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Environmental Justice, Community Empowerment, and the Role of Lawyers in Post-Katrina New Orleans

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ENVIRONMENTAL JUSTICE, COMMUNITY EMPOWERMENT AND THE ROLE OF LAWYERS IN POST-KATRINA NEW ORLEANS

*Janell Smith & Rachel Spector**

When the mainstream national environmental groups pair up with environmental justice groups that have the ability to mobilize large numbers of constituents—to get people marching and filling up those courtrooms and city council meetings—that’s when you can talk about an environmental movement.¹

I. INTRODUCTION: HURRICANE KATRINA AND THE ENVIRONMENTAL JUSTICE MOVEMENT

Working together toward a common goal often requires mobilizing the strength and energy of many groups of people, all of whom share the same passion for accomplishing that goal. Hurricane Katrina and its devastating effect on the environment and communities in New Orleans and the Gulf Coast has done exactly that, bringing together numerous coalitions of concerned individuals who share the determination to clean up and improve New Orleans and the Gulf region. This Article addresses how lawyers from around the country can work with local advocates on reconstruction efforts in New Orleans in a way that increases, rather than undermines, community empowerment. While the Article focuses on environmental justice advocacy, it defines the concept broadly with the understanding that adequate housing, opportunities for employment and economic stability, and an effective political voice are just as important as neighborhoods free from toxic pollution.

A. *When the Local Becomes National*

Environmental justice has been formally defined as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the develop-

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¹ Gregory Dicum, *Justice in Time*, GRIST MAG., Mar. 14, 2006, <http://www.grist.org/news/maindish/2006/03/14/dicum/> (interview with Robert Bullard, “the father of environmental justice”).

ment, implementation, and enforcement of environmental laws, regulations, and policies.² The environmental justice movement is a community-led response to the disproportionate levels of environmental pollution and degradation in communities of color and low-income communities in the United States and across the globe.³

The environmental justice movement began in the early 1980s as a loose coalition of various minority and low-income communities across the nation and focused on local issues of pollution and poor health.⁴ In 1991, the similarities among these community struggles led to the organization and meeting of the First National People of Color Environmental Leadership Summit in Washington, D.C.⁵ The Summit's 600 participants included African Americans, Latino Americans, Asian Americans, and Native Americans from across the United States and other countries who "struck out at environmental racism and committed themselves to a new movement—a movement for environmental justice."⁶ To accomplish the goal of environmental justice, the participants "depart[ed] from the goals of national environmental groups" which "turned struggles over pure air and water into lifeless technical debates about balancing risks and costs."⁷ Instead, participants made it their goal to address issues more in tune with "personal human

² United States Env'tl. Prot. Agency, Environmental Justice, <http://www.epa.gov/compliance/environmentaljustice/index.html> (last visited Dec. 18, 2006).

³ See, e.g., COMM. FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, A NATIONAL REPORT ON THE RACIAL & SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES (1987) (groundbreaking report on the disproportionate impact of environmental degradation on low-income people and people of color); cf. MANUEL PASTOR ET. AL., IN THE WAKE OF THE STORM: ENVIRONMENT, DISASTER & RACE AFTER KATRINA (2006) (studying racial disparities in environmental health after Hurricane Katrina).

⁴ Robert Bullard, Environmental Justice in the 21st Century, Environmental Justice Resource Center, <http://www.ejrc.cau.edu/ejinthe21stcentury.htm> (last visited Dec. 18, 2006) (providing history of the environmental justice movement and how it started in Warren County, North Carolina).

⁵ See Keith Schneider, *Minorities Join to Fight Polluting Neighborhoods*, N.Y. TIMES, Oct. 25, 1991, at A20.

⁶ *Id.* Environmental racism is defined as "racial discrimination in environmental policy making and the enforcement of regulations and laws; the deliberate targeting of people of Colour communities for toxic and hazardous waste facilities; the official sanctioning of the life-threatening presence of poisons and pollutants in our communities; and the history of excluding people of colour from the leadership of the environmental movement." Deborah M. Robinson, Environmental Racism: Old Wine in a New Bottle, World Council of Churches, <http://www.wcc-coe.org/wcc/what/jpc/echoes/echoes-17-02.html> (last visited Dec. 18, 2006) (explaining the growth of the environmental justice movement in the United States and internationally).

⁷ Schneider, *supra* note 5.

values, like justice, health and race.”⁸ Although the Summit established a national coalition, the issues, goals, and leadership of the environmental justice movement remain largely local.

The focus on local leadership and community empowerment is reflected in the Principles of Environmental Justice, a seventeen-point set of objectives adopted at the Summit which guide environmental justice work.⁹ The Principles articulate the movement’s aim to “include not only equal protection from environmental risks, or life and health issues, but also the right for people to live in communities that are environmentally safe, regardless of their race or income.”¹⁰ Recognizing the great importance of local involvement and leadership¹¹ and the need for direct action at the grassroots level to accomplish environmental objectives,¹² the Principles emphasized the rights of individuals to live and work in “safe and healthy . . . environment[s] . . . free from environmental hazards,”¹³ as well as “the right to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement and evaluation.”¹⁴ The Principles of Environmental Justice laid the foundation for a movement built on community empowerment.

In a shift from the local nature and appeal of environmental justice issues, Hurricane Katrina, the category-five hurricane that hit the Gulf Coast and New Orleans in August 2005, broadcast the issue of environmental justice to a vast national audience. While the problems affecting the region were local, the publicity surrounding the crisis was international, and national environmental organizations and other national groups quickly mobilized their resources and expertise toward the cleanup effort in New Orleans.

⁸ *Id.*

⁹ See Environmental Justice Resource Center, Principles of Environmental Justice, available at <http://www.ejrc.cau.edu/princej.html> (last visited Nov. 17, 2006) (complete list of Principles of Environmental Justice) [hereinafter Principle or Principles].

¹⁰ R. Gregory Roberts, *Environmental Justice and Community Empowerment: Learning From the Civil Rights Movement*, 48 AM. U. L. REV. 229, 265 n. 200 (quoting Deoohn Ferris & David Hahn-Baker, *Environmentalists and Environmental Justice Policy*, in ENVIRONMENTAL JUSTICE: ISSUES, POLICIES, AND SOLUTIONS 66, 66 (Bunyan Bryant ed. 1995)).

