lower Ninth Ward. The decision has been appealed. For an argument that emergency food supplies should not have been shielded from judicial review because of the 11th Amendment on the grounds that they are non-discretionary, see Nathan Smith, “Water, Water Everywhere, and Not a Bite to Eat: Sovereign Immunity, Federal Disaster Relief, and Hurricane Katrina,” *San Diego Law Review* 43 (2006): 699-732.

¹⁴ See *The Sociology of Katrina: Perspectives on a Modern Catastrophe*, ed. by David L. Brunson, David Overfelt, and J. Steven Picou (Lanham, MD: Rowman & Littlefield, 2007).

¹⁵ In this book, an outgrowth of an international conference on human rights, these Katrina narratives represent the only North American focus.

¹⁶ See Brian Williams’ NBC nightly news coverage from Trudi Green’s rooftop in the Lower Ninth Ward on August 28, 2010. There were rare exceptions, like Samuel Freedman’s “Long, Slow Return for Black Churches in New Orleans,” *NY Times* (8/27/10).

¹⁷ www.infectiousdiseaseneews.com/article/67574.aspx.

director of a program of last resort for unemployed, homeless women. “We were their last hope. Failure was not an option,” she recalled. As Alcorn reflected on the fates of the significant people in her pre-storm social network: the sisters, nephews, godchildren, friends, and church members, mainly homeowners, who all lived within a six-block radius, she paused to admit that she still tears up every two-to-three days as she worries about how they are coping, alone, in distant cities. “Some losses can’t be overcome,” she gently chided me as co-editor of the book *Overcoming Katrina*.¹⁸

Weiner may accurately capture the jubilation of the “new” New Orleans in the predominantly White neighborhoods of Uptown, the French Quarter, and even Lakeview. But he cannot speak for Alcorn, and does not speak to the deleterious impact of Katrina’s aftermath on (especially) Lower Ninth Warders who commanded the world’s attention from August 29 through September 4, 2005.

The harms of the militarized seven-day aftermath of Katrina are best understood both by looking back to the deep history of race relations in the United States and by looking forward to how the use of federal resources furthers a revanchist local agenda in changing the racial demographics of New Orleans.¹⁹ This chapter will illustrate African American narrators’ experiences of human rights’ violations during Katrina’s highly visible immediate aftermath (Phase I) and the more invisible phase of permanent displacement and/or dispossession that began on September 4, 2005 (Phase II). Because decontextualized survivors’ evidence has been used to create policies of which they have disapproved,²⁰ I conclude with recommendations from the results of my open-ended, semi-structured research. These recommendations take the form of present-tense strategies to address narrators’ concerns for accountability and restitution keeping within a framework of constitutional rights.

¹⁸ PFN, Mildred Alcorn-Penner interview, New Orleans, Louisiana (“NOLA”), August, 2010.

¹⁹ See Katherine Cecil, “Race, Representation, and Recovery: Documenting the 2006 New Orleans Mayoral Elections” (M.A. Thesis, University of New Orleans, 2009), and Peter Marcuse, “Rebuilding a Tortured Past or Creating a Model Future: The Limits and Potentials of Planning,” in *There is No Such Thing as a Natural Disaster: Race, Class, and Hurricane Katrina*, ed. by Chester W. Hartman and Gregory D. Squires (NY: Routledge, 2006), 271-2.

²⁰ For my critique of how structured approaches to Black Katrina survivors squelched interviewees’ deepest concerns, see “Assault Rifles,” 576-9, 597.

Phase I: Dishonour and Dispersion

Despite the class diversity of the survivors that I interviewed, most testified about human rights' violations against themselves, their kin, or their community. Because of length constraints, only a few can be described here. To facilitate categorization, I follow the Guiding Principles on Internal Displacement (“Guiding Principles”), a nonbinding treaty developed by the United Nations, and the International Convention on the Elimination of Race Discrimination, a binding treaty signed by a United States president and ratified by the Senate.²¹

The first internationally recognized human rights' principle violated against African Americans in New Orleans during the initial displacement from their homes was the right to life and security, Principle 10 of the Guiding Principles.²² The narrators left little doubt that the people steered into the Superdome and the convention center felt that their lives were in danger. “The scariest part of my ordeal,” said Kevin Owens, a maintenance man for the B.W. Cooper Housing Development, in response to my question about how frightening Katrina was as a hurricane, “was being in the Superdome. . . . It was us against the military.”²³ Deacon Harold Toussaint, a short, slender, 55-year-old sommelier living in the Upper Ninth Ward, stayed in New Orleans for Hurricane Katrina because he felt God’s call to take care of the elderly after the storm. On September 1, 2005, he attempted to ask a patrolling military unit for help evacuating predominantly white senior citizens at The Esplanade at City Park:

I have to preface this by saying I had on a short-sleeved shirt and my pants were wet—I had no place to hide a weapon. So as I approached [the federal police], I just waved my hand out and said, “Oh, the ‘guardsman’ over there, he needs to talk to you.” [They] pointed their M-16s, their

²¹ Wing, 133-4.

²² Wing, 137.

²³ *Overcoming*, 144-7. On military violence against Blacks during the aftermath, see especially Shana Agid, “Locked and Loaded: The Prison Industrial Complex and the Response to Hurricane Katrina,” in *Through the Eye of Katrina: Social Justice in the United States*, ed. by Kristin A. Bates and Richelle S. Swan (Durham, NC: Carolina Academic, 2007), 55-69; *Overcoming*, 32, 52-4, 57-8, 64-7, 74, 113, 124-6, 135-7, 144-8, 150-1, 156, 162, 165, 208-9, 225; Rebecca Solnit, *A Paradise Built in Hell: The Extraordinary Communities That Arise in Disaster* (NY: Viking, 2009), 234-5, 245-66; and Robert Caldwell, “New Orleans: The Making of an Urban Catastrophe,” *Monthly Review* (12/9/05). For a brief account of the rumors of “urban warfare” with which they were briefed, see *Overcoming*, xxi-xxii, 112, 138, 150, 207, 216, and 222. On the acknowledgment of the gross exaggeration of these rumors, see Jim Dwyer et al., “Storm and Crisis: Lawlessness; Fear Exceeded Crime’s Reality in New Orleans,” *NY Times* (9/29/05); Andrew Gumbel, “After the Storm, US Media Held to Account for Exaggerated Tales of Katrina Chaos,” *Los Angeles Times* (9/28/05); and Brian Thevenot and Gordon Russell, “Reports of Anarchy at the Superdome Overstated,” *Seattle Times* (9/26/05).

