Race, Poverty, Justice, and Katrina:
Reflections on Public Interest Law and Litigation in the United States

Remarks at the Conference on Public Interest Law in Ireland –
The Reality and the Potential
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I. Summary

In the wake of the Katrina catastrophe, New Orleans and other parts of the Gulf Coast region in the United States must be rebuilt in a sustainable and socially just way. It will cost well over $200 billion to rebuild the region. Low-income people of color disproportionately bear the burdens of the Katrina disaster, and disproportionately stand to lose out on the benefits of recovery and relief.

The people who lived in the areas of New Orleans that were still flooded days after Hurricane Katrina struck were more likely to be black, have more children, earn less money, and be less educated than those in the rest of the city.

Normal federal contracting rules are largely suspended in the rush to help people displaced by the storm and reopen New Orleans and the Gulf Coast. Hundreds of millions of dollars in no-bid contracts have already been let and billions more are to flow to the private sector in the weeks and months to come. The administration of President George W. Bush has waived the federal law requiring that prevailing wages be paid on construction projects underwritten by federal dollars. The administration has suspended the requirement that new federal contractors have an affirmative action plan to hire people of color, women, veterans, and disabled people on Katrina-related projects to ensure that they receive their fair share of the billions of dollars for reconstruction.

Katrina and the demographics of destruction and reconstruction illustrate that race, poverty, and inequality are the most intractable problems in the history of the United States. "I hope we realize that the people of New Orleans weren't just abandoned during the hurricane," Senator Barack Obama, the only Black person in the United States Senate, said in the days after the Katrina catastrophe. "They were abandoned long ago--to murder and mayhem in the streets, to substandard schools, to dilapidated housing, to inadequate health care, to a pervasive sense of hopelessness."[2]

The purpose of the Dublin conference is to examine the role that public interest law and litigation might have in advancing the position of disadvantaged and vulnerable groups in Irish society; to identify barriers to this role; and to explore options for a development strategy. The systemically vulnerable groups in Ireland's booming economy include children, the disabled, the homeless, single parents, migrants, seniors, ex-offenders, refugees and those seeking asylum, Travellers and Romas, and the unemployed.[3]

The most systemically disadvantaged and vulnerable people in the United States are low income people of color. What role does public interest law and litigation have in advancing their position in the United States? What are the implications for public interest law and litigation in Ireland?

This paper will consider *Brown v. Board of Education* as the paradigm example of public interest litigation in the United States in the 20th Century. The United States Supreme Court in *Brown* in 1954 took a giant step to abolish legal apartheid across the country by striking down the doctrine of "separate but equal" in public elementary schools that segregated school children on the basis of race. The *Brown* Court held that separate is inherently unequal and violates equal protection under the Constitution of the United States. Today, however, many public schools across the country are more segregated than before *Brown* was decided. The litigation model with a primary emphasis on establishing a binding precedent in court to accomplish social change through law is no longer the paradigm for public interest law in the United States in the 21st Century. It is increasingly challenging to win public interest cases in federal courts, and to win fee awards even in successful cases. Efforts for reform increasingly focus on diverse state, regional, and local as well as federal strategies as a result of "devolution."

This paper will then consider efforts to evolve public interest law and litigation in the face of an increasingly conservative country, Congress, and court system. This paper will reflect on efforts in Southern California to achieve equal access to public resources while promoting democratic values of full information and full and fair public participation in the decision making process. Specifically, the focus will be on the struggles for equal access to schools, parks, health, and transportation. These are examples of using public interest law with and without litigation to make concrete improvements in people's lives, give people a real sense of their own power, and alter the relations of power. The key strategies include developing a collective vision to bring people together, coalition building and community organizing, multidisciplinary research and analyses, policy and legal advocacy outside the courts, strategic media campaigns, creative engagement of opponents to find common ground, and impact litigation when necessary within the context of a broader campaign.

This paper will then return to Katrina, destruction, and reconstruction, before reaching the conclusion.

II. *Brown v. Board of Education* and Public Interest Litigation in the 20th Century

Brown v. Board of Education can be viewed as the paradigm example of public interest litigation in the United States in the 20th Century. The United States Supreme Court in 1954 struck down the doctrine of "separate but equal" in public elementary schools that, by law, segregated school children on the basis of race. The *Brown* Court held that separate is inherently unequal and violates equal protection. The NAACP Legal Defense & Education Fund, Inc., litigated that case and established the paradigm for public interest litigation in the 20th century.[4] In the litigation paradigm, attorneys strategically found sympathetic plaintiffs, developed the facts and evidence, filed a lawsuit and took it all the way up to the United States Supreme Court in an effort to establish the law of the land that would impact every state and city in the nation. Decades of enforcement actions in court followed to ensure that the law was applied.

Without a doubt, *Brown* was a victory that needed to be won. The symbolism of abolishing legal apartheid in education and throughout society remains an overwhelmingly important accomplishment.[5] The decision in *Brown* was a key victory in the modern civil rights movement and paved the way to equal access to schools, jobs, housing, public accommodations, and to the Civil Rights Act of 1964. It is also important to keep in mind that the *Brown* litigation was in fact only part of a long-term strategic campaign to abolish legally sanctioned segregation.[6]

Other public interest law groups applied the litigation model in other contexts, and even lifted the name of the Legal Defense Fund for their own work -- for example, the Mexican American Legal Defense & Education Fund, the Sierra Club Legal Defense Fund, and the NOW (National Organization for Women) Legal Defense Fund.

Today, however, many public schools across the country are more segregated than before *Brown*.[7] African American and Latino children suffer in segregated inner-city schools, shortchanged by "white flight" to suburbs and private schools, restrictive legal rulings, inequities in school funding, low academic expectations, and pervasive neglect. Non-Hispanic White children in suburban or private schools are being prepared to think creatively, to reason, to lead; children of color to provide a compliant workforce capable of following orders. This dilemma exists in much of urban America, where schools are segregated not by law but because neighborhoods are segregated.

