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TRIAL BY WATER: REFLECTIONS ON SUPERSTORM SANDY

Thomas Maligno & Benjamin Rajotte***

I. INTRODUCTION

Superstorm Sandy devastated thousands of homes in some of the most densely populated areas of the country. It created extensive and diverse property losses in the Northeast, resulting in an unprecedented need for disaster recovery assistance in affected communities. As we pass the storm's two-and-a-half-year anniversary, complex challenges remain for many of these households. This article documents how one law school has responded. It reflects on how we have approached our educational and public interest missions throughout the recovery process, and how these experiences have shaped our views of the future.

Disasters know no boundaries, and coastal floods are not isolated events that simply inconvenience millionaires with beach houses. Major urban areas and population centers are facing increasing and in some cases, existential, flood risks.¹

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¹ See, e.g., U.S. ARMY CORPS. OF ENGINEERS, NORTH ATLANTIC COAST COMPREHENSIVE STUDY: RESILIENT ADAPTATION TO INCREASING RISK (Jan. 2015), *available at* www.nad.usace.army.mil/Portals/40/docs/NACCS/NACCS_main_report.pdf (“While the disastrous results of Sandy remain fresh in the North Atlantic coastal communities, we must continue with a clear focus on the storm-related science, community planning and other measures that can reduce the risks of natural disasters over the short-term and the long-term. As the storm recedes from memory, we should resist the temptation to return to ‘business as usual’ and remain focused on the ‘new normal’ of change that represents a responsible and effective response to the dynamic coastal environment. In the longer term, communities should pursue opportunities to reduce exposure to risks in coastal zones in ways that support improvements in economic, social, and environmental conditions (e.g., preparedness, resilience, and floodplain management). This report represents a start in the direction of the new paradigm that accounts for new and changing conditions—this will need the attention and commitment of public, private and commercial interests in order to succeed. We need to

continually improve our plans for climate preparedness and resilience in order to reduce vulnerability through adaptation to climate change.”); CLIMATE CENTRAL, WASHINGTON, D.C. AND THE SURGING SEA: A VULNERABILITY ASSESSMENT WITH PROJECTIONS FOR SEA LEVEL RISE AND COASTAL FLOOD RISK 7 (updated 2015), available at sealevel.climatecentral.org/uploads/ssrf/DC-Report.pdf, archived at <http://perma.cc/9V6P-BQYF> (“Sea levels are rising at an accelerating rate, and the scientific community is confident that global warming is the most important cause. Higher sea levels translate to more and higher coastal floods.”); Erika Spanger-Siegfried, Melanie Fitzpatrick & Kristina Dahl, *Encroaching Tides: How Sea Level Rise and Tidal Flooding Threaten U.S. East and Gulf Coast Communities Over the Next 30 Years*, UNION OF CONCERNED SCIENTISTS (Oct. 2014), www.ucsusa.org/global_warming/impacts/effects-of-tidal-flooding-and-sea-level-rise-east-coast-gulf-of-mexico#.VLF522TF9TM, archived at <http://perma.cc/9EZG-V23C> (“By 2045—within the lifetime of a 30-year mortgage—many coastal communities are expected to see roughly one foot of sea level rise. As that occurs, one-third of the 52 locations in our analysis would start to face tidal flooding more than 180 times a year, on average. And nine locations, including Atlantic City and Cape May, NJ, can expect to see tidal flooding 240 times or more per year. In this future, days without high-tide floods could start to become the exception in certain places. Without sensible preparation for these disruptions, conducting daily life in such flood-prone areas would become, at best, unreliable and, at worst, dangerous.”); Andrew Freedman, *D.C. Has Passed Sea Level Rise ‘Tipping Point,’ More Cities to Follow: Study*, MASHABLE (Dec. 20, 2014), mashable.com/2014/12/20/washington-dc-sea-level-rise/?utm_cid=mash-com-fbmain-link, archived at <http://perma.cc/X3R3-2UTC> (“[F]looding at high tides may become so common along the East Coast that ‘sections of coastal cities may flood so often they would become unusable in the near future.’”) (quoting *New Study Finds Steep Increase in East Coast High-Tide Floods*, UNION OF CONCERNED SCIENTISTS (Oct. 8, 2014), www.ucsusa.org/news/press_release/tidal-flooding-0437#.VJWW4cAC2A, archived at <http://perma.cc/X277-589Q>); William V. Sweet & Joseph Park, *From the Extreme to the Mean: Acceleration and Tipping Points of Coastal Inundation from Sea Level Rise*, EARTH’S FUTURE (2014), onlinelibrary.wiley.com/enhanced/doi/10.1002/2014EF000272, archived at <http://perma.cc/9QSR-MTXK> (“[W]e find that the majority of [analyzed] locations surpass a 30 days/year tipping point by 2050 except for locations with higher nuisance flood levels (e.g., Boston, St Petersburg, Galveston and Seattle).