AK-47s, or whatever it was at me and said, “Get back! Get back! Get back!” . . . I felt they were ready to shoot me! All they saw was that I was black, and blacks are criminals. That was what I got from them at the time when we needed them most.²⁴

Assault rifles were pointed routinely at survivors “as if [they] were in a concentration camp,” to borrow the analogy of Shriff Hasan, a high school teacher and playwright from the Gentilly neighbourhood.²⁵ “There were police cars *en masse*. Every night that happened around two or three A.M.,” he amplified. “No, they didn’t stop to see how we were doing. . . . Hell no, it wasn’t about protecting nobody! It was about protecting their wealth. . . . Guns pointed at people out of car windows like [they’re] ready to shoot, I’m talking about if you breathed the wrong way.” This long-time resident of New Orleans characterized the targets of the scare tactics—people he saw on the I-10 bridge, around the Superdome, and inside and outside of the convention center—as “taxpaying citizens” and “decent human beings.” Hasan was particularly struck by the murderous look in the eyes of the man he nicknamed “GI Bob,” one of the thousands of soldiers and police in full battle gear who stormed the convention center at noon on September 2. “I understand that [he had] a job to do, but these people had suffered enough. They [didn’t] deserve [him] looking at them as if [he’d] shoot them and talking to them as if [he would] kill them on the spot.”

Failure to provide timely food and water after Katrina violates Guiding Principle 7.²⁶ Elementary rescue equipment (life jackets, boats, medical supplies) seemed to have been forgotten and standard rescue supplies (food and water) were in critically short supply.²⁷ “[Although] there was water everywhere,” Deacon Toussaint recalled, “[the

²⁴ Harold Toussaint’s interview is included in condensed form in *Overcoming*, 49-59, here at 53. See also www.bbc.co.uk/programmes/p0099v7z. Both the digital audio and the 80-page transcript of the interview are available at the Amistad Research Center (ARC) at Tulane University, as are most of the interviews cited herein. The author has copies of all the interviews and PFN on file.

²⁵ This and all subsequent Shriff Hasan quotes come from Hasan-Penner interview, Houston, TX, October, 2005.

²⁶ Wing, 136-7.

²⁷ Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, A Failure of Initiative, H.R. Rep. No. 109-377, at 7 (2006). On the Stafford Act, which entitles American citizens irrespective of race to food provisions in the aftermath of a disaster, see Smith. On the blockading of Red Cross from New Orleans, see Lance Hill’s commentary: www.southerninstitute.info/commentaries/?m=200608&paged=2. Hill was an active eyewitness in and around the convention center the entire week. On the availability of supplies in Algiers, a westbank neighbourhood of Orleans Parish, see malik Rahim, “this is criminal” in *What Lies Beneath: Katrina, Race, and the State of the Nation*, ed. by the South End Press Collective (Cambridge, MA: South End, 2007), 65-8.

military] had guns but no life jackets.”²⁸ It was not until the evening of Thursday, September 1, 2005, the fifth day of the disaster, that Michael D. Brown, director of FEMA (Federal Emergency Management Agency) acknowledged that thousands were stranded without resources in and around the ten-and-one-half block convention center. In response, a military helicopter dropped the first batch of food and water: enough MREs (“Meal, Ready to Eat”) for approximately twenty-five people. Cynthia Banks, Founder of Free to Be Kids Daycare and mother of Jermol Stinson, a quadriplegic housed at Kindred Hospital during the storm, was driven to take cartons of milk from Wal-Mart’s shelves because the National Guard responsible for delaying the hospital’s evacuation from Wednesday to Friday had no food or water for the patients.²⁹

The problem of supplying the thousands of survivors inside New Orleans (and especially around the convention center) with food and water was not a result of the building being flooded or inaccessible. There was no standing water around the convention center. Early in the week after the storm, hotels around the convention center moved swiftly and visibly to bus their guests (and some white New Orleanians) to other cities.³⁰ Most of the major hotels in New Orleans were within walking distance of the convention center. If buses could carry whites out of the city, then other buses (trucks, vans, or cars) could have transported food, water, and medical supplies into the city. Boxes of MREs and bottled water were handed out in Jefferson Parish, a predominantly white parish with almost no flooding, as of noon on August 29, 2005. According to Freddie Clark, a retired reservist and longtime resident of Jefferson Parish, “The National Guard put them in your car.”³¹ The problem was not in getting supplies to Louisiana in a timely fashion.

The lack of sanitary conditions also violated Guiding Principle 7.³² Every convention center or Superdome narrator I interviewed mentioned with visible repugnance the inadequacy of bathroom facilities, indoors and outside.³³ Cynthia Banks,

²⁸ *Overcoming*, 58.

²⁹ *Ibid.*, 65.

³⁰ Rene Kinsella-Brigid Shea interview, Austin, TX, 14 Sept. 2005. This interview is part of the Alive-in-Truth documentation project, also in the author’s possession.

³¹ Freddie Clark sat in on part of my interview with Rogers Branche, Birmingham, AL, December, 2005. Similarly, the Red Cross handed out food and water to Chalmette residents as early as August 31, 2005. See Hill.

³² Wing, 136-7.

³³ *Overcoming*, 72, 146, 163.

founder of a nonprofit daycare, relayed the story of her “second mother,” a 94-year-old West Indian woman she called Mother Baker. Mother Baker was first separated from her grandchildren and then deposited, alone, on a landing field with a growing crowd of strangers by the National Guard. Two months later, Mother Baker confided to Banks by phone, “Child, it’s but God that kept me on that hot, black tar three days. I had nowhere to go to the bathroom.”³⁴ Demetrius White, a computer technician who rescued over thirty people after Katrina, was among the five thousand African Americans who were corralled at gunpoint for two days at the outdoor I-10/610 cloverleaf in Metairie. “You had five thousand people with nine port-a-lets,” he reported.³⁵

The withholding of medical treatment violated Guiding Principle 3.³⁶ The slowness of the government’s response to hospitals—indeed, the failure to provide back-up generators alone—caused the deaths of many people at University Hospital, according to Dr. Denise Roubion-Johnson, medical director of a public breast cancer center.³⁷ Similarly, we may never know how many diabetics died because of a lack of insulin.³⁸ On Saturday, September 3, 2010, a pregnant Anika Pugh, a purveyor of homemade sweets, was finally evacuated along with her three children to Baton Rouge, Louisiana, where she was housed along with thousands in a gymnasium at Louisiana State University. By the time she got there, she remembered, “I couldn’t even walk up straight ... because the pain had just suddenly came down on me.” She pleaded for medical attention, for someone to listen for her baby’s heartbeat. The rescue worker to whom Anika Pugh appealed for medical treatment had the power to validate Pugh’s medical concerns as serious enough for hospitalization. Instead, Pugh was given vitamins and iron pills, and told to lie down on a cot. Pugh miscarried a week later in Birmingham. She declined the Birmingham hospital’s offer of a fetal autopsy because, as she explained, “I kind of have a feeling why my baby’s gone, because it’s like I was stressing from the start of everything, wondering what are we going to do, how are we going to survive?”³⁹

³⁴ *Overcoming*, 225. On Banks, see *Overcoming*, 60-9.

³⁵ *Overcoming*, 164. On White, see *Overcoming*, 159-67.

³⁶ Wing, 136-7.