¹¹ See generally, Regina Austin & Michael Shill, *Black, Brown, Red, and Poisoned*, in UNEQUAL PROTECTION: ENVIRONMENTAL JUSTICE AND COMMUNITIES OF COLOR 53, 57–65 (Robert Bullard, ed. 1994) [hereinafter UNEQUAL PROTECTION].

¹² See *id.* at 63–64 (discussing the importance of direct action, including “a panoply of legal and extralegal activities such as circulating petitions; holding demonstrations, marches, and sit-ins; conducting candidate and agency accountability sessions . . . ; and picketing shareholders’ meetings.”).

¹³ See Principles, *supra* note 9 (Principle #8).

¹⁴ *Id.* (Principle #7).

Many outside groups and volunteers sought to collaborate with local grassroots organizations in their work in the Gulf Coast region.

Such efforts have a checkered history because past collaboration between local activists and outside lawyers has often been imbalanced or unsuccessful;¹⁵ this has lead local environmental justice advocates to mistrust national environmental organizations.¹⁶ Traditionally, much of their work together has been in the context of case-specific litigation, where the national organizations' lawyers would often bring litigation without consulting the communities directly affected by it or leave after the case was over, regardless of whether the community actually had achieved a satisfactory result.¹⁷ The failure of national environmental groups to commit fully to community-driven efforts often did not empower the community and in some cases left it worse off than it was before.¹⁸ Recently, national environmental groups have incorporated the spirit and principles of the environmental justice movement into their missions, proactively collaborating with community groups without undermining local leadership.¹⁹ Those organizations, and other lawyers and activists trained in the environmental justice movement, have brought an important sensitivity to community leadership while working on environmental and rebuilding issues in New Orleans and the Gulf Region following Katrina.

This Article describes several recent advocacy and environmental justice projects in New Orleans in which communities are working with lawyers and scientists from around the country and offers lessons for successful local-national collaborative environmental justice advocacy. Part I gives some background on environmental advocacy issues in the New Orleans region and the impact of Hurricane Katrina. Part II illustrates the difficulties communities have had challenging environmental justice problems through traditional legal action. Part III describes partnerships between the

¹⁵ See Bill Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994) (stories from community organizers about their experiences working with lawyers).

¹⁶ See Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619 (1992).

¹⁷ *Id.*

¹⁸ See generally, Quigley, *supra* note 15.

¹⁹ For example, the Natural Resources Defense Council's mission statement now includes the following: "We work to foster the fundamental right of all people to have a voice in decisions that affect their environment. We seek to break down the pattern of disproportionate environmental burdens borne by people of color and others who face social or economic inequities." NRDC: Mission Statement, <http://www.nrdc.org/about/mission.asp> (last visited Oct. 6, 2006).

NRDC²⁰ and local environmental organizations²¹ that resulted in a community-led testing and cleanup of toxic sediments and successful opposition to a landfill in a residential neighborhood. Part IV discusses a nationwide network of law students and New Orleans residents called Matchmakers for Justice, which is advocating to secure the basic needs of returning residents.²² Finally, Part V briefly describes the issues that New Orleans residents will continue to face in the future and offers recommendations for attorneys and other advocates seeking to collaborate with community organizations.

B. *The Environmental Impacts of Katrina*

New Orleans' long history of racial discrimination has led to some of the nation's most egregious environmental justice problems.²³ Before World War II, explorers found oil off the coast of Baton Rouge and built an oil refinery.²⁴ Louisiana became a "prime location" for the petrochemical industry,²⁵ and by 1956, petrochemical plants employed 87,200 Louisianans; generous tax exemptions for the industry in the 1960s prompted still more growth.²⁶ This economic boom was accompanied by a sharp increase in air pollution: Between 1987 and 1989, more than two bil-

²⁰ The NRDC is a membership organization with 1.2 million members that uses law, science, and advocacy "to protect the planet's wildlife and wild places and to ensure a safe and healthy environment for all living things." NRDC: About Us, <http://www.nrdc.org/about/> (last visited Oct. 6, 2006).

²¹ For a list of local organizations, see Nat. Resources Defense Counsel, *NRDC Helps New Orleans Rebuild, and Stay Safe*, <http://www.nrdc.org/health/effects/neworleans.asp> (last visited Feb. 12, 2007).

²² The Matchmakers for Justice program is a collaborative effort among legal partners and community partners. Through the program, the Student Hurricane Network works with organizations to arrange a network of support structures and services to residents and law students. See Student Hurricane Network Main Page, <http://www.studenthurricanetwork.org/main.htm> (last visited Nov. 10, 2006).

²³ See Robert D. Bullard, *Environmental Justice for All*, in UNEQUAL PROTECTION, *supra* note 11, at 3-5 (Robert Bullard ed., 1994) (chronicling the various early cases of environmental justice that started the movement); see also Liza Featherstone, *Race to the Bottom: Slow Katrina Evacuation Fits Pattern of Injustice During Crises*, GRIST MAG., Sept. 8, 2005, <http://www.grist.org/news/maindish/2005/09/08/featherstone-katrina/index.html> (emphasizing that Louisiana has been a "nationally recognized poster child for environmental injustice . . . for decades").

²⁴ Beverly H. Wright et al., *Coping with Poisons in Cancer Alley*, in UNEQUAL PROTECTION, *supra* note 11, at 111 (Robert D. Bullard ed., 1994). For a compelling story of one community's fight against oil companies in Cancer Alley, see STEVE LERNER, *DIAMOND: A STRUGGLE FOR ENVIRONMENTAL JUSTICE IN LOUISIANA'S CHEMICAL CORRIDOR* (2005).

²⁵ Wright et al., *supra* note 24, at 111.