What are the lessons of *Brown* and segregation in education today for public interest law and litigation in Ireland? Civil rights advocates in the United States are re-assessing the litigation paradigm and developing more robust strategies in their practices, in conferences, and in works like *Awakening from the Dream: Pursuing Civil Rights in a Conservative Era*, edited by Denise C. Morgan and others (2005).[8] One lesson is already clear. The litigation model with a primary emphasis on establishing a binding precedent in court to accomplish social change through law across the country is not the paradigm for public interest law in the United States for the 21st Century. It is increasingly challenging to win public interest cases in federal courts, and to win fee awards even in successful cases.[9] Efforts for reform increasingly focus on diverse state, regional, and local as well as federal strategies as a result of the "devolution" of power from the federal government.

III. Reflections from Los Angeles

This section will consider efforts to evolve public interest law and litigation in the United States in the face of an increasingly conservative country, Congress, and courts. Specifically, this section will consider the struggles for equal access to schools, parks, health, and transportation in Los Angeles. Urban issues like schools, parks, health, and transportation are genuine civil rights issues of race, poverty, and democracy that are interrelated in the United States economy. We are implementing a collective vision for Los Angeles with lessons for other regions: a comprehensive and coherent web of parks, schools, and transportation that promotes human health and economic vitality, and reflects the diverse cultural urban landscape. This is part of a broader vision for distributing the benefits and burdens of public resources in ways that are equitable, protect human health and the environment, promote economic vitality, and engage informed public participation in the decision making process. Key strategies include developing

a collective vision to bring people together, coalition building and community organizing, multidisciplinary research and analyses, policy and legal advocacy outside the courts, strategic media campaigns, creative engagement of opponents to find common ground, and impact litigation when necessary within the context of a broader campaign.

We are building a different model of urban development that focuses on children, families, health, parks, schools, and transportation. Nowhere else in the United States is there such a convergence of institutions, grassroots activists, business interests, and people of color in positions of power. There is no better place in the United States to do this than Los Angeles. Los Angeles is a laboratory for progressive change that reverberates throughout the country.

A. Schools, Jobs, and Contracts in Los Angeles

The Los Angeles Unified School District is investing $14.4 billion to build new schools and modernize existing schools. This might be the largest investment in schools in one place and time ever. New schools are being built, older schools are becoming less crowded, and hundreds of acres of land are being environmentally restored. More than $9.2 billion will be invested on 184 new schools and additions, which will add over 6,500 classrooms, over 171,000 seats, and over 450 acres of playing fields and play areas. School yards will provide places to play after school and on weekends. More importantly, the future has become brighter for hundreds of thousands of children. And it is being done in a manner that respects the public's demand for accountability, transparency, and social justice. This massive public works project involves issues that lie at the intersection of education, racial justice, jobs and economic vitality, and sustainable regional planning.

Aside from the educational benefits, new construction and modernization will create local jobs for local workers and stimulate the Los Angeles economy. The school construction program will create 174,000 jobs, $9 billion in wages, and $900 million in local and state taxes. The School District has targeted small businesses and local workers to ensure they receive a fair share of these benefits. The School District adopted a 25% Small Business Enterprise goal in 2003. For the 2004 fiscal year, 39% of all contract awards -- $337 million -- went to Small Business Enterprises, with the percentages increasing each quarter to 62% in April-June. Small Business Enterprise participation in Construction Management and similar contracts exceeded 40% in Fiscal Year 2004. The School District has set the goal of 50% local worker participation for school construction. To achieve this goal, the School District provides ten-week pre-apprenticeship training, and facilitates placement in union apprenticeship training programs. Local workers are disproportionately people of color and low income people. Small businesses are disproportionately owned or managed by people of color, women, and veterans.

In the Los Angeles Unified School District, 91% of the students are children of color. Half the system's 700 schools have few or no White students. Nearly 1 million black and Latino students attend California schools with few if any Whites.

The school construction and modernization program in Los Angeles is an example of public interest lawyers seeking improvements in public education through legal and policy advocacy outside the courts, rather than litigation. I served as the Chair of the School District's

Independent School Bond Oversight Committee for five years from 2000 to 2005 to oversee school construction and modernization. I signed the official ballot arguments for two successful local bond measures which provided over $7 billion for school construction and modernization, with billions more in matching state and federal funds. The School District implemented the programs for local jobs and small businesses in response to the recommendations of the Oversight Committee. Another civil rights attorney and I both decided to devote substantial time and resources to service on the Committee as the result of a strategic decision to improve public education without litigation.

Challenges remain for public schools in Los Angeles. Drop out rates of over 50% are unacceptably high. Performance on standardized academic tests is improving but remains far behind where it should be. Fully 87% of students in the School District are not physically fit because of obesity, inactivity, and the lack of places to play in school yards and parks.[10]

B. The Urban Park Movement

The urban park movement is relying on diverse strategies that have implications for public interest law and litigation to serve disadvantaged and vulnerable groups.[11] One of the broadest and most diverse alliances ever behind any issue in Los Angeles has joined together to create parks in underserved communities of color. Many parts of Los Angeles are park poor, and there are unfair disparities in access to parks and recreation based on race, ethnicity, income, and access to transportation. Children of color living in poverty with no access to cars have the worst access to parks and recreation. In a cruel irony, disproportionately white and wealthy people with fewer children than the county average enjoy the most access to parks and recreation. The people who need parks the most have the least, while those who need less have the most. The parks and recreation system in Los Angeles is separate and unequal.

The urban park alliance created a state park in the 32-acre Chinatown Cornfield in the last vast open space in downtown Los Angeles. The alliance stopped a proposal for a massive warehouse project there without an environmental impact report by the city and a wealthy developer seeking federal urban renewal subsidies to make the deal profitable. The alliance challenged the proposed warehouses as one more product of discriminatory land use policies that long deprived communities of color of parks and recreation. The alliance through an administrative complaint persuaded the United States Secretary of Housing and Uban Development to withold any subsidies for the warehouses unless there was full environmnetal review that considered the park alternative and the impacts on people of color. The alliance then persuaded the state to buy the site for the new Los Angeles State Historic Park. The Cornfield is “a heroic monument” and “a symbol of hope,” according to the Los Angeles Times.