³⁷ Denise Roubion-Johnson, Spotlight on *Overcoming Katrina* Panel, Oral History Conference, Atlanta, Georgia, October, 2010. See also *Overcoming*, 70-9.

³⁸ Demetrius White is still haunted by the memory of the 400-pound mother, a diabetic, for whom he could not provide insulin five days after the storm. *Overcoming*, 164, and PFN, White-Penner phone conversation, March, 2009.

³⁹ Anika Pugh-Penner interview, Birmingham, AL, December, 2005.

She carries the loss of her unborn baby as another man-made, Katrina-related loss. Like Pugh's infant, it is certain that many lives were lost in the ensuing weeks and months due to a critical lack of medical care during the disaster.⁴¹

After the storm, Kenneth Anderson, a house painter, walked nine blocks through water, at times up to his chin, to get to his ill older brother. Because he found his brother out of food, he walked through more water to his sister's apartment, to which he had a key. "On my way back, that's when the helicopter stopped me," Anderson explained, "and told me I had to go with them. I say, 'I'm going to bring my brother something to eat.' He said, 'No, you have to evacuate.'" As a result, Anderson's brother was not evacuated until five days after the storm and went without food for several days.⁴² Anderson's experience illustrates another routine practice of state agents that violated human rights' standards: keeping families together, according to Principle 7 of the Guiding Principles on Internal Displacement.⁴³

Parnell Herbert, a retired AT&T technician, related the story of his friend's mother in a hospital. A helicopter stopped the pair, as the daughter was pushing the mother's hospital bed to the Superdome before the water rose any higher. When the helicopter offered to take her mother, the daughter gladly offered her consent, never guessing that they would not make room for her as well. She learned that she was being left behind only after her mother was inside the helicopter. As of January 2006, no one in the family had any information about the mother's ultimate whereabouts or disposition.⁴⁴ Not only did the mother apparently die alone, but the medical staff lost an invaluable ally in the daughter.

Almost all of the narrators who were eventually evacuated from the Superdome, the convention center or the I-10/610-cloverleaf staging ground blamed the extremely chaotic departures of buses as the leading reason why so many children ended up separated from their families.⁴⁵ Not only were thousands of separated parents and children still looking for one another as late as the spring of 2006, but nuclear and

⁴¹ Many of these lives are not counted in the official Katrina death toll. PFN, Abe Louise Young-Penner phone conversation, November, 2010.

⁴² Kenneth Anderson-Penner interview, Birmingham, AL, December, 2005.

⁴³ Wing, 137.

⁴⁴ *Overcoming*, 46.

⁴⁵ *Overcoming*, 7, 22, 33, 38, 46, 55, 67, 73, 76-8, 127, 135, 138, 145, 147-8, 165, 172, 195-6, 202, and 224.

extended families that had lived in close proximity for decades were scattered across multiple states and, as of 2007, were in more than 5,500 cities.⁴⁶

The International Convention on the Elimination of Race Discrimination was also violated during Katrina's immediate aftermath.⁴⁷ For the narrators who endured the aftermath of Hurricane Katrina in New Orleans, the event was made traumatic less by the winds or the flood waters, and more by the city's descent into a militarized zone in which they were singled out for race-based persecution.⁴⁸ According to some estimates, 20 percent of the residents remaining in New Orleans after Katrina's landfall were nonblacks.⁴⁹ The death toll among whites in the immediate aftermath, though still not final, is proportionately high enough when compared to the deaths of African Americans to indicate that significant numbers of whites in Lakeview and the racially mixed lakeside neighbourhoods of Gentilly and Mid-City must have attempted to ride out the storm in their homes.⁵⁰ The Jefferson Parish Sheriff's Office reported that on the single day of August 30, 2005, approximately five hundred people from Lakeview were rescued by helicopter.⁵¹ Although the same sheriff's office reported rescuing people from their rooftops and attics in the flooded, mixed-race Mid-City and Gentilly neighbourhoods, CNN reported on September 3, 2005, that "as more and more eyewitness accounts of conditions in the convention center and Superdome surface, it becomes plain that most if not all of those who survived unspeakable days and nights under inhuman conditions were black."⁵² At every turn, the Saddest Days narrators saw examples of white privilege in action. They watched whites directed to refuge in Jefferson Parish by the same police officer who directed them to the convention center.⁵³ From the convention center, they had a view of the Mississippi River Bridge, where they could count the number of Orleans Parish buses—Rochelle Smith counted 132—destined to pick up whites from St

⁴⁶ Dana Alfred, *Louisiana Disaster Recovery Corps* (2007).

⁴⁷ Wing, 133.

⁴⁸ Sherrie Armstrong Tomlinson, "No New Orleanians Left Behind: An Examination of the Disparate Impact of Hurricane Katrina on Minorities," *Connecticut Law Review* 38 (2005-2006): 1153-88; Rebecca Eaton, "Escape Denied: The Gretna Bridge and the Government's Armed Blockade in the Wake of Katrina," *Texas Wesleyan Law Review*, 13 (2006-2007): 127-74, here at 136-9. My article on race and rescue will be available at <http://www.southerninstitute.info/> in late 2011.

⁴⁹ Russell McCulley, "Healing Katrina's Racial Wounds," *Time* (8/27/07).

⁵⁰ Laura Maggi, "Official List of Disaster Victims Still Untabulated," (August 28, 2008) at blog.nola.com.

⁵¹ "Hurricane Katrina Rescue Efforts" at jpsso.com.

⁵² *CNN Reports: Katrina—State of Emergency*, with an introduction by Ivor van Heerden (Kansas City: Andrews McMeel, 2005), 100.

⁵³ For examples of white privilege, see *Overcoming*, 53-4, 58, 70, 74-5, 103, 123-7, 137, 144-5, 164-5, 221-2 and 224.

Bernard Parish via the Algiers Point ferry landing and drive them to Houston.⁵⁴ The thousands of African Americans trapped at the I-10/610 cloverleaf watched as whites were dropped off, fed, and flown out within a few hours.⁵⁵

On August 31, 2005, government officials, including governor Kathleen Blanco and Mayor Ray Nagin, made a decision to safeguard white property (that has not been proven to have been at risk) by calling off the rescue, bringing in the National Guard for “order,” and withholding food, water, and medical supplies until after white-owned property was allegedly “secure.”⁵⁶ These uses of federal and state resources to favor the dignified rescue and evacuation of one race of people—and security of their property and possessions—meant that more black lives were lost in Orleans Parish not only during the week after Katrina, but also during the last four months of 2005.⁵⁷ Narrator after narrator has long lists of relatives, mainly elders, who died in the fall of 2005. Mother Baker died in exile only weeks after talking to Cynthia Banks.⁵⁸ The Charles Duplessis family, for example, lost more than a dozen relatives.⁵⁹ The emotional toll continues to be paid five years out, even by a professional woman with access to two therapy sessions a month. In September 2010, Dr. Roubion-Johnson told her story at a panel of the Oral History Association in Atlanta, Georgia. Her narration was accompanied by sobs, in particular as she recalled the horror of being told not to keep manually ventilating (“bagging”) the elderly patients—someone’s mother or grandfather—after the generators stopped

⁵⁴ On the Orleans Parish buses sent to rescue St. Bernard Parish survivors via Algiers Point Landing, I am indebted to Lance Hill, who found NGS satellite photographs confirming the evacuation and photographs taken by first responders. Hill also interviewed residents of Chalmette who were evacuated on the buses.