²⁶ *Id.* at 112.

lion pounds of toxic chemicals were emitted from these plants.²⁷ The air, ground, and water are still filled with carcinogens, mutagens, and embryotoxins.²⁸ Grassroots organizers in New Orleans and along the corridor called "Cancer Alley," where the petrochemical plants are located, have worked to end the pollution.²⁹ While some battles have been won,³⁰ the majority have not.³¹

Before Hurricane Katrina, the population of New Orleans was 68% African American.³² Of the approximately 28% of its residents living below the poverty line, more than 80% were African American.³³ The environmental degradation especially worsened the situation for those living in poverty.

The floodwaters caused by Hurricane Katrina covered residential neighborhoods in New Orleans and surrounding areas with mud and sediments from the bottom of Lake Pontchartrain and industrial sites in the region, precipitating what should have been "the mother of all toxic cleanups."³⁴ Six major oil spills occurred during Katrina, releasing about 60% of the amount of oil leaked during the Exxon Valdez accident.³⁵ In addition, about sixty un-

²⁷ *Id.* at 114.

²⁸ *Id.*

²⁹ *See, e.g., id.* at 114–15 (describing the efforts of different Cancer Alley communities to combat environmental discrimination).

³⁰ For example, in the late 1990s, the Louisiana state government launched an attack on a community group's access to legal assistance from a local law school's legal clinic combating environmental injustices; in response to community outrage, however, the EPA denied state-issued air permits for the construction of a \$700 million chemical plant. *See* Marcia Coyle, *EPA Move Makes Tulane the Victor*, NAT'L L. J., Sept. 22, 1997, at A13; *cf.* Marcia Coyle, *Governor v. Students in \$700M Plant Case: Tulane Law School Clinic Threatens Construction of a Chemical Complex*, NAT'L L. J., Sept. 8, 1997, at col. 2 (discussing how Louisiana Governor Murphy Foster tried to stop the Tulane Environmental Law Clinic from assisting a high-risk community in Convent, Louisiana in their suit against Shintech, a Japanese-owned company); Robert R. Kuehn, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J.L. & POL'Y 33 (2000) (detailing the actions of Governor Foster and other business interests in denying the Convent community access to the clinic's legal representation).

³¹ Wright et al., *supra* note 24, at 117–122 (discussing communities that have won lawsuits against chemical companies and buy-outs where communities were completely displaced).

³² *Hurricane Katrina: Assessing the Present Environmental Status: Hearing Before the Subcomm. on Env't & Hazardous Materials of the Comm. on Energy & Commerce*, 109th Cong. 99 (2005) (statement of Dr. Beverly Wright, Director, Deep South Center for Environmental Justice).

³³ *Id.*

³⁴ Catherine Arnst & Janet Ginsburg, *The Mother of All Toxic Cleanups*, BUS. WK., Sep. 26, 2005, at 42.

³⁵ PASTOR ET AL., *supra* note 3, at 4.

derground oil storage tanks were disturbed by the storm.³⁶ The flooded area included five Superfund toxic waste sites and 466 industrial facilities where various dangerous chemicals including pesticides were stored.³⁷ This is in addition to an unprecedented amount of debris.³⁸

In the year since Katrina, local and federal governments have done little to pursue cleanup strategies that protect residents' health; moreover, little has been done to plan for similar catastrophes in the future. In the aftermath of the hurricanes, for example, a number of bills proposed in Congress initially called for the suspension of many environmental laws.³⁹ State and federal authorities have largely failed to clean up toxic sediments or pursue sustainable strategies for dealing with the debris left behind by the storms. Local community groups have had to step in to protect themselves and hold the government accountable.

II. STALLED IN THE COURTS

Communities have had limited legal success on traditional civil rights claims of environmental injustice due to discrimination based on race and class. In particular, several key civil rights decisions have prevented communities from bringing claims of discrimination against federal agencies.⁴⁰

Most communities have tried to litigate environmental injustice claims under the Equal Protection Clause of the Fourteenth

³⁶ *Id.* at 29.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Louisiana Katrina Reconstruction Act, S. 1765, 109th Cong. (2005). The bill included waivers of many protections under current environmental laws, such as the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., beyond the general emergency waivers already included in the law. For example, any Army Corps of Engineers project approved by a newly created and permanent "Pelican Commission" would be exempted from an environmental review process; in addition, the bill would have allowed the president to waive any environmental law for any project two years following Katrina. See generally LINDA LUTHER, CONGRESSIONAL RESEARCH SERVICE, NEPA AND HURRICANE RESPONSE, RECOVERY AND REBUILDING EFFORTS, CRS REPORT FOR CONGRESS (Sept. 28, 2005) (discussing NEPA requirements and the effects of proposed legislation), available at http://www.law.berkeley.edu/library/online/guides/disastersFiles/crs_nepaAndHurricaneResponse.pdf.

⁴⁰ See, e.g., *East Bibb Twiggs Neighborhood Ass'n v. Macon-Bibb County Planning & Zoning Comm'n*, 706 F. Supp. 880 (M.D. Ga. 1989) (finding that county's decision to allow private landfill in primarily African American census tract was "not motivated by the intent to discriminate against black persons"), *aff'd*, 896 F.2d 1264 (11th Cir. 1989); *Bean v. Sw. Waste Mgmt. Corp.*, 482 F. Supp. 673 (S.D. Tex. 1979) (holding that plaintiffs failed to establish substantial likelihood of proving that permit to create solid waste facility was motivated by purposeful discrimination).

Amendment of the U.S. Constitution.⁴¹ Under the Supreme Court's decision in *Washington v. Davis*, however, racial discrimination on the part of a state actor is unconstitutional only if plaintiffs show "a racially discriminatory purpose"—intentional discrimination.⁴² An action will not be held unconstitutional "[s]olely because it has a racially disproportionate impact."⁴³ Because the environmental justice movement focuses on disproportionate impact on minority and low-income communities, it is very hard to meet the intentional discrimination standard.⁴⁴

In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, the Court articulated five factors used to prove discriminatory purpose.⁴⁵ The court applied those factors in *East Bibb Twiggs Neighborhood Ass'n v. Macon-Bibb County Planning & Zoning Commission* and found no discriminatory intent.⁴⁶ In *East Bibb*, the plaintiffs alleged that "the Commission's decision to allow the creation of a private landfill in [its] census tract . . . was motivated at least in part by considerations of race."⁴⁷ The district court found that the plaintiffs had shown no "background of discrimination in the Commission's decisions," such as discriminatory statements in the legislative or administrative history, and held that the impact on the minority community was the result "of necessity" rather than intent because a large minority population happened to live in the census tract chosen to house the landfill.⁴⁸

East Bibb is typical: Most communities cannot meet the intentional discrimination standard because they go to court to combat discriminatory *impact* and have little knowledge or interest in the

⁴¹ Marcia Coyle, *Unequal Protection; The Racial Divide in Environmental Law: Lawyers Try to Devise New Strategy*, NAT'L L.J., Sept. 21, 1992, at S8.