The alliance separately persuaded the state to buy a former railyard at Taylor Yards to create a 40-acre park on the banks of the Los Angeles River as as part of the greening of the 51-mile River, the most environmentally degraded river in the world. The urban park alliance won an environmental law suit against the city and another developer to stop a commercial project there. The alliance organized the community to stop a power plant and a garbage dump in favor of a two square mile park in the Baldwin Hills, the historic heart of African-American Los Angeles, that will be the largest urban park in the United States in over a century -- bigger than Central

Park in New York City or Golden Gate Park in San Francisco. The alliance persuaded the state and the city of Los Angeles to form a partnership to create the next great urban park on a 100 acre site in Ascot Hills in Latino East Los Angeles. Until now the largest open space in East Los Angeles has been Evergreen Cemetery, which sends a message to children that if they want open space, they have to die first.

Parks are important in themselves. Parks are also an important organizing tool to bring people together to create the kind of community where they want to live and raise children. Emphasizing the diverse values at stake is a core strategy of the urban park movement to build support for parks and recreation. The values at stake include providing children the simple joys of playing in the park; improving human health and recreation; ensuring equal access to public resources; and providing the clean air, water, and ground benefits of safe and healthy urban parks and green schools.

The Center for Law in the Public Interest recently received the Los Angeles River Award from the City of Los Angeles "for extensively publishing research and findings on urban parks and their benefits for the River, for receiving national recognition in your efforts to revitalize the River, and for your contribution to the greening of the River through your work on the Cornfields and Taylor Yard state parks."

C. Transportation Justice: *MTA* and its Aftermath

Civil rights attorneys working with grass roots activists won the landmark environmental justice class action *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority (MTA)*. The plaintiff class alleged that MTA operated separate and unequal bus and rail systems that discriminated against bus riders who were disproportionately low income people of color. The parties settled the case after two years of litigation and mediation through a court-ordered Consent Decree in which MTA agreed to invest over $2 billion in the bus system, making it the largest civil rights settlement ever. MTA agreed to improve transportation for all the people of Los Angeles by reducing overcrowding on buses, lowering transit fares, and enhancing county-wide mobility. The plight of the working poor with limited or no access to cars illustrates the need to implement a transportation policy agenda to provide choices to people who currently lack them.

The MTA case is a prime example of how a highly organized grassroots campaign can team up with creative civil rights lawyers, academics, and other experts to achieve social change. Together, the participants collected and analyzed the data, organized the community, made political connections, presented the case to the media, and won the groundbreaking lawsuit that is helping to bring transportation equity to Los Angeles. The case has received national and international attention, and has led to similar efforts in other cities.[12]

The MTA case enabled the plaintiff class to present a well-documented story about MTA's pattern and history of unfair, inefficient, and environmentally destructive allocation of resources. The legal team documented the unfair disparities in a massive 226 page brief filed in court in support of the settlement. The evidence was largely undisputed and is summarized below.

1. Racial disparities. While over 80% of the people riding MTA's bus and rail lines were people of color, most people of color rode only buses. On the other hand, only 28% of riders on Metrolink were people of color. Metrolink is the six-county Southern California commuter rail line, which MTA has provided with over 60% of the local subsidy funding. The percentage of people of color riding Metrolink varied by 173 standard deviations from the expected 80%. The likelihood that such a substantial departure from the expected value would occur by chance is infinitesimal, according to expert testimony for the plaintiff class.[13]

2. Subsidy disparities. While 94% of MTA's riders rode buses, MTA customarily spent 60-70% of its budget on rail. Data in 1992 revealed a $1.17 subsidy per boarding for an MTA bus rider. The subsidy for a Metrolink commuter rail rider was 18 times higher, however, or $21.02. For a suburban light-rail streetcar passenger, the subsidy was more than nine times higher, or $11.34; and for a subway passenger, it was projected to be two-and-a-half times higher, or $2.92. For three years during the mid-1980s, MTA reduced the bus fare from $0.85 to $0.50. Ridership increased 40% during the period, making this the most successful mass transit experiment in the post-war era. Despite this increase in demand, MTA subsequently raised bus fares and reduced its peak-hour bus fleet from 2,200 to 1,750 buses.

3. Security disparities. While MTA spent only $0.03 for the security of each bus passenger in fiscal year 1993, it spent 43 times as much, or $1.29, for the security of each passenger on the Metrolink commuter rail and the light rail, and 19 times as much, or $0.57, for each passenger on the Red Line subway.

4. Crowding disparities. MTA customarily ran overcrowded buses with 145% of seated capacity during peak periods. In contrast, there was no overcrowding for riders on Metrolink and MTA-operated rail lines. Metrolink was operated to have three passengers for every four seats so that passengers could ride comfortably and use the empty seat for their briefcases or laptop computers.

5. The history and pattern of discrimination. Such disparate treatment has devastating social consequences. The Governor's Commission on the 1964 Los Angeles riots and rebellion found that transportation agencies "handicapped minority residents in seeking and holding jobs, attending schools, shopping, and fulfilling other needs," and that the inadequate and prohibitively expensive bus service contributed to the isolation that led to the civil unrest in Watts.[14] Thirty years later, following the riots and rebellion in the wake of the acquittals of the police officers in the Rodney King beating, MTA commissioned a new study on inner city transit needs that echoed the recommendations of the Governor's Commission. MTA, however, did not comply with the recommendations of either report.

6. Efficiency and Equity Prevail. Buying more buses under the Consent Decree reflects sound transportation policy to offset decades of overspending by MTA on rail and unproductive road projects. MTA's policies have focused on attracting automobile users onto buses and trains, to the detriment of the transit dependent who are MTA's steadiest customers. The dissonance between the quality of service provided to those who depend on buses and the level of public resources being spent to attract new transit riders is both economically inefficient and socially inequitable. Policies to attract affluent new riders decrease both

> equity and efficiency because low-income riders are, on average, less costly to serve. The poor require lower subsidies per rider than wealthier patrons. Moreover, the loss of existing ridership brought about by increased fares and the reduced quality of bus service, as in Los Angeles, far exceeds the small number of new riders brought onto the system.