⁵⁵ *Overcoming*, 164-5. It seems highly unlikely that this drastic action was necessary for residents of Jefferson Parish, who did not have enough floodwater to make transportation by car impossible. More likely, these were whites rescued from Lakeview and Gentilly.

⁵⁶ In the weeks after the storm, Hill interviewed approximately 200 National Guardsmen and law officials who explained that the operative policy had been not to allow food, water or medical aid for the people who remained in the city. This was explained as a necessary measure to force people to leave the city. Hill is working on a book, wherein he will document all that he witnessed and substantiated since Katrina. Hill-Penner email, June, 2010.

⁵⁷ Tomlinson, 1161; First Supplemental and Amending Class Action Complaint at 2-3, 5, *Dickerson v. City of Gretna*, No. 05-0667 (E.D. La. Filed 4/11/06); Kevin U. Stephens et al, “Excess Mortality in the Aftermath of Hurricane Katrina: A Preliminary Report,” *Disaster Medicine and Public Health Preparedness*, 1 (2007): 15-20. Columbia University’s Earth Institute, “Accounting for Katrina’s Dead,” at earth.columbia.edu.

⁵⁸ *Overcoming*, 226.

⁵⁹ PFN, Charles Duplessis-Penner conversation, March, 2008.

working.⁶⁰ Not for the first time in American history, black people's lives were sacrificed to "protect" white private property.⁶¹

Over the past two decades, the erosion of constitutional safeguards of equal protection for minorities, especially for disenfranchised African American males under the age of 30, has been well documented.⁶² When she arrived in Texas, Dr. Roubion-Johnson, a homeowner from New Orleans East's most exclusive neighbourhood and a professional woman with many degrees, was treated as a criminal suspect just as the men and women around her on the bus from public housing developments. Only her fellow white employees from University Hospital were treated like human beings who had just lost most of their worldly possessions.⁶³ The government's resort to human rights' violations against the 80,000 African Americans who remained in New Orleans after the storm alerts us to the fact that middle class status is no longer a badge of immunity for African Americans.

Phase II, Dispossession: "They wiped those people out."⁶⁴

One of the most passionate currents running through my 290 interviews was the intensity of the love African Americans had for their city.⁶⁵ Former residents of the Lower Ninth Ward were among those most proud of their neighbourhood. And yet today, 100,000 former New Orleanians have still not returned.⁶⁶ Block after block of once lively neighbourhoods in New Orleans East, Pontchartrain Park, and, above all, the Lower Ninth Ward still resemble a postwar wasteland. A local expert believes that up to 90

⁶⁰ On her experience of watching Tulane Hospital administrators refuse to evacuate on private equipment boatloads of Black mothers with their newborn babies on Friday, September 2, 2005, see *Overcoming*, 73.

⁶¹ Elizabeth Fussell, "Constructing New Orleans, Constructing Race: A Population History of New Orleans," *Journal of American History*, 94 (Dec. 2007): 846-55; Craig E. Colten, *An Unnatural Metropolis: Wrestling New Orleans from Nature* (, 20; Ari Kelman, "Boundary Issues: Clarifying New Orleans's Murky Edges," *Journal of American History* 94 (12/07), 695-703, and Ned Sublette, *The World that Made New Orleans: From Spanish Silver to Congo Square* (Chicago: Lawrence Hill, 2008), 135-6, and 225; and Pete Daniel, *Deep 'n As It Come: The 1927 Mississippi River Flood* (Oxford: Oxford University, 1977).

⁶² Erwin Chemerinsky, *The Conservative Assault on the Constitution* (New York: Simon & Schuster, 2010), 148-52 and Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (NY: New Press, 2010), 96-97, 100-1, 115.

⁶³ Denise Johnson, Spotlight. For other examples of lower and upper middle class African Americans treated differently than whites during Katrina's immediate aftermath, see *Overcoming*, 52-4, 67, 103, 112-3, 137, and 145-6.

⁶⁴ Aline St. Julien, author of *Colored Creole*, describing her reaction to seeing the Lower Ninth Ward after her return to New Orleans in 2006; *Overcoming*, 8.

⁶⁵ *Overcoming*, 8, 20, 30, 44, 47, 51, 58, 61, 70, 110, 133, 141, 152-5, 157, 160, 194, 199, 213, and 228-9.

⁶⁶ Jonathan Tilove, "Five Years after Hurricane Katrina, 100,000 New Orleanians Have Yet to Return," *Times-Picayune* (8/24/10).

percent of the Lower Ninth Ward is still vacant.⁶⁷ Many Lower Ninth Warders returned home in the winter of 2005-2006 to discover everything they had worked for bulldozed without actual notice.⁶⁸ Formerly energetic, independent elders are dying prematurely as renters or occupants of a relative's spare bedroom.⁶⁹ According to the testimonies of several of the Lower Ninth Ward narrators, many of their neighbours were persuaded by insurance adjustors or Road Home Program bureaucrats to give up their land—upon which stood the splintered vestiges of their family home, which they'd owned outright before the storm—for as little as \$5,000.⁷⁰

The Army Corps of Engineers' negligent maintenance of the levees protecting New Orleans led to a massive synchronous displacement of African Americans, without the usual warning that accompanies eminent domain seizures, evictions, and bulldozing property.⁷¹ Federal resources for mitigating the damages caused by the Corps' negligent maintenance of the levees before Katrina have been diverted disproportionately to white neighbourhoods, especially Lakeview.⁷² In *Greater New Orleans Fair Housing Action Center, et al. v. U.S. Department of Housing and Urban Development, et al.*, the Federal District Court of the District of Columbia ruled that the formula devised by the state of Louisiana for the distribution of federal funds for the rebuilding of areas most devastated by Hurricanes Katrina and Rita had a discriminatory impact on African American homeowners. Judge Kennedy opined that if the case ever goes to trial on the merits the evidence was strong enough to predict a verdict for the plaintiffs on the grounds that African American homeowners with a similar level of devastation and need to purchase

⁶⁷ Keith Ferdinand-Penner email, 11-12-10.

⁶⁸ PFN, Keith Calhoun-Penner interview, NOLA, Feb. 2008. On bulldozing, see William P. Quigley, "Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again," *Tulane Law Review* 81, 4 (March 2007): 955-1017, here at 993.

⁶⁹ PFN, Bernadette Capehart-Penner interview, NOLA, August, 2010.