⁴² 426 U.S. 229, 239 (1976).

⁴³ *Id.* The Court went on to say that "[d]isproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution." *Id.* at 242.

⁴⁴ Suzanne Smith, Note, *Current Treatment of Environmental Justice Claims: Plaintiffs Face a Dead End in the Courtroom*, 12 B.U. PUB. INT. L.J. 223, 229 (2002).

⁴⁵ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977). The five factors are: (1) "the impact of the official action" and "whether it 'bears more heavily on one race than another;'" (2) "the historical background of the decision," especially "if it reveals a series of official actions taken for invidious purposes;" (3) "[t]he specific sequence of events leading up to the challenged decision;" (4) whether there were "substantial departures" from "the normal procedural sequence" in the making of the decision; and (5) "legislative and administrative history" provided in "statements by members of the decisionmaking body, minutes of its meetings, or reports." *Id.* at 266-67.

⁴⁶ *East Bibb Twiggs Neighborhood Ass'n*, 706 F. Supp. at 884.

⁴⁷ *Id.* at 881.

⁴⁸ *Id.* at 886-87.

intent. The equal protection standard articulated by the Court focuses on proving discriminatory intent preceding the decision,⁴⁹ while plaintiffs look to the subsequent effect that a decision had on their lives.⁵⁰ In *Washington v. Davis*, the Supreme Court stated that there are "proper circumstances" where "the racial impact of a law, rather than its discriminatory purpose, is the critical factor."⁵¹ *Arlington Heights* recognized the priority that should be placed on community impact by naming this factor first.⁵² Although courts need not completely abandon an examination of prior actions by a particular state actor, more weight should be given to the impact that the decision will have on the community.

In February 1994, the Clinton Administration recognized environmental justice as an issue by enacting Executive Order 12,898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which mandates that specific agencies take action to incorporate environmental justice into their decision-making.⁵³ Although the Order formally recognized the issue of environmental justice and encouraged agencies to take action, its effectiveness is questionable since it does not bind agencies.⁵⁴ Even the Environmental Protection Agency (EPA) fails to abide by the intent of the Order.⁵⁵ The lack of movement toward environmental justice after the Order has seriously hindered the progress of affected communities.

Recognition of the environmental justice issue did not necessarily provide greater protection for community members. The Order explicitly states that it does not "create any right to judicial review involving the compliance or non-compliance of the United States [or] its agencies," but is "intended only to improve the internal management of the executive branch."⁵⁶ Because a citizen can-

⁴⁹ See Smith, *supra* note 44, at 235 ("Similar to the Equal Protection cases . . . prevailing on a Title VI [of the Civil Rights Act of 1964] claim has proven difficult because courts require a plaintiff to prove discriminatory intent.").

⁵⁰ See, e.g., *Bean*, 482 F. Supp. at 677 (showing that community members in an action claiming racial discrimination in site selection were concerned about the facility's effect on "land values, its tax base, its aesthetics, the health and safety of its inhabitants, and operation of Smiley High School, located only 1700 feet from the site.").

⁵¹ *Washington v. Davis*, 426 U.S. 229, 243 (1976).

⁵² *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

⁵³ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

⁵⁴ Willie Hernandez, Comment, *Environmental Justice: Looking Beyond Executive Order No. 12,898*, 14 UCLA J. ENVTL. L. & POL'Y 181, 206 (1996).

⁵⁵ ENVTL. PROT. AGENCY, OFFICE OF THE INSPECTOR GEN., REP. NO. 2006-P-00034, EPA NEEDS TO CONDUCT ENVIRONMENTAL JUSTICE REVIEWS OF ITS PROGRAMS, POLICIES, AND ACTIVITIES (2006).

⁵⁶ Exec. Order No. 12,898, 59 Fed. Reg. at 7632.

not bring a suit based on an agency's non-compliance with the Order, many agencies lack the incentive to take the Order's requirements seriously.⁵⁷ In general, an executive order has legal authority if: (1) the order was issued pursuant to a statutory mandate or delegation of authority from Congress, and (2) the order's language establishes an intent to create a cause of action.⁵⁸ Some executive orders have made a larger impact when these two conditions existed.⁵⁹ In this case, however, Congress did not delegate authority to the President to issue Executive Order 12,898; therefore, it does not have the force of law. Although scholars advocated in favor of amending the Order to include language explicitly creating a cause of action for affected communities, no such language was ever added.⁶⁰

Plaintiffs seeking environmental justice also experience difficulty employing Title VI of the Civil Rights Act of 1964. Title VI states that "no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."⁶¹ This provision should allow community organizations to bring claims against any agency receiving federal funds that has discriminated against them. In 2001, however, the U.S. Supreme Court in *Alexander v. Sandoval* held that no private cause of action could be implied from Title VI of the Civil Rights Act of 1964.⁶² Despite a prior ruling to the contrary,⁶³ the Court reasoned that Congress would have explicitly written a private cause of action into the statute if it intended one to exist.⁶⁴ After *Sandoval*, communities could no longer bring lawsuits under Title VI against any state or local agencies receiving federal funding that discriminately enforce environmental laws.

⁵⁷ Hernandez, *supra* note 54, at 206.

⁵⁸ *Id.* at 205.

⁵⁹ *See id.* at 204, n.140. President Kennedy used an executive order to combat racial discrimination in federally funded housing, and President Lyndon Johnson issued an executive order to prohibit discrimination in hiring practices. *Id.*

⁶⁰ *Id.* at 207.