The plaintiff class maintained that this evidence established both (1) intentional discrimination, and (2) unjustified discriminatory impacts for which there were less discriminatory alternatives.

It is important to discuss the legal basis for the *MTA* case and subsequent developments below. A federal statute known as Title VI of the Civil Rights Act of 1964 prohibits intentional discrimination based on race and ethnicity by recipients of federal funds such as MTA. The regulations passed by federal agencies to implement the Title VI statute also prohibit unjustified discriminatory impacts against people of color. The discriminatory impact regulations do not require proof of the intent to discriminate. The plaintiff class relied on both standards to prevail in the *MTA* case.

After the parties settled the case in 1996, the United States Supreme Court held in an unrelated case in *Alexander v. Sandoval* that individuals and groups do not have standing to enforce the regulations that prohibit discriminatory impact without proof of intent. The MTA case as filed and won could not be filed today as a result of that Supreme Court ruling. This in itself has significant implications for public interest law and litigation to serve disadvantaged and vulnerable groups, as discussed below.

D. Equal Justice after *Sandoval*

A conservative 5-4 majority of the United States Supreme Court in *Alexander v. Sandoval*[15] took a step to close the courthouse door to individuals and community organizations challenging practices that adversely and unjustifiably impact people of color, such as unequal access to schools, parks, and transportation. The majority held there is no standing for private individuals like José Citizen or groups like the Labor Community Strategy Center (in the *MTA* case) to file suit to enforce the discriminatory *impact* regulations issued by federal agencies under Title VI of the Civil Rights Act of 1964. Those are the regulations that the plaintiff class successfully relied on in part to win the *MTA* case. This is one of the ways that the United States Supreme Court is rolling back civil rights protections, by manipulating legal doctrines like standing to sue.

Although the *Sandoval* holding is a serious blow to civil rights enforcement, it is more important to keep in mind that intentional discrimination and unjustified discriminatory impacts are just as unlawful after *Sandoval* as before, and that recipients of federal funds like MTA remain obligated to prohibit both. Even now, after *Sandoval*, individuals still can sue a recipient of federal funds to challenge intentionally discriminatory practices. Known discriminatory impact continues to be among the most important evidence leading to a finding of discriminatory intent.

Aside from private lawsuits in federal court, there remain other ways to enforce discriminatory impact regulations. Recipients of federal funds are still bound by the regulations under Title VI, and every recipient signs a contract to enforce Title VI and its regulations as a condition of receiving federal funds. This provides an important opportunity to use the planning and administrative processes to resolve discriminatory impact issues. Similar kinds of evidence are

relevant to prove both discriminatory intent and discriminatory impact. The same kinds of evidence can also be as persuasive in the planning process, administrative arena, and court of public opinion, as in a court of law. The urban park alliance did just that, using evidence of both intentional and disparate impact discrimination administratively to persuade the Secretary of the United States Department of Housing and Urban Development to cut off federal subsidies for warehouses in the Cornfield.

There are important strategic considerations in the quest for equal justice after *Sandoval*. Elected officials should be increasingly sensitive to and held accountable for the impact of their actions on communities of color, especially now that people of color are in the majority in 48 out of the 100 largest cities in the United States. People of color are increasingly being elected to positions of power or otherwise holding decision-making authority at the local and state levels, as well as at the federal level. Los Angeles, for example, recently elected its first Latino mayor in 130 years. Ballot measures like the billions of dollars in school bond measures in Los Angeles can be crafted and invested to provide resources for underserved communities. State civil rights protections can be enforced and strengthened. California, for example, now has a state statute that prohibits both intentional discrimination and unjustified discriminatory impacts based on race and ethnicity by recipients of state funds. The United States Congress can and should pass legislation to reinstate the private cause of action to enforce the discriminatory impact standard. Civil rights claims can be creatively combined with other laws in future cases in the wake of *Sandoval* to use the strengths of one body of law to shore up weaknesses in another. The urban park movement has combined claims under civil rights and environmental laws, for example, to argue that environmental impact reports must analyze and disclose the impacts on communities of color.

The complexities of equal justice after *Sandoval* require far-reaching strategies that include building multicultural alliances, legislative and political advocacy, strategic media campaigns, research and analyses of financial, demographic, and historical data, and strengthening democratic involvement in the public decision-making process in addition to litigation. Societal structures and patterns and practices of discrimination are significant causes of racial injustice and should be principal targets of reform.

IV. Katrina, Destruction, and Reconstruction[16]

A. The Challenge

In the wake of Hurricane Katrina, New Orleans and other parts of the Gulf Coast region need to be rebuilt in a sustainable and socially just way. It will cost well over $200 billion in federal funds to rebuild the region. People of color and low income communities disproportionately bear the burdens of the Katrina disaster, and disproportionately stand to lose out on the benefits of recovery and relief. The people who lived in the areas of New Orleans that were still flooded days after Hurricane Katrina struck were more likely to be black, have more children, earn less money, and be less educated than those in the rest of the city (see demographic analyses and map in the appendix).