⁷⁰ Charles Duplessis-Penner interview, Marrero, Louisiana, February, 2008; PFN, Trudi Green-Penner interview, NOLA, July, 2010; Calhoun-Penner. The Road Home Program ("Road Home") was an 11 billion dollar federal housing recovery program intended to help homeowners rebuild after Hurricanes Katrina and Rita. It was overseen by the Disaster Recovery Unit of the Office of Community Development of Louisiana.

⁷¹ Peter Grier, "The Great Katrina Migration," *Christian Science Monitor* (9/12/05); R. B. Seed et al., University of California at Berkeley and American Society of Civil Engineers, Report No. UCB/CITRIS-05/01, "Report on the Performance of the New Orleans Levee System in Hurricane Katrina on August 29, 2005," at 1-4 (7/31/06).

⁷² On June 21, 2007, the Army Corps of Engineers made available an interactive, web-based map that graphically displayed the fruits of their investment of federal resources into making Lakeview and Old Metairie, white neighbourhoods, much more flood resistant than before the storm. By contrast, it showed how few resources had been invested in enhancing flood protection for New Orleans East and the Lower Ninth Ward, black neighbourhoods. Amy Laura Cahn, "Our Rights Are Not Cast in Stone": Post-Katrina Environmental "Red-Lining" and the Need for a Broad-Based Human Rights Lawyering Movement," *Journal of Law and Social Change*, 12 (2008-2009): 37-71.

building materials and hire contractors at the same rates as whites received on average substantially less money than white homeowners.⁷³ The court granted an injunction requiring the State of Louisiana to use a non-discriminatory formula for the few remaining candidates waiting for the processing of their Road Home applications.⁷⁴ Lastly, the armed might of the National Guard was used by the city of New Orleans to deprive Lower Ninth Ward homeowners of sustained access to their properties in order to rebuild for more than eight months.⁷⁵ Failure to safeguard the property of displaced individuals violates Guiding Principle 21.⁷⁶

There are several ways in which the above-described human rights violations against Lower Ninth Warders stranded in New Orleans after Hurricane Katrina facilitated their transformation from homeowners into renters. Particularly in the fall of 2005, there was an unshakable belief among many of the people I interviewed that there had been, at worst, an intentional attempt to kill African Americans; and at best, a callous indifference to whether they lived or died. Answers to my question of whether narrators wanted to go home were intertwined with uncertainty about whether it was safe for them to rebuild in a predominantly black area of town in light of what was believed to be a pattern of dynamiting (or purposefully under-maintaining) their levees to protect Uptown and the French Quarter.⁷⁷ Irvin Porter, a Navy veteran, a retired school teacher with a master's degree from Southern University and a pioneering homeowner in Pontchartrain Park, explained his reluctance to rebuild in New Orleans: "whether [the rebuilding of the levees] will be redone right or whether it will be designed to relieve one part of the city at the expense of another—all those things are still up in the air." In the end, he concluded that "[t]he idea of losing the property that has been in the family forever, the product of so much hard work, scrimping, and faith" was too painful. Therefore, he gave up his American dream house in Pontchartrain Park, and is still attempting restoration of a

⁷³ On the decision, see Jarvis DeBerry, "For Black Road Homers, a Hollow Victory," *Times-Picayune* (8/20/10). On Road Home practices, see Davida Finger, "Stranded and Squandered: Lost on the Road Home," *Seattle Journal for Social Justice*, 7, No. 1 (Fall/Winter 2008): 59-100, here at 70. Both the plaintiffs and the government are appealing the verdict to the Ninth Circuit. For a summary of other charges of race-based discrimination in the distribution of FEMA funds and SBA loans, see William Quigley, *Storms Still Raging: Katrina, New Orleans and Social Justice* (Boston: Book Surge Publishing, 2008).

⁷⁴ DeBerry.

⁷⁵ Gwen Filosa, "City Opens a Section of Lower Ninth Ward," *Times-Picayune* (5/9/06) and Deborah Sontag, "Delery Street: Access Denied," *NY Times* (10/24/05).

⁷⁶ Wing, 140.

⁷⁷ *Overcoming*, 8, 27, 37-8, 48, 98, 140-1, 160, and 223-4.

dilapidated house in Sunshine, Louisiana, better known as “Cancer Alley”—a safer choice, he hoped.⁷⁸

These beliefs that influential whites tried to kill African Americans before, during, or after the storm were reinforced by the obvious racial discrimination that led to 20,000 whites being allowed to escape Orleans Parish across Jefferson Parish borders, while 80,000 blacks were contained at gunpoint.⁷⁹ One result of the way the buses were finally loaded was that some of the black male narrators felt like their deaths had been hoped or planned for. With great emotional pain, Kevin Owens, the B.W. Cooper mechanic, described the way he was separated from his wife and extended family as a direct result of following military orders. After thousands of people were “packed in like sardines” to the area leading from the Superdome to the buses, Owens recalls a military commander’s announcement: “We don’t want nothing but women and children.” This, according to Owens, caused panic. “Now you got children, little kids, and women holding on to their husbands and their boyfriends and their fathers, and, they’re saying, ‘No! You’re not going to separate us from each other, because this is all I have left in the world.’ The military commander responded, ‘Don’t do what we ask, nobody leaves. Come across this barricade and you will be shot!’”⁸⁰

After much prayer over several months, Owens concluded: “I believe with all my heart that they were going to kill us. If we had been the animals that they were portraying us to be [on television] and acted like that, then they would have opened fire on us.” Even though he’d ruminated over the question from the relative distance of a peaceful Birmingham suburb, Owens could find no other explanation for the soldiers stationed inside the Superdome to have pointed their weapons continuously for five days “at unarmed, innocent people trying to escape a flood.”⁸¹

Second, countless elderly homeowners from the Lower Ninth Ward gave up their struggles with insurance companies for reimbursement because of a handful of missing

⁷⁸ *Overcoming*, 27-8.

⁷⁹ See “Phase I.”

⁸⁰ According to Hill, some African Americans believed they were being loaded on to buses to be taken away and executed. Hill-Penner email, January, 2010.