⁶¹ Civil Rights Act of 1964, 42 U.S.C. § 2000d (2007).

⁶² 532 U.S. 275, 293 (2001). In *Sandoval*, a non-English-speaking citizen brought a claim against the Alabama Department of Public Safety, which received federal funding, for discrimination due to its policy of administering driving tests only in English. *Id.* at 279.

⁶³ *See Cannon v. Univ. of Chi.*, 441 U.S. 677, 694 (1979) (holding that plaintiff had private cause of action against discriminatory universities under Title IX of the Education Amendments of 1972).

⁶⁴ *Sandoval*, 532 U.S. at 286-87.

Without favorable law available in the courtroom, it is imperative that community members reach beyond the legal system to gain environmental justice victories. Although lawyers in this field continue to develop innovative ways of bringing lawsuits to protect communities across the nation, there is a need to utilize other means of creating change. If national environmental groups and other national networks use their resources to support community organizations, non-legal alternatives for advocacy can be strengthened.

III. PROTECTING RESIDENTS FROM TOXIC SEDIMENTS AND UNSAFE LANDFILLS

As Katrina's floodwaters receded, residents of New Orleans sought to ascertain the dangers of a layer of sediment that covered their yards, sidewalks, and homes. Among other things, they wanted to know about the impact of massive mold growth to human health in flooded areas; the safety of New Orleans' drinking water; and the harmful effect of the tons of debris being moved to landfills located in residential neighborhoods.⁶⁵

A. *Testing the Soil*

Local environmental and community groups requested that NRDC examine the toxicity of sediments because of inadequate testing by the Environmental Protection Agency in the fall of 2005.⁶⁶ NRDC found elevated levels of lead, arsenic, and diesel fuel contamination prevalent in many neighborhoods; in many cases, the levels exceeded EPA soil cleanup guidelines.⁶⁷ Sampling also revealed high levels of dangerous pesticides such as dichloro

⁶⁵ Nat. Resources Defense Council, New Orleans Area Environmental Quality Test Results: Sediment Contamination, <http://www.nrdc.org/health/effects/katrinadata/sediment.asp> (last visited Oct. 6, 2006).

⁶⁶ ENVTL. PROT. AGENCY, ENVIRONMENTAL ASSESSMENT SUMMARY FOR AREAS OF JEFFERSON, ORLEANS, ST. BERNARD AND PLAQUEMINES PARISHES FLOODED AS A RESULT OF HURRICANE KATRINA (2005), http://www.epa.gov/katrina/testresults/katrina_env_assessment_summary.htm. The EPA tested for and found toxins such as lead and arsenic, pesticides, herbicides, fecal coliform bacteria, PCBs, polynuclear aromatic hydrocarbons (PAH), and total petroleum hydrocarbons (TPH). *Id.* Although some samples clearly revealed levels of toxic pollutants that far exceeded existing regulation levels, the EPA concluded that toxins in sediment did not represent a significant health hazard and recommended "routine" health and safety precautions such as frequent hand washing. *Id.* Similarly in December 2005, the Louisiana Department of Environmental Quality announced that there was "no unacceptable health risk" from sediments deposited by Katrina. *Id.*

⁶⁷ Nat. Resources Defense Council, *supra* note 65 (noting that the average level of arsenic in Orleans Parish was more than thirty-one times the EPA soil cleanup level).

diphenyl trichloroethane, commonly known as DDT, in a residential area where an abandoned pesticide-blending plant was located.⁶⁸ Finally, leachate from the Agriculture Street Landfill, a Superfund toxic waste site, was seeping into the yard of a senior citizens' center, leaving carcinogens in excess of EPA guidelines.⁶⁹ NRDC's analysis of EPA's sampling data confirmed the significant toxic contamination.

In light of these health hazards, a coalition of more than a dozen civil rights, religious, and environmental justice groups petitioned the EPA, the Agency for Toxic Substances and Disease Registry (ATSDR), the Centers for Disease Control and Prevention (CDCP), and Federal Emergency Management Agency (FEMA) to take immediate action to clean up the toxic contamination.⁷⁰ EPA and ATSDR responded by saying they believed they had taken all appropriate actions and that a cleanup was not necessary.⁷¹

B. Community Cleanup

Residents decided that if state and federal agencies would not take steps to clean up their neighborhoods, they would do it themselves. In an innovative partnership spearheaded by the Deep South Center for Environmental Justice, environmental groups, community organizations, and the United Steelworkers of America staged an April 2006 community cleanup demonstration in New Orleans East.⁷² At the cleanup, called A Safe Way Back Home, health and safety specialists from the United Steelworkers of America provided safety equipment and trained community members in handling hazardous materials.⁷³ Residents and volunteers removed several inches of topsoil and sediment from neighborhood yards and deposited them in an empty lot for FEMA removal; they then replaced the soil with fresh sod and river sand.⁷⁴

A Safe Way Back Home is an example of the Principles of Environmental Justice in action.⁷⁵ Led by community groups, it brought together religious, labor, and environmental organiza-

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Nat. Resources Defense Council, <http://www.nrdc.org/health/effects/katrina/data/bywater.asp> (last visited Oct. 6, 2006).

⁷¹ *Id.*

⁷² For more information about the project, see the website of the Deep South Center for Environmental Justice, <http://www.dscej.org/asafewayhome.htm> (last visited Oct. 6, 2006).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Principles, *supra* note 9.

tions and achieved direct results for the community of New Orleans East, while drawing attention to the government's failure to act. Additionally, it allowed resident participation in both cleaning-up their own community and protesting government decisions and policy. Yet unlike the EPA and FEMA, community groups lack resources to replicate their work on a larger scale. As Dr. Beverly Wright, executive director of the Deep South Center for Environmental Justice, stated, "Ultimately, it is the government's responsibility to provide the resources required to address areas of environmental concern and to assure that our communities are safe and our families are protected."⁷⁶ Faced with government ambivalence, however, individuals used available local and national resources to make essential changes in their community.