Normal federal contracting rules are largely suspended in the rush to help people displaced by the storm and reopen New Orleans and the Gulf Coast. The administration has suspended the

requirement that new federal contractors have an affirmative action plan to hire people of color, women, veterans, and disabled people on Katrina-related projects to ensure that they receive their fair share of the billions of dollars for reconstruction. The waiver of the affirmative action rule has been extraordinarily rare: there have been only four in the forty years that the law has been on the books, and each was for a single, highly-specialized short-term contract, including two in the 1980's for federally financed work on commemorative coins.[17]

The private sector is poised to reap a windfall of business in the largest domestic rebuilding effort ever undertaken. Hundreds of millions of dollars in no-bid contracts have already been let and billions more are to flow to the private sector in the weeks and months to come.[18] The administration has waived the federal law requiring that prevailing wages be paid on construction projects underwritten by federal dollars.[19] Some experts warn that the crisis atmosphere and the open federal purse are a bonanza for lobbyists and private companies and are likely to lead to the contract abuses, cronyism and waste that numerous investigations have uncovered in post-war Iraq.[20]

Lawmakers and industry groups are lining up to bring home their share of the cascade of money for rebuilding and relief. Louisiana lawmakers plan to push for billions of dollars to upgrade the levees around New Orleans, rebuild highways, lure back business, and shore up the city's sinking foundation. The devastated areas of Mississippi and Alabama will need similar infusions of cash. Communities will want compensation for taking in evacuees. Future costs of health care, debris removal, temporary housing, clothing, and vehicle replacement will add up.[21]

Other ideas circulating through Congress that could entail significant costs include turning New Orleans and other cities affected by the storm into big new tax-free zones; providing reconstruction money for tens of thousands of homeowners and small businesses that did not have federal flood insurance on their houses or buildings; and making most hurricane victims eligible for health care under Medicaid and having the federal government pay the full cost rather than the current practice of splitting costs with states.[22]

The relief money is not expected to cover any of the real reconstruction costs that lie ahead: repair of highways, bridges and other infrastructure and new projects that seek to prevent a repeat of the New Orleans disaster. Nor will it help pay for expanded availability of food stamps and poverty programs to cover hurricane victims. Farmers from the Midwest, meanwhile, are beginning to press for emergency relief as a result of their difficulties in shipping grain through the Port of New Orleans.[23]

One of the most immediate tasks after Hurricane Katrina hit was repair of the breaches in the New Orleans levees. Three companies have been awarded no-bid contracts by the Army Corps of Engineers to perform the restoration. To provide immediate housing in the region, FEMA says it suspended normal bidding rules in awarding contracts.[24]

B. Building a Better Future

Drawing on the lessons of public interest law and litigation discussed above, the following steps can and should be taken to restore New Orleans and the Gulf Coast region in a socially just way.

1. Jobs and Contracts

People of color on the Gulf Coast devastated by the Katrina disaster should receive their fair share of the economic benefits of recovery through local jobs for local workers, and an even playing field for small business enterprises that include people of color and women in positions of ownership and management. The jobs and small business programs of the Los Angeles Unified School District are a best practice example for the Gulf Coast and other public works projects.

2. Sustainable Flood Control, Levees, and Wetlands

The natural ecosystem along the Gulf has been stripped of natural buffers like coastal reefs, tropical forests, and swampland that can absorb rising water and resist tidal surges. The levees in New Orleans need to be restored and strengthened for flood control purposes, but flood control cannot be the only purpose dictating the design of the levees and surrounding wetlands. Levees and wetlands should be restored in a sustainable, environmentally sound manner that serve people's needs for safe and healthy open space for parks, recreation and habitat restoration, clean air, and clean water. Every few square miles of marshes lower the flood level significantly.

In the 1930s the Army Corps of Engineers drowned the 51 mile Los Angeles River in concrete for flood control purposes. The problem was defined as flood control, and the solution addressed only the problem as defined. As a result, the Los Angeles River is the most environmentally degraded river in the world. Today Los Angeles is beginning to green the river with parks, habitat restoration, housing, schools, and economic development recognized as central components of any river restoration and flood control effort. The greening of the Los Angeles River provides valuable lessons for restoring the levees in a sustainable way that takes into account the diverse values at stake, not just the need for flood control.

The Environmental Law Institute cited the green school construction and modernization program in Los Angeles as a national "best practice" example for sustainable construction with natural lighting, trees and grass, and renewable energy meeting CHPS (Collaborative for High Performance School) and LEEDS (leadership in energy and environmental design) standards. Sustainable construction standards should be set and followed for new and restored buildings in the Gulf Coast.

3. Transportation Justice

Fully one-quarter of the people in New Orleans did not own cars or have ready transportation out of town in the event of evacuation orders. Civic leaders knew that many of the city's poor, including 134,000 without cars, could be left behind in a killer storm.[25] Many who had cars before will not be able to repair or replace cars damaged or destroyed by the flood. The plight of the working poor with limited or no access to cars illustrates the need to implement a transportation policy agenda to provide choices to people who currently lack them.

An evacuation plan for low income people must be developed and implemented with local people on the planning team to ensure full and fair public participation. Effective communication with local people is essential. The very low car ownership rates of African-Americans in New Orleans and other Gulf Coast areas need to be addressed. More public transportation alone will not be enough in an evacuation. Public transit is one of the first parts of infrastructure to cease operation or fail in an emergency. Car ownership, maintenance, and insurance should be funded through micro-loans. Neighborhood car repair businesses can be funded through disadvantaged business enterprise programs. The monopoly on taxi cab ownership and operation should be ended. Jitneys (multi-unassociated riders) should be permitted. Increased car ownership is one answer, but traditional environmentalists are often not comfortable with this.

4. Oversight, Information, and Public Participation

An independent citizens' oversight body of progressive individuals should be created and funded to find out what went wrong and why in New Orleans and the Gulf Coast region, and how to create a better future, to serve as a check and balance for any official commissions and studies. It is necessary to offer a counter-narrative because the government cannot be trusted to do it alone. Democratic values of full disclosure of information and public participation need to be implemented.

The oversight body can gather, analyze, and publish the information necessary to understand the impact of Katrina and the rebuilding efforts on all communities, including communities of color and low income communities.

It is necessary to conduct multidisciplinary research and analysis to find out what went wrong and why, and how the future could be better. (1) Follow the money. Who benefits from reconstruction, and who gets left behind? (2) Demographic analysis. The people who lived in the areas of New Orleans that were still flooded days after Hurricane Katrina struck were more likely to be black, have more children, earn less money, and be less educated than those in the rest of the city.[26] Additional demographic analyses using census data and GIS (geographic information systems) need to be conducted along the Gulf Coast to understand the impacts of destruction and reconstruction based on race, ethnicity, income, poverty, education, gender, access to cars, and other salient factors. (3) Historical research to understand how the region came to be the way it is, and how it could be better. Secretary of State Condoleeza Rice has recognized that the Katrina disaster "gives us an opportunity" to rectify historic injustices in the South. "When it's rebuilt, it should be rebuilt in a different way than it was at the time this happened," she said, adding that "maybe now on the heels of New Orleans" there could be an effort to "deal with the problem of persistent poverty."[27] (4) Creative legal research and analysis needs to combine civil rights, environmental, housing, employment, and other areas to bolster the weaknesses of one body of law with the strengths of another.