Under the local 95% projection probability . . ., this tipping point is surpassed by the end of the next decade (2030). At all [analyzed] locations, the tipping points are surpassed much earlier than 2100—the date for which most global mean [sea level risk (SLR)] projections are formulated . . .”).

See also, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE: CLIMATE CHANGE 2014: IMPACTS, ADAPTATION, AND VULNERABILITY 17 (2014), available at www.ipcc.ch/report/ar5/wg2, archived at <http://perma.cc/P25A-25GU> (“Due to sea level rise projected throughout the 21st century and beyond, coastal systems and low-lying areas will increasingly experience adverse impacts such as submergence, coastal flooding, and coastal erosion (very high confidence). The population and assets projected to be exposed to coastal risks as well as human pressures on coastal ecosystems will increase significantly in the coming decades due to population growth, economic development, and urbanization (high confidence).”); *id.* at 555 (“The new IPCC estimates for global mean sea level rise are . . . between 26 and 98 cm by 2100; this is higher than the 18 to 59 cm projected in [the *Fourth Assessment Report of the Intergovernmental Panel on Climate Change (AR4)*]. Rising sea levels, the associated coastal and riverbank erosion, or flooding in conjunction with storm surge could have widespread effects on populations, property, and coastal vegetation and ecosystems, and present threats to commerce, business, and livelihoods. This is well

Floods “are the most common, and most costly, natural disaster.”² The Federal Emergency Management Agency (FEMA) estimates that nearly 40% of Americans live in counties with a coastal floodplain, including ocean and Great Lakes coastlines, and that many inland counties have bodies of water that present flood risks.³ These

illustrated by several large-scale recent disasters including Hurricane Sandy in the New York metropolitan region.”); ROYAL SOCIETY, RESILIENCE TO EXTREME WEATHER 7 (2014), available at royalsociety.org/policy/projects/resilience-extreme-weather, archived at <http://perma.cc/WL7U-N9ZJ> (“Globally, the risks from extreme weather are significant and increasing, mainly because larger numbers of people and their assets are being exposed to extreme weather. Many people are already highly vulnerable to the impacts. In the future, climate change will affect the frequency and severity of extreme events. Exactly how and where extremes will occur is not known but past trends can no longer be used to predict future extreme weather patterns.”); Sarah Adams-Schoen, *On the Waterfront: New York City’s Climate Change Adaptation and Mitigation Challenge (Part 1 of 2)*, 25 ENVTL. L. N.Y. 81, 83 (2014) (“Sea level in New York City has risen 1.1 feet since 1900, and we can predict that it will continue to rise, at an increasing pace. According to the most recent projections from the [New York City Panel on Climate Change], higher sea levels are ‘extremely likely,’ with projected sea level rises of as much as 2.5 feet by 2050. In addition to increasing the height of storm surges, sea level rise also causes dramatic losses in coastal wetlands, which buffer storm surges, thereby increasing exposure to flood damage as well as other harms such as saltwater intrusion into estuaries and drinking water supplies. Severe storms also result in further loss of coastal lands.”).