C. Dealing with Debris: Battling Over a Landfill

Another example of community action and empowerment is found in the battle to eliminate the health risks associated with a landfill in New Orleans East. In the spring of 2006, the Louisiana Department of Environmental Quality (LDEQ) created a new landfill called Chef Menteur to house 2.6 million tons of debris from homes and other structures demolished by Katrina. The landfill was located directly adjacent to a Vietnamese immigrant neighborhood and across a canal from the Bayou Sauvage National Wildlife Refuge.⁷⁷ Operated by Waste Management of Louisiana, the landfill was opened under an expedited permitting process through emergency administrative orders after Katrina. Mayor Ray Nagin, without a public hearing, waived local zoning regulations to issue a conditional land-use permit for the landfill so it could be sited near Village de l'Est, a residential area.⁷⁸ With conditional land-use approval, LDEQ issued a permit for an "enhanced construction-and-demolition" landfill on the site, enabling the site to accept an expanded definition of construction and demolition waste that included the rotting contents and structural material of hurricane-destroyed homes.⁷⁹ The landfill contained potentially dangerous home products such as petroleum, cleaning products, and pesti-

⁷⁶ Press Release, Deep S. Cnr. for Envtl. Justice, A Safe Way Back Home (July 3, 2006), available at <http://newreconstruction.civilrights.org/details.cfm?id=45043>.

⁷⁷ Leslie Eaton, *A New Landfill in New Orleans Sets Off a Battle*, N.Y. TIMES, May 8, 2006, at A1.

⁷⁸ *Id.*

⁷⁹ Press Release, La. Dep't of Envtl. Quality, Chef Menteur Landfill Ok'd to Accept C&D Waste (April 13, 2006), available at <http://www.deq.louisiana.gov/portal/portals/0/news/pdf/ChefMenteurLandfillfinal.pdf>; see also Eaton, *supra* note 77.

cides; yet operated without basic protections such as a clay liner to prevent toxic leaching.⁸⁰

Local residents and community organizations objected vigorously to the landfill's location. In April, they sought an injunction against the Army Corps of Engineers to prevent its opening, but a judge denied the request.⁸¹ Mayor Nagin briefly shut down the landfill in May 2006 to allow testing of material dumped there, but allowed it to reopen only two weeks later despite a testing process that was highly criticized as ineffective.⁸² Finally, Mayor Nagin, under significant political pressure from community members, stated that he would allow the city's emergency land-use permit to expire on August 14, 2006.⁸³ In response to the expiration of the conditional use permit, LDEQ was forced to revoke the operating permit for the facility. Subsequently, Waste Management filed suit against the LDEQ, seeking an injunction to maintain the status quo. Concerned Citizens for a Strong New Orleans, Louisiana Environmental Action Network, and NRDC joined with local counsel to intervene on behalf of community residents, urging closure of the landfill. A Louisiana judge denied Waste Management's request for an injunction and the landfill was closed on August 14, 2006.⁸⁴ In this case, although NRDC stepped in to offer legal support, community protests, media outreach, and advocacy were the primary catalysts in closing Chef Menteur landfill.⁸⁵ Despite this victory, however, the problem of debris disposal remains.⁸⁶

⁸⁰ Wayne Curtis, *A Heap of Sorrows*, GRIST MAG., Aug. 10, 2006, <http://www.grist.org/news/maindish/2006/08/10/curtis/>.

⁸¹ La. Envtl. Action at Work. v. U.S. Army Corps of Eng'rs, No. 06-2020, 2006 U.S. Dist. LEXIS 24344, at *1 (E.D.La. Apr. 27, 2006), available at <http://www.deq.louisiana.gov/portal/portals/0/news/pdf/ReasonsforJudgmentCD.pdf>; see also Press Release, La. Dep't of Envtl. Quality, Judge Rules Chef Menteur Landfill Can Continue Operating (April 27, 2006), available at <http://www.deq.louisiana.gov/portal/portals/0/news/pdf/chefmenteurjudgerulingapril27.pdf>.

⁸² Gordon Russell, *Chef Menteur Landfill Testing Called a Farce*, NEW ORLEANS TIMES-PICAYUNE, May 26, 2006, at A1. Local groups suspected that politics played a role in Nagin's agreement to shut the landfill temporarily, since he did so just before the mayoral election and re-opened the facility immediately afterward. *Id.*

⁸³ Curtis, *supra* note 80.

⁸⁴ Leslie Eaton, *New Orleans Mayor Closes a Disputed Landfill Used for Debris from Hurricane*, N.Y. TIMES, Aug. 16, 2006, at A1.

⁸⁵ Curtis, *supra* note 80.

⁸⁶ *Id.* Curtis addresses concerns that the debris will simply go to other existing landfills that are similarly unsafe and located near residential areas, such as the Gentilly landfill.

IV. MATCHMAKERS FOR JUSTICE: A COMMUNITY EMPOWERMENT INITIATIVE

In reaction to the tragedy of Hurricane Katrina and the resulting social and legal upheaval, a group of law students formed the Student Hurricane Network.⁸⁷ Initially, the organization helped plan and execute student volunteer trips to the Gulf Coast for the winter break during the 2005-2006 school year. These efforts have grown into several initiatives, including a student lobbying project, a disaster preparedness project, a remote research project, and the pilot project that is the subject of this section: Matchmakers for Justice.⁸⁸

Matchmakers for Justice (Matchmakers) pairs residents displaced by Hurricane Katrina with law students from across the country⁸⁹ who assist them in rebuilding their lives. The project's goal is to help residents help themselves in the areas of housing, employment, education, and health care. Students and residents work together toward goals which allow residents to move back to New Orleans and re-establish some level of normalcy. Since the law students are not authorized to practice law, the main goals of the project are advocacy and community empowerment.⁹⁰ The six-week pilot project paired twenty-eight law students with twenty-eight displaced residents.

The overall structure of the project provides support for the law student-resident relationship and ensures that residents receive the best possible results from the project. Faculty advisors from students' law schools answered general questions about assisting the

⁸⁷ See LAILA HLAAS ET AL., LAW STUDENTS WORKING WITHIN THE POST-KATRINA LEGAL LANDSCAPE: THE STUDENT HURRICANE NETWORK ANNUAL REPORT 2005-2006 at 5-6 (2006), *available at* http://www.studenthurricanenetwork.org/shn_report_oct_%202006.pdf.