⁸¹ *Overcoming*, 142-51.

succession papers,⁸² a deficit any second year civil law student could have helped remedy. Had the community not been artificially torn asunder and scattered in many states, these elders could have been assisted by literate and computer-savvy pastors, public interest lawyers, children, nephews, nieces, and grandchildren.⁸³ On average, Lower Ninth Warders ended up 349 miles away from home, without their kinship networks to depend upon.⁸⁴

In Atlanta, Dr. Keith C. Ferdinand, the Lower Ninth Ward cardiologist who co-founded Heartbeats Life Center, witnessed heavily armed National Guardsmen stationed at FEMA processing centers ordering elders to go “home” and process their requests online. When Ferdinand’s insurance company tried to give him a fraction of what his medical equipment at Heartbeats was worth, he hired a lawyer and demonstrated that he would not be intimidated out of his contractual rights because of his Ninth Ward zip code.⁸⁵ Not every family from the Lower Ninth Ward had a computer-savvy young person or a lawyer in it, but church and neighbourhood communities had long traditions of pooling resources and sharing information to overcome obstacles. These strengths would have allowed the elderly a chance to meet or resist otherwise impossible (and arbitrary) demands.⁸⁶

Third, severe emotional and psychological depression undercut many displaced people’s will to fight for their property rights. This depression, triggered by the simultaneous loss of almost every constant in their lives, was deepened by the ordeal of the military occupation, and the vicarious pain of hearing how one’s loved ones, especially the elderly, had suffered and been treated as “chattel,” dropped off “essentially to die, without food or water.”⁸⁷ The Katrina survivors who had negative

⁸² The rules of successions are clearly laid out in the Louisiana Civil Code to codify the values of dominant society in the disposal of a deceased’s assets when he dies without a “valid” will. For an excellent explanation of why African American cultural values sometimes clashed with dominant society’s hierarchy of values in the context of Katrina, see Charles Henry Rowell, “An Interview with Judge Michael G. Bagneris,” *Callaloo*, 31 (2) (Spring 2008): 506-20. Financially, the era of post-industrialization and outsourcing hit the working class homeowners of the Lower Ninth Ward with force, and made the pre-Katrina hiring of a lawyer to process a succession an unaffordable luxury.

⁸³ By contrast, only 193 miles separated the average white Chalmette resident from St. Bernard Parish. Quigley, “Thirteen Ways,” 959-60.

⁸⁴ On kinship networks in New Orleans before 2005, see D’Ann Penner, ““Overcoming: The Hidden Fury of Hurricane Katrina’s Aftermath and Implications for the Future of New Orleans,” (“Hidden Fury”) *The Hooks Institute Working Paper Series* (University of Memphis, 2010).

⁸⁵ Keith Ferdinand, “Community Consequences of Displacement and Recovery,” Critical Incidents Analysis: Displacement as an Obstacle to Recovery Conference, New Orleans, Louisiana, June, 2010.

⁸⁶ *Overcoming*, 10-14, 16-18, 80-1, 84, 96, 102, and 122.

⁸⁷ The quotes are from Senta Eastern, a psychologist and social worker; *Overcoming*, 173.

encounters with the military or the police not only carry with them a haunting reminder of their vulnerability as blacks, but also suffer widely from post-traumatic stress syndrome (PTSD).⁸⁸ For myself, I cannot rid my soul of the depression, trauma, and overwhelming loss I have inhaled during conversations with narrators who were hours or days travel away from New Orleans, their family members, and their community. Dr. Ferdinand freely described the intense depression under which he was still laboring when his first interview was conducted in his makeshift Atlanta office in January, 2006.⁸⁹ Three years later, this no-nonsense son of a military sergeant and a third-grade teacher he described as a female Joe Pesci still teared up when he alluded to his Ninth Ward community being taken from him in less than 24 hours. To this day he has no way of knowing whether many of his former patients are still living.⁹⁰ In New Orleans, it is palpable in the intensity of the hugs and the unbidden tears when someone loved by an entire congregation makes it home for a rare visit.⁹¹ Collectively, they are enduring what Mindy Thompson Fullilove, Professor of Psychiatry at Columbia University, calls “root shock,” or “the traumatic stress reaction to the destruction of all or part of one’s emotional ecosystem.”⁹²

The depression wrought by the dishonourable treatment of themselves and their elders, compounded by the deportation of African Americans at gunpoint to distant cities not of their own choosing, made it exceptionally difficult for ordinarily defiant and stubborn people to concentrate the necessary energy and focus to fight for what they were legally entitled to from their insurance companies, FEMA, and the Road Home. Narrator after narrator spoke of the need to submit the same required documents not once but multiple times, often without a final resolution and no independent review process.⁹³ Charles Duplessis, Senior Pastor of Mount Nebo Baptist Church formerly on Flood Street, explained his decision not to keep fighting with Road Home after the low

⁸⁸ Assault Rifles, 574-5, 599. Abe Louise Young, director of *Alive in Truth*, an oral history documentation project spearheaded from Austin, Texas, also has witnessed long-term PTSD among the narrators with whom she has stayed in touch; PFN, Young-Penner phone conversation, November 14, 2010.

⁸⁹ *Overcoming*, 99. Ferdinand’s colleague, Dr. Cecilia Mouton, and his aunt, Narvalee Copelin, confirmed the seriousness of his depression. Their interviews with Penner are also available at ARC.

⁹⁰ PFN, “Tom Dent Authors’ Showcase,” New Orleans Public Library, October, 2009.

⁹¹ D’Ann Penner at <http://dartsociety.com/2010/08/losses-that-cant-be-overcome/>

⁹² Mindy Thompson Fullilove, *Root Shock: How Tearing Up Our Neighbourhoods Hurts America, and What We Can Do About It* (NY: One World/Ballantine, 2005).

⁹³ *Overcoming*, 27, 56-7, 103, 105, 127-8, 138-40, 166, 172-3, and Doris Smith-Penner interview, St. Joseph, Louisiana, November, 2005.

valuation of their Lower Ninth Ward home thus: “You get to a point where you just want to move on with your life.”⁹⁴

Fourth, the militarized dispersal of African Americans hundreds of miles from home has necessitated that displaced homeowners work a fulltime job and raise a family in a distant city, while commuting back to New Orleans to wrangle with insurance adjusters, Road Home bureaucrats, and the contractors rebuilding one’s home. Cynthia Banks, the founder of Free to Be Kids, has been overcoming adversity since she was 5 years old and her family’s house burnt down because of faulty wiring. When her husband died during open heart surgery and left her with four children under the age of 14, she moved back to New Orleans, made a down payment on a house in the Lake Carmel subdivision, and kept the note paid by working two, fulltime, professional jobs. When her oldest son was shot in the neck, she orchestrated around-the-clock volunteer homecare for him. After Katrina, Banks fixed up a run-down house near Dallas, Texas, and began working and commuting 60 hours a week as an uninsured, home health nurse. On weekends, she returned to New Orleans to oversee the rebuilding of her house. Stress and chronic exhaustion led to a heart attack and strokes in the fall of 2008. This story illustrates the unique obstacles displaced people, even with decades of proven resilience, are facing.

The markedly disparate ways African Americans and their neighbourhoods were treated by state agents after Hurricane Katrina and by the use of federal resources for levee repairs, neighbourhood redevelopment, and grants to homeowners constitutes not only human rights violations according to the standards of international human rights treaties, but also constitutional violations of the 14th Amendment that guaranteed Equal Protection to emancipated slaves and their descendants. The combination of Phase I and Phase II racial discrimination has presented major disadvantages to African American homeowners, especially from the Lower Ninth Ward.