For an interesting study comparing Sandy to the more powerful Norfolk Long Island Hurricane of 1821, see SWISS REINSURANCE CO., THE BIG ONE: THE EAST COAST’S USD 100 BILLION HURRICANE EVENT (2014), available at big.assets.huffingtonpost.com/SwissReHurricanePaper.pdf, archived at <http://perma.cc/C5H6-J8QY>; see also KATE SHEPPARD, *Report Warns that Superstorm Sandy Was Not “The Big One”*, HUFFINGTON POST (SEPT. 18, 2014), www.huffingtonpost.com/2014/09/18/sandy-hurricane-damage-co_n_5842958.html, archived at <http://perma.cc/LC9G-HNM3> (last visited Mar. 28, 2015).

² FEMA, *What You Need To Know About Federal Disaster Assistance and National Flood Insurance*, www.fema.gov/media-library/assets/documents/12126 (last visited Dec. 22, 2014), archived at <http://perma.cc/5BUG-TNMB>; see also Aviva Abramovsky, *Insurance and the Flood*, in LAW AND RECOVERY FROM DISASTER: HURRICANE KATRINA 83, 83-84 (Robin Paul Malloy, ed., 2009) (discussing national flood risks); *infra* note 3 (same).

³ *Implementation of the Biggert-Waters Flood Insurance Reform Act of 2012: One Year After Enactment Before the S. Comm. on Banking, Housing & Urban Affairs, Subcomm. on Ec. Policy*, 113th Cong. (2013) (statement of Hon. Craig Fugate, Administrator, FEMA), available at www.dhs.gov/news/2013/09/18/written-testimony-fema-administrator-craig-fugate-senate-banking-housing-andurban, archived at <http://perma.cc/8VN2-ZTWD> (“About 40 percent of the U.S. population lives in counties that border the ocean or Great Lakes and are directly or indirectly affected by flood risk, and most U.S. counties contain rivers and streams that present flood hazards. Moreover 5.6 percent of the U.S. population lives in the highest risk coastal and riverine flood hazard areas, making flooding the most costly and prevalent natural risk in the United States. Additionally, sea level rise, climate change, urbanization and other factors may lead to even more Americans living in high flood risk areas in coming years.”); FEMA, *Coastal Flood Risks: Achieving Resilience Together*, www.fema.gov/coastal-flood-risks-achievingresilience-together (last visited Dec. 22, 2014),

risks expose large segments of the fabric of society, and the public interest is deeply encoded in the recovery process.

Part II of this article documents how Touro Law Center formed its Disaster Law Program, starting with a Sandy hotline that addressed a diverse set of legal and nonlegal inquiries in the weeks and months following the storm, and its expansion into a broader educational and public interest initiative. Part III discusses the role of legal-nonlegal coordination in the recovery process and their benefits to students, the groups involved, and affected communities. This builds the foundation for Part IV, which discusses our experiences in the recovery process and its multidimensional frameworks while expanding on the long-range need for nonprofit assistance.

This article concludes by recommending a comprehensive and in-depth policy-informing examination of our national approach to disasters, recovery, and resiliency, and its implications for the public interest. Lessons from Hurricane Katrina and those emerging from Sandy demonstrate why it is important to analyze these recoveries in a way that informs the policymaking process.⁴ For example, the report commissioned after Katrina's sweeping devastation was completed within approximately six months of when the storm made landfall.⁵ It was not designed to study long-range systemic challenges to recovery and resiliency.⁶ Rather, it provided an essential public lens for the

archived at <http://perma.cc/CBS9-DNML> ("Six of the top 10 most expensive natural disasters in our nation were caused by coastal storms. Using the 2010 census population counts, it has been determined that 39 percent of the U.S. population liv[es] in counties subject to significant coastal flooding during the 1-percent annual-chance flood event."); *see also* ANN-MARGARET ESNARD & ALKA SAPAT, *DISPLACED BY DISASTER: RECOVERY AND RESILIENCE IN A GLOBALIZING WORLD* 7 (2014) ("Rapid urbanization in coastal areas and increased development, along with a rise in the severity and frequency of natural and human-made disasters across the world, has increased the exposure of households and properties.").

⁴ *See, e.g.*, NAT'L COMM'N ON ENVTL. JUST. ON THE GULF COAST & THE LAWYERS' COMM. FOR CIVIL RIGHTS UNDER LAW, *PROTECTING VULNERABLE COASTAL COMMUNITIES: MEANINGFUL POLITICAL ACTION AND