⁸⁸ *Id.* at 35. Janell Smith, Co-Author of this Article, is the Resident Outreach Coordinator of Matchmakers for Justice.

⁸⁹ Law students from the following schools participated in the six-week pilot project: American University School of Law, Florida State University School of Law, Georgetown Law School, Harvard Law School, Howard University School of Law, John Marshall Law School, Mississippi College School of Law, Paul M. Hebert Law Center at Louisiana State University, Seton Hall University School of Law, Southern University Law Center, South Texas College of Law, Texas Wesleyan School of Law, Tulane University School of Law, University of Baltimore Law School, UCLA School of Law, University of Colorado, Boulder School of Law, University of Florida School of Law, and the University of Houston Law Center. *Id.* at 35 n.109.

⁹⁰ See Press Release, Matchmakers for Justice, Matchmakers for Justice Provides Breakthrough Legal Resources for Residents Wronged by Katrina Failings (Sept. 11, 2006), *available at* http://www.studenthurricanenetwork.org/M4J_PressRelease9.11.06.doc.

residents, and members of a legal advisory board and a social work advisory board provided direction and resources during weekly conference calls with law students.⁹¹ The legal advisory board was comprised of legal services attorneys, directors of pro bono programs at various law schools, and other attorneys from non-profit organizations within the New Orleans community. The social work advisory board consisted of social workers from New Orleans community organizations. Together, seven law students, three legal advisory board members, and three social work advisory board members formed a “cluster group.” These weekly calls allowed students to troubleshoot residents’ issues and get feedback from professionals in the field with knowledge of New Orleans resources.

From the project’s official start on September 9, 2006, students connected with residents in a way that was unique and empowering. First, the students met facetoface with residents at a New Orleans training session, which gave students a comprehensive history of the socio-economic situation in New Orleans before the storm; counseled about how to interact with residents who face poverty and discrimination; and introduced the various local and state resources available. Second, for the duration of the pilot project, law students from all over the country communicated with residents by phone to help them navigate government programs and fill out paperwork. Third, the students gained the skills needed to work with future clients, especially just hearing clients’ needs and determining workable solutions. Importantly, each step of this process was orchestrated to allow residents to voice their needs and for law students to react to them.

A recent article in the Tulane University electronic newsletter highlighted one relationship between a first-year law student at Tulane University School of Law and a displaced resident:

It’s stressful because there is a lot I don’t know about civil procedure in Louisiana She has multi-faceted issues. I’m making phone calls and working to locate resources on her behalf. What surprises me the most is how some insurance companies

⁹¹ Matchmakers for Justice Community Partners include: Rhode Island Legal Services, New Orleans Legal Assistance Corporation (NOLAC), Loyola Law Clinic, NAACP, Southeast Legal Services, Law Offices of Colette Pichon Battle, The ProBono Project, Mississippi Center for Justice, People’s Institute for Survival and Beyond, Advocacy Project, The Louisiana Bar Association, ACRON, Common Ground, Hope House, Mercy Corps, Neighborhood Housing Services, New Orleans Musicians Hurricane Relief Fund, People’s Hurricane Relief Fund, People’s Organizing Committee, United Front for Affordable Housing, Unity for Homeless, Moving Forward Gulf Coast, Inc. as well as other local and national organizations. HCLASS ET AL, *supra* note 87, at 35 n.110.

are acting toward New Orleans residents. But, despite all their problems, the residents are optimistic.⁹²

This testimonial represents a majority of the student-resident interactions during the project's six-week duration. The students sometimes experienced challenges in meeting the needs of residents, but each used the support structure of the advisory boards and faculty advisors to address the issues of their individual residents.

The pilot project is currently in its evaluation stage and the program coordinators are working on fine-tuning it for a possible second phase. It is extremely important for coordinators to hear from the law students and residents to determine which parts of the project worked and which parts did not. Upon hearing the feedback on the project, the coordinators will make informed decisions on whether or not the project accomplished its goals of advocacy and empowerment. Ultimately, the coordinators would like residents to take over the program and help other residents to confront the issues that they face in the process of rebuilding. If residents actually play an active role in their own revitalization, then they will be empowered to help other residents to move forward from this tragedy.

V. LOOKING AHEAD: WORK TO BE DONE

Over a year after Katrina, current, former, and returning residents of New Orleans face a variety of problems in the long- and short-term. The goals of environmental justice encompass dealing with this array of needs—from adequate and affordable housing; to ensuring people's return to safe schools and homes; to wetlands restoration—and in the process, increasing community participation in political and corporate decision-making.⁹³

Short-term problems, such as finding transitional housing when FEMA assistance is no longer available, need immediate attention.⁹⁴ Organizations such as Common Ground Collective, Matchmakers for Justice, and the People's Hurricane Relief Fund Grassroots Legal Group are providing legal assistance and advocacy

⁹² Fran Simon, *Matchmakers for Justice*, THE NEW WAVE, October 24, 2006, http://www2.tulane.edu/article_news_details.cfm?ArticleID=6883.

⁹³ See Cole, *supra* note 16, at 641 (discussing the "holistic view" of "third-wave" environmentalists, who see "structural societal change as a way to alleviate many of the problems—poverty, crime, joblessness, environmental degradation—their communities endure").

⁹⁴ For information on legal campaigns regarding housing see, for example, Common Ground Collective, Legal Advocacy Team, <http://www.commongroundrelief.org/node/149> (last visited Dec. 1, 2006).

for individuals in collaboration with local legal aid providers, legal clinics at Loyola and Tulane University Schools of Law, and volunteers from around the country.⁹⁵ They are helping individuals contest insurance claim denials; fight evictions from both transitional and more permanent housing; counter police misconduct and brutality; and seek remedies for fraudulent or other bad practices by contractors.⁹⁶ Here, legal assistance provides a way to meet people's needs, as well as involve community members in the organizations' larger projects.