Lower Ninth Ward pioneers paid as they went. They were marked by frugality and a tireless will to work. This ethic is exemplified by Vallery Ferdinand, II, who worked by day as a technician at the VA Hospital, and by evening and weekend as a

⁹⁴*Overcoming*, 105.

mortician's assistant. In his free time, he led his three sons in heavy manual labor details: gardening, clearing neighbours' lots for construction, and keeping the St. Augustine grass neatly trimmed for the entire block. With such a familial work force combined with local black handymen, rebuilding his family home from scratch after Hurricane Betsy took less than one year.⁹⁵ Tracing the family tree of the original Lower Ninth Warders almost invariably ends at a veteran who saw active duty before he had full citizenship rights in the United States.⁹⁶ Vallery Ferdinand, II saw active duty in World War II and the Korean War. The desolation of the Lower Ninth Ward, a pre-storm haven of working class homeowners, has multiplied the post-1968 tendency to uproot and disperse entire black neighbourhoods, most recently housing developments, in the name of progress.⁹⁷

Accountability and Restitution

The State of Louisiana has appealed the district court's injunction ordering the creation and implementation of a non-discriminatory formula for dispersing Road Home money. The class representatives of 20,000 black homeowners are appealing the denial of an injunction for prospective relief, and are seeking to use the estimated \$150 million dollars that will remain from the federal earmarks to correct the shortfall in the initial grants to African Americans. In light of the long history of underpaid black labor and dispossession of black property without any political or legal redress,¹⁰¹ in the interests of justice, it is imperative that the D.C. Court of Appeals find that the remedial use of the remaining federal funds earmarked by Congress for the rebuilding of the most damaged

⁹⁵ On Vallery Ferdinand, II, see *Overcoming*, 81-84, 89-96, and 230; Kalamu ya Salaam, *What is Life? Reclaiming the Black Blues Self* (Chicago: Third World Press, 1994), 79-89; and Kalamu ya Salaam, "Pa Ferdinand," *Catalyst* (Fall 1989): 112. For other recollections of the work ethic of the World War II generation, who paid for and built the houses that are now being lost *en masse*, see *Overcoming*, 61, and 181-4.

⁹⁶ For family histories and military experience, see *Overcoming*, 23, 24, 29, 30, 34, 43, 81, 90, 101-2, 115, 117, 137, 142, 151, 153, 168, 190, 193, and 220-1.

⁹⁷ Jeff Crump, "Deconcentration by Demolition: Public Housing, Poverty, and Urban Policy," *Environment and Planning: Society and Space* 20, 5 (2002): 581-96. On the multiple damages such community uprooting does, see Fullilove.

¹⁰¹ For a summary of the literature on political and legal efforts, so far unsuccessful, to gain some purchase on redress for centuries of human rights violations against African Americans, see Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon, 1999), 101. On Louisiana, see also Rebecca J. Scott, *Degrees of Freedom: Louisiana and Cuba after Slavery* (Cambridge, Mass: Harvard University, 2005) and Kent Germany, *New Orleans after the Promises: Poverty, Citizenship, and the Search for the Great Society* (Athens, GA: University of Georgia, 2007). On the disparate ways that the Lockean labor theory of property was applied historically to whites and newly emancipated slaves, see Rachel A. van Cleave, "Property Lessons in August Wilson's *The Piano Lesson* and the Wake of Hurricane Katrina," *California Western Law Review* 43 (2006-2007): 97-129, here at 108.

areas of Louisiana be classified as “prospective” relief, thereby allowing it to overcome the sovereign immunity bar, as was allowed in *Quern v. Jordan*, *Milliken v. Bradley*, and *Edelman v. Jordan*.¹⁰² According to a leading constitutional scholar, “prospective relief, appears to be simply an order to comply with the law; the costs are incidental to the state’s obligation to act in accordance with federal law.”¹⁰³ There is no compelling reason to allow Louisiana’s defence of state sovereign immunity to defeat the property rights and equal protection interests of 20,000 African American homeowners. The injuries are personal and concrete: not only have homeowners lost their homes and communities, but also in many cases their professional employment and health.¹⁰⁴

The post-Rehnquist court’s trend in favor of expanding state’s sovereign immunity at the expense of individual rights is often justified by an appeal to “dignity.” In writing the majority’s opinion in *Alden v. Maine*, Justice Clarence Thomas made the argument that sovereign immunity against the states is needed to safeguard the “dignity” of state governments, which would be impermissibly affronted by being named as a defendant in a lawsuit.¹⁰⁵ Yet when a state has a record of discriminatory treatment against its African American population for well over three centuries,¹⁰⁶ it needs an order from an independent judiciary to help it act with more dignity in fact.¹⁰⁷ This would prevent the injured class of Lower Ninth Ward homeowners from the grievous injustice of being asked to bear the costs of the Army Corps of Engineer’s negligence twice in one lifetime. In Louisiana, the federal courts are the only hope of black homeowners, because political channels are blocked, due to the minority status of African Americans.¹⁰⁸ Such an outcome could also prevent similarly situated Southern state governments from trying to utilize disasters for gerrymandering purposes.

¹⁰² 440 U.S. 332 (1979); 433 U.S. 267 (1977); 415 U.S. 651 (1974).

¹⁰³ Erwin Chemerinsky, *Constitutional Law: Principles and Policies*, 3rd ed. (NY: Aspen, 2006), 207.

¹⁰⁴ On post-Katrina health consequences, see “Hidden Fury,” and D. Abramson, T. Stehling-Ariza, R. Garfield, & I. Redlener, “Prevalence and Predictors of Mental Health Distress Post-Katrina: Findings from the Gulf Coast Child and Family Health Study,” *Disaster Medicine and Public Health Preparedness*, 2, (2008): 77-86, and K. R. Klein, P. E. Pepe, F. M. Burkle, N.E. Nagel, & R. E. Swienton, “Evolving Need for Alternative Triage Management in Public Health Emergencies: A Hurricane Katrina Case Study,” *Disaster Medicine and Public Health Preparedness*: 2, Suppl. 1 (2008), S40-S44.

¹⁰⁵ 527 U.S. 706 (1999).

¹⁰⁶ See Scott; Jerrold Packard, *American Nightmare: The History of Jim Crow* (London: St. Martin’s Griffin, 2003); and Lance Hill, *The Deacons for Defense: Armed Resistance and the Civil Rights Movement* (Chapel Hill: University of North Carolina, 2006).

¹⁰⁷ On the 20th-century “ascendancy of human dignity,” see Judith Resnik and Julie Chi-hye Suk, “Adding Insult to Injury: Questioning the Role of Dignity in Conceptions of Sovereignty,” *Stanford Law Review* 55 (2003): 1921-55.

¹⁰⁸ On express racism among white New Orleanians, see Cecil.