5. Congressional Caucuses Working Together

The Black, Hispanic, and Asian Pacific American Congressional Caucuses should begin to work together immediately to address sustainable and socially just rebuilding and relief efforts. Black

people in New Orleans disproportionately suffered from the Katrina destruction. 145,000 Latinos have been left without jobs in the Gulf Coast. Many Latinos in rural areas did not have adequate access to information, do not speak English, are undocumented, and are quite alone in the recovery. The needs of Asian-American small entrepreneurs in the fishing industry on the Gulf Coast need to be addressed.

6. The Unique Culture and Heritage of New Orleans

New Orleans celebrates even in death through jazz music in funeral processions. This joyous spirit should guide the reconstruction of New Orleans and the Gulf Coast. One of the reasons New Orleans is dear to the hearts of people everywhere is the rich artistic and cultural heritage of the area, as expressed in art, music, food, and cultural celebrations. Mardi Gras in February 2006, and the New Orleans Jazz and Heritage Festival in the spring of 2006, will provide opportunities to mourn destruction and celebrate reconstruction together, with tourism helping to bring economic recovery for all. Reconstruction should preserve the rich cultural heritage of New Orleans through preservation and adaptive reuse of historic buildings and neighborhoods. Reconstruction must respect the diversity of the Native American, Spanish, French, African-American, Creole, Cajun, and other people who have given New Orleans its unique power of place. Reconstruction must preserve and build on the strengths of New Orleans and its character as a compact, walkable, historic community. Reconstruction should also avoid the mistakes of the past and prevent concentrated poverty in some areas.

7. Never Again

In a video guide to hurricane evacuations that had been prepared for but not yet distributed in New Orleans before Katrina struck, the Rev. Marshall Truehill warned "Don't wait for the city, don't wait for the state, don't wait for the Red Cross." The central message to the people of New Orleans was blunt: Save yourself, and help your neighbors if you can.[28]

We can and must do better than that by turning to each other and effective government to achieve equal justice, democracy, and livability for all. That is true in New Orleans, along the Gulf Coast, and across the nation. With all due respect, that can be understood as a central lesson for public interest law and litigation in Ireland as well.

V. Conclusion

Mel Cousin's report on public interest law and litigation in Ireland concludes that public interest litigation works best when it is part of a broader public interest law approach that includes law reform, legal education, and community engagement.[29] We agree.

The litigation model with a primary emphasis on establishing a binding precedent in court to accomplish social change through law is not the paradigm for public interest law in the United States for the 21st Century.

Advocates are implementing strategic campaigns with diverse tactics. First, a collective vision reflects what people want and collective ways of getting it. Second, coalition building

emphasizes the diverse values at stake to bring stakeholders together. Third, multidisciplinary research and analyses including financial, demographic, and historical studies provide hard data to support reform. Legal analyses combine different bodies of law to use the strengths of one body of law to shore up the weaknesses of another. Fourth, policy and legal advocacy outside the courts focuses on public education and the planning and administrative processes. Fifth, strategic media campaigns, including use of the web, help build support. Sixth, it is necessary to creatively engage opponents to find common ground. Litigation remains available when necessary within a broader campaign. Finally, strategic campaigns should make concrete improvements in people's lives, give people a real sense of their own power, and alter the relations of power.[30]

Emphasizing the diverse values at stake is a core strategy to bring people together to create the kind of community where we want to live and raise children. Articulating the values at stake to appeal to different stakeholders is consistent with the call of Professor George Lakoff from the University of California, Berkeley, to build a progressive movement that frames issues around shared values that define who progressives are, and that encompasses the work done by groups working in many different areas.[31]

We thank FLAC for organizing this international conference so that we can learn from each other how to achieve equal justice, democracy, and livability for all. In Ireland, advocates are assessing how public interest law and litigation could be more widely used to serve disadvantaged and vulnerable groups, in a nation where it has traditionally not been extensively used. In the United States, where public interest law and litigation have been extensively used, we are reassessing the strategies of the 20th Century to redefine public interest lawyering for the 21st Century.

The struggle never ends.