In the medium- and long-term, residents still seek a cleanup and rebuilding plan that provides for the needs of the community and the natural environment. NRDC and its local partners continue to monitor for toxic pollution and have completed an assessment of drinking water that will surely lead to further advocacy.⁹⁷ As demolition continues, NRDC is advocating for recycling and safe, efficient disposal of waste. Perhaps most importantly, the future rebuilding of New Orleans poses many issues in which advocates continually need to be involved. Community groups and tenant organizations are advocating to include affordable housing in the rebuilding plan and partnering with a Loyola law clinic to fight city efforts to shut down a large portion of the city's public housing.⁹⁸ Another looming question is how to prevent a similarly devastating flood from occurring; innovative wetlands restoration and protection must be a part of this plan.⁹⁹ In the meantime, local and international organizations are collaborating on efforts to use green building techniques whenever possible in the huge amount of construction necessary to rebuild New Orleans.¹⁰⁰

Although national media attention to the Gulf Coast area has diminished, local organizations and residents still need outside resources and support to complete their important work. The following recommendations—based on the experience of the authors, their mentors, and community partners, as well as the innovative work of many social justice lawyers¹⁰¹—provide some guidance to

⁹⁵ Common Ground Collective, Free Legal Clinic, <http://www.commongroundrelief.org> (last visited Dec. 1, 2006).

⁹⁶ *Id.*

⁹⁷ Results of study on file with author.

⁹⁸ See CommonGround.org, <http://www.commongroundrelief.org/node/149> (last visited Dec. 1, 2006).

⁹⁹ See, e.g., Cornelia Dean, *Corps Proposal for Gulf Draws Criticism From Scientists*, N.Y. TIMES, Dec. 19, 2006, at F2.

¹⁰⁰ See GlobalGreen.org, Healthy Homes and Smart Neighborhoods Response Team, <http://www.globalgreen.org/greenbuilding/neworleans/rebuild.html>.

¹⁰¹ See generally, Quigley, *supra* note 15; Cole, *supra* note 16; GERALD LOPEZ, REBEL-

attorneys and other advocates interested in joining the movement.

VI. LESSONS FOR ATTORNEYS AND OTHERS SEEKING TO EMPOWER COMMUNITIES

A. *Let Community Leaders Lead*

Local organizations and residents understand the social and political landscape of their communities, and they are personally affected by the problems they seek to address. Their goals should guide attorneys' work at each step.¹⁰² Projects must be structured in a way that facilitates community leadership, decision-making, and advocacy. Community members lacking the technical expertise of lawyers can participate fully—and more effectively—in non-legal advocacy. Further, attorneys must understand where community members are coming from and respect decisions that might differ from their advice. For example, people may mistrust government based on personal experience, and attorneys should acknowledge that mistrust, understand its causes, and keep it in mind when fashioning strategies.

B. *Organize, Organize, Organize*

When advocating outside the legal system, one of the greatest strengths communities have is numbers. Attorneys working with local organizations must be willing to bring in all concerned parties regardless of income or race. Developing new and creative partnerships is key: An environmental law attorney may not be used to working with labor organizations or church leaders, but these organizations represent a great number of people who share the interests. When reaching out to these organizations, however, attorneys should check in with the local community first to acknowledge and respect existing alliances or divisions. In addition,

LIOS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992); Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103 (1992).

¹⁰² See, e.g., ADVOC. FOR ENVTL. HUMAN RIGHTS, ET. AL., REBUILDING NEW ORLEANS: A TEN-POINT PLAN OF ACTION 1 (2005), available at http://www.nrdc.org/legislation/katrina/leg_06011001a.pdf. NRDC signed on to the Plan along with Advocates for Environmental Human Rights; Alliance for Healthy Homes; Deep South Center for Environmental Justice; Healthy Schools Network; Holy Cross Neighborhood Association; Interreligious Foundation for Community Organization/Pastors for Peace; Louisiana Environmental Action Network; National Black Environmental Justice Network; Natural Resources Defense Council; 9/11 Environmental Action; People's Hurricane Relief Fund; Physicians for Social Responsibility-Louisiana; and Sierra Club Delta Chapter. *Id.*

organizing puts a human face on the issues: Political entities and the media respond to human stories, not technical arguments. Working with people who are directly affected is also essential to community acceptance of the project's goals. Finally, attorneys accustomed to court rules and discovery schedules may become frustrated with ad hoc organizing methods.¹⁰³ Although this type of advocacy requires a longer-term commitment, attorneys can remain consistently involved throughout.

C. Use Non-Legal As Well As Legal Strategies

There are many advantages to non-legal remedies. Community empowerment is stronger when people are active in the advocacy. The media are just as, if not more, responsive to press releases, protests, and organizing as they are to legal action. Litigation is often costly and time-consuming, frustrating the more immediate needs and goals of the community. Since courts have not been open to environmental justice litigation, as non-legal avenues are often more likely to be successful.¹⁰⁴ In addition, non-legal solutions based on the neighborhood and its political structures are often more responsive to community needs than traditional legal action.

If legal action is part of the advocacy, attorneys should be open to structuring it in a non-traditional way to serve larger organizational goals. Within the limits of ethical obligations, for example, attorneys can time the filing of a lawsuit to correspond with other advocacy activities. Legal remedies should be one tool to solve intermediate problems, rather than the only tool in the advocacy plan. For example, legal advocacy at the administrative level may be the best way to get an extension on a community member's unemployment insurance or prevent an eviction, but a project should not be structured around the provision of those intermediate legal services.

CONCLUSION

This Article provides several examples of community empowerment and involvement in legal advocacy efforts after Hurricane Katrina in New Orleans. When legal and non-legal advocates collaborate with an involved citizenry, the community is empowered.

¹⁰³ See Quigley, *supra* note 15, at 475–76 (discussing attorneys' expectation that they can control interactions based on experience in a controlled courtroom environment).

¹⁰⁴ See *supra* Part.II.

The examples in this Article demonstrate how the horrific aftermath of Hurricane Katrina can be overcome through community partnership and collaboration. The issues facing Gulf Coast residents can become the issues of any community in the United States or elsewhere. We hope to encourage attorneys and other professionals to look beyond their professional community service requirements to more-involved work that not only serves the community, but also empowers the community, leading to social change.