In late August 2010, Mayor Mitch Landrieu signaled that expropriating “blighted” properties was one of his highest priorities.¹⁰⁹ From the vantage point of the Civil District Court, Parish of Orleans, I regularly see titles to properties that have been in African American families for generations transferred to strangers for as little as \$750 to quiet the tax lien, and funds to pay court filing costs and attorney’s fees. The original homeowner, if still living, may well be depressed and stranded in Houston or Birmingham with no awareness that his family plot is in danger of being taken in this manner. The meaning of actual notice in the post-Katrina context needs to be reconsidered. Knowledge of how to access private “gap” funding needs to be democratized. At the very least, an injunction should be issued to stay expropriations of the property of Lower Ninth Warders and others on any grounds before the pending appeals against the state of Louisiana in the dispersal of the Road Home recovery money and the Army Corps of Engineers is resolved.

One reason the discrimination against Lower Ninth Ward homeowners has been tolerated by society at large is because of the relentlessly negative treatment of the Lower Ninth Ward in the media pre-dating Katrina.¹¹⁰ Every murder was covered in agonizing detail,¹¹¹ while even stories of extraordinary heroism were omitted. Keith Ferdinand’s story is a case in point. In 1968, Ferdinand left the Lower Ninth Ward on a full scholarship to Cornell University. After graduating from Howard Medical School, he co-founded Heartbeats Life Center on Poland Avenue in the heart of the Ninth Ward. It became a community-based cardiology practice with cutting edge equipment worth over one million dollars and at least 7000 active patients, ranging from judges to homeless veterans. Dr. Ferdinand won over 30 local and national awards, published articles in peer-reviewed medical journals, cooperated in pharmaceutical trials, conducted independent research, and lectured around the world.¹¹² Neither Dr. Ferdinand nor Heartbeats was ever featured in the *Times Picayune*’s coverage of the Ninth Ward.

¹⁰⁹ Tilove.

¹¹⁰ All around the country I have encountered virtual travelers to the Lower Ninth Ward who believe that its citizens were universally poor and violent.

¹¹¹ John McCusker, a photojournalist for the *Times Picayune*, recalled how often he went into the Lower Ninth Ward to cover murders before the storm. PFN, McCusker-Penner conversation, July, 2010, Baton Rouge, Louisiana.

¹¹² A copy of Ferdinand’s 30-page *curriculum vita* is on file with the author.

Just as there is a cost nationally to a generation of young black men who are “marked” as criminals because of the high numbers of incarcerated young men and the lack of counterbalancing media coverage,¹¹³ so too does an unchallenged negative stigma attached to an entire territory make it easier for a state to dismantle and relocate whole communities.¹¹⁴ The post-Katrina dismantling of the Lower Ninth Ward has led to the dispossession and dishonouring of home-owning, tax-paying, church-going people—many of them military veterans—on a scale that begs the question of how far Louisiana has journeyed from the days when its slavery regime was renowned as the cruelest and most deadly in the nation.¹¹⁵

Defamation suits against news outlets should be brought on behalf of individual African Americans in order to give future journalists and their editors the incentive to ponder the consequences of racially biased misreporting. Unlike politicians and public figures, working-class veterans rarely have access to the media for a corrective to their stories. Currently, stereotyped portraits of black men benefit journalists’ careers, given the nation’s appetite for reality shows featuring black men as criminals. It is not enough to turn only to alternative media outlets with feature stories about the best that our endangered communities have to offer, because the alternative media does not influence most voters or politicians. We must press more creatively and aggressively to have corrective stories told more accurately in mainstream venues. These efforts should be complemented with a publicized, targeted economic boycott of the sponsors of biased media representations.

Plans to re-occupy New Orleans with those in the diaspora who are willing and able to rebuild the city should be drawn up immediately. The contributions of the still displaced are needed to complete the restoration of New Orleans. Rather than being violent, poor, and unskilled, many uprooted New Orleanians have urgently-needed

¹¹³ On an entire generation being branded and the link to unemployment, see Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (Chicago: University of Chicago, 2007). On the paucity of media coverage of working and middle class African Americans, see Mitchell Duneier, *Slim’s Table: Race, Respectability, and Masculinity* (Chicago: University of Chicago, 1992), 121-3, 128, 142, and 164, and Mary Pattillo-McCoy, *Black Picket Fences: Privilege and Peril among the Black Middle Class* (Chicago: University of Chicago, 1999), 1-2.

¹¹⁴ Loïc Wacquant, “Urban Desolation and Symbolic Denigration in the Hyperghetto,” *Social Psychology Quarterly*, 73/3 (Sept. 2010): 1-5.

¹¹⁵ Scott, 12, 24-25 and Jordan Flaherty, *Floodlines: Community and Resistance from Katrina to the Jena Six* (Chicago: Haymarket Books, 2010).

abilities. Especially across the former black neighbourhoods of the city, rebuilding is at a standstill, both because of a lack of funds and an absence of trustworthy, qualified builders, to take just one example. Kevin Owens, the B.W. Cooper maintenance man who before the storm took pride in ability to fix any broken thing, would have enjoyed nothing more than to help with the clean-up and rebuilding of New Orleans. A Works Progress Administration-style public works program aimed at an equitable restoration of the 51,000 vacant or “blighted” properties that either returns displaced homeowners to New Orleans or allows them to donate their property to the church or school of their choosing would help rebuild collapsed infrastructure, improve housing conditions, and offer meaningful employment to a generation of young African American men.¹¹⁶ Without felony records, they are still less likely to be hired by employers than whites, and only equally with whites who have felony records.¹¹⁷

Finally, we must continue to give an independent accounting, unfinanced by political and government interests, of the ongoing consequences of the unique human rights violations and “invisible genocides” that targeted African Americans in Katrina’s immediate and long-term aftermath.¹¹⁸ This begins with a re-contextualization of the history leading up to confrontations and decisions. The public needs to be reminded that the elderly homeowners who were strong-armed into giving up their land were educated in segregated schools in an era of categorically lowered wages for blacks. Although governments and private foundations may never sponsor research tracking second-wave deaths from Katrina nor the fates of the men and women who lost family homes in the Lower Ninth Ward, the documents are readily accessible in the public records of the courthouse and the deceased’s surviving relatives have a wealth of information surrounding the stresses and strains of their ascendants’ last days. Should legal accountability be impossible to achieve, then at the very least, the perpetrators will be tried in the courtroom of history, unfettered by statutes of limitations and a Supreme Court’s privileging of a state’s “dignity,” no matter how racist, at the expense of

¹¹⁶ Greater New Orleans Community Data Center, “Benchmarks for Blight” (May 7, 2010).

¹¹⁷ Mary Pattillo, “Investing in Poor Black Neighborhoods ‘As Is,’” in *Legacy of Racial Discrimination and Segregation in Public Housing*, ed. Margery Turner, Susan Popkin, and Lynette Rawlings (Washington, D.C.: Urban Institute, 2008), 31-46.

¹¹⁸ Nancy Scheper-Hughes, “Specificities: Peace-Time Crimes,” *Social Identities*, 3:3 (1997): 471-498, here at 472.

constitutionally protected individual rights to liberty, property, and the pursuit of happiness.

D'Ann R. Penner, Ph.D.

Scholar in Residence

Southern Institute for Education and Research

Tulane University

dpenner1@tulane.edu