Appendix
Source: New York Times, September 12, 2005

The Neighborhoods That Were Hit Hard And Those That Weren't

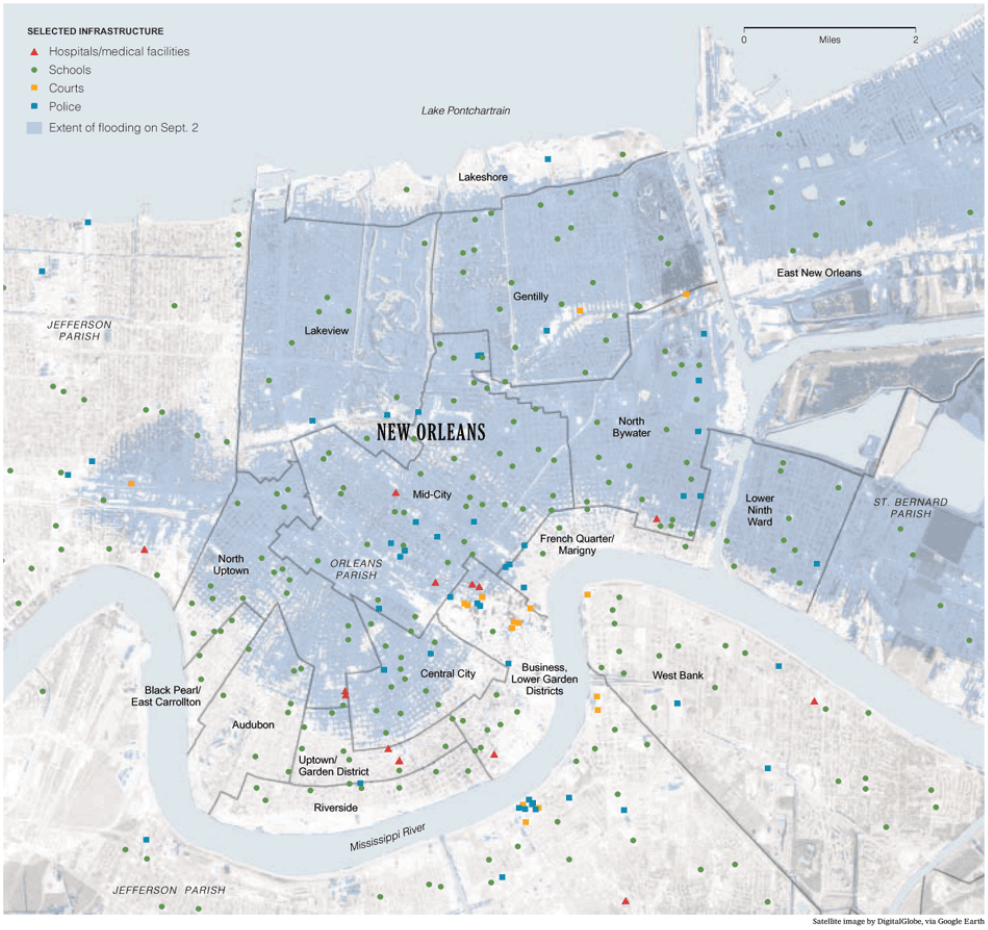
Rebuilding New Orleans will take years or decades and cost untold sums. While large swaths of the city may have to be bulldozed, a strip of unflooded land containing hospitals, government buildings, schools, historic homes and tourism sites suffered minimal damage.

The people who lived in the areas of New Orleans that were still flooded days after Hurricane Katrina struck were more likely to be black, have more children, earn less money and be less educated than those in the rest of the city. The flooded areas were home to about 346,000 people — 71 percent of the city's population — and contained more than two-thirds of the city's homes.

The map shows the extent of the flooding on Sept. 2, after the water level had stopped rising, but several days before crews were able to plug breaches in levees and start pumping water out.

DATA FROM 2000 U.S. CENSUS

Areas with significant flooding		Areas with little or no flooding
Population		
346,000		138,000
Race and ethnicity		
76%	BLACK	43%
18	WHITE	49
3	HISPANIC	4
2	ASIAN	2
1	OTHER	2
Age		
PERCENTAGE OF RESIDENTS THAT WERE:		
28%	UNDER 18	22%
11%	OLDER THAN 65	12%
Single-parent families		
29%	PERCENTAGE OF FAMILIES WITH SINGLE PARENTS	21%
Education		
72%	HIGH SCHOOL GRADUATE	82%
21%	BACHELOR'S DEGREE OR HIGHER	38%
Income		
$25,759	MEDIAN HOUSEHOLD INCOME (1999)	$31,455
$4.9 BILLION	TOTAL AMOUNT EARNED BY ALL RESIDENTS	$3.2 BILLION
29%	POVERTY RATE	25%
PERCENTAGE OF HOUSEHOLDS WITH INCOMES OF:		
56%	LESS THAN $30,000	48%
6%	MORE THAN $100,000	13%
Houses		
145,000	NUMBER OF HOUSING UNITS	70,000
23%	HOUSES BUILT BEFORE 1940	44%
52%	OCCUPIED BY RENTERS	56%
Transportation		
29%	HOUSEHOLDS WITH NO VEHICLE	24%



Satellite image by DigitalGlobe, via Google Earth

Areas with significant flooding

AREA	North Uptown	Lakeview	Mid-City	Central City	Gentilly	North Bywater	Lower Ninth Ward	East New Orleans
POPULATION	38,700	22,300	76,900	26,600	42,000	32,900	19,500	96,400
AVG. INCOME	$38,530	$69,777	$25,583	$26,962	$43,272	$27,720	$28,826	$41,997
	Residential and commercial area home to middle and working class; houses range from mansions to small shotgun houses.	Moderately to very wealthy area with beautiful homes, large park, city art museum and lavish cemetery.	Mostly working-class and low-income housing; includes Xavier University, historic cemeteries and industrial area.	Home to low- and middle-class families, who mostly rent; many homes are shotgun houses built on brick piers.	Mostly middle-class area with high rate of home ownership; includes historic district and 200-acre park.	Mostly low-income and working-class housing with large industrial area; of historical significance to African-American history.	Mostly middle- to low-income families who rent; large number of small businesses, schools and churches.	Moderate-income area with subdivisions, large business and manufacturing areas and a wildlife refuge.

Areas with little or no flooding

AREA	Black Pearl/ East Carrollton	Audubon	Riverside	Uptown/ Garden District	Business, Lower Garden Districts	French Quarter/ Marigny	West Bank	Lakeshore
POPULATION	6,200	14,900	12,700	11,900	10,900	4,200	58,800	5,800
AVG. INCOME	$52,336	$108,964	$38,149	$59,203	$47,985	$58,571	$45,249	$112,094
	Mostly middle-class homes and apartment buildings; contains oldest operating street railway line.	Includes a 127-acre park, Tulane and Loyola universities, historic mansions and the city zoo.	Residential area of moderate-income families of various ethnicities; contains a few historic parks.	Home to wealthy and middle-class families, with architecture ranging from mansions to single shotgun houses.	Contains main commercial, business, government and recreation facilities, along with art galleries and historic buildings.	Oldest part of New Orleans and main tourist destination; contains many hotels, bars, shops and historic homes.	Industrial and residential area, including a large military installation, small businesses and subdivisions.	Wealthiest residential area of the city; includes popular entertainment district and the University of New Orleans.

Sources: Dartmouth Flood Observatory; SPOT; International Charter: Space and Major Disasters; Greater New Orleans Community Data Center; U.S. Census Bureau; ESRI; TeleAtlas; InfoUSA; Queens College Department of Sociology

David Constantine, Matthew Ericson and Archie Tse/The New York Times

[1] Robert García is Executive Director of the Center for Law in the Public Interest in Los Angeles, California. He has influenced the investment of over $20 billion in underserved communities through the urban park movement, public

school construction and modernization, and the MTA environmental justice litigation in Los Angeles. He previously served as an Assistant United States Attorney in the Southern District of New York under Rudoph W. Giuliani. He has published and lectured widely on social change and law.
The Center for Law in the Public Interest is a non-profit law firm in Los Angeles, California, that seeks equal justice, democracy, and livability for all by influencing the investment of public resources to achieve results that are equitable, enhance human health and the environment, and promote economic vitality for all. The Center works with diverse coalitions to serve the needs of the community as defined by the community. *See* www.clipi.org.

[2] Time Magazine, Sept. 19, 2005.

[3] Email from Noeline Blackwell to Robert García, Sept. 30, 2005.

[4] The author previously served as Western Regional Counsel with the NAACP Legal Defense & Education Fund, Inc.

[5] On both sides of the Atlantic, critics argue that the law should not be used for "social engineering." This position reflects a fundamental misunderstanding of the nature of law, lawyering, and the judiciary. Equal justice protections are part of the law. Equal justice protections are enshrined, for example, in the United States in the Constitution and other laws, and in Ireland in the Constitution and European conventions on human rights. Enforcing equal protection provisions is a way of enforcing the law. Enforcing tax breaks for the rich and subsidies for corporate welfare are ways of enforcing the law. Does enforcing the law have "social engineering" implications in each context?

[6] *See generally Simple Justice* (1978).

[7] *See generally* Sandy Banks, *'The Shame of the Nation: The Restoration of Apartheid Schooling in America' by Jonathan Kozol*, L.A. Times Sunday Book Review, September 18, 2005.

[8] The book includes a section by Robert Garcia and Erica Flores in the chapter called *We Shall Be Moved: Community Activism as a Tool for Reversing the Rollback.*

[9] Funding to support public interest law and litigation is a central concern in the United States and Ireland. Developing a diverse funding base is necessary. Funding sources include awards of attorneys' fees in successful litigation, grants from foundations, support from major donors and other individuals, financial support from organized bar associations, and fundraising events such as dinners honoring civic leaders. Legal aid organizations in civil cases, and public defenders in criminal cases, rely on government funding. Some organizations do not seek government funding to preserve their independence and to avoid potential conflicts of interests with the agency providing the funding. Private law firms also co-counsel with non-profit organizations like the Center for Law in the Public Interest to provide attorney time and advance the costs of litigation. Private firms can also donate fee awards to the Center. In the United States, public interest litigants can recover attorneys' fees and costs in successful cases. They are not liable for fees or costs in unsuccessful litigation. In Ireland, on the other hand, prevailing public interest litigants can recover fees and costs, but are liable for fees and costs if they lose. This is a potential area for reform under Irish law.

[10] *See generally* Robert García and Erica Flores, *Healthy Children, Healthy Communities, and Legal Services*, published in a special issue on Environmental Justice for Children in the Journal of Poverty Law and Policy by the National Center on Poverty Law and the Clearinghouse Review (May-June 2005); Robert García and Erica Flores, *Healthy Children, Healthy Communities: Parks, Schools, and Sustainable Regional Planning*, article in the Urban Equity Symposium in 31 Fordham Urban Law Journal 101 (2004).

[11] *See generally* Robert García and Erica Flores, *Anatomy of the Urban Park Movement: Equal Justice, Democracy and Livability in Los Angeles*, chapter in the book *The Quest for Environmental Justice: Human Rights and the Politics of Pollution*, edited by Dr. Robert Bullard and published by the Sierra Club (2005); Robert García and Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, Stanford Journal of Civil Rights (forthcoming 2005); Robert García, Erica Flores, Christopher T. Hicks, *Diversifying Access to and Support for the Forests: Remarks at the National Forest Service Centennial Conference, Policy Brief, Center for Law in the Public Interest (2004);* Lawrence Culver, *The Garden and the Grid: A History of Race, Recreation, and Parks in the City and County of Los Angeles (2005).*

[12] The author served as one of the lead attorneys in the MTA case, and co-authored with Thomas A. Rubin the chapter *"Crossroad Blues: the MTA Consent Decree and Just Transportation,"* in the book on transportation justice in the United Kingdom and the United States edited by Professor Karen Lucas from the University of London, *Running on Empty* (2004). *Crossroad Blues* chronicles this historic struggle for transportation justice and its lessons for equal access to public resources. The case was filed by the NAACP Legal Defense & Education Fund, Inc.

[13] *See Castaneda v. Partida*, 430 U.S. 482, 496 n.17 (1977) (differences of two or three standard deviations are suspect).

[14] *Governor's Commission on the Los Angeles Riots (1965).*
[15] 532 U.S. 275 (2001).
[16] *See generally* Robert García and Marc Brenman, *Katrina and the Demographics of Destruction and Reconstruction, Policy Brief, Center for Law in the Public Interest (September 2005).*
[17] New York Times, Oct. 1, 2005.
[18] New York Times, Sept. 10, 2005.
[19] New York Times, Sept. 9, 2005.
[20] New York Times, Sept. 10, 2005.
[21] New York Times, Sept. 9, 2005.
[22] New York Times, Sept. 9, 2005.
[23] New York Times, Sept. 9, 2005.
[24] New York Times, Sept. 10, 2005.
[25] Los Angeles Times, September 14, 2005.
[26] New York Times, Sept. 12, 2005.
[27] New York Times, Sept. 13, 2005.
[28] Time Magazine, Sept. 19, 2005.
[29] Mel Cousins, *Public Interest Law and Litigation in Ireland 30 (2005).*
[30] Midwest Academy, *Organizing for Social Change*.
[31] George Lakoff, *Don't Think of an Elephant! Know Your Values and Frame the Debate (2004)*; George Lakoff, *Moral Politics: How Liberals and Conservatives Think (2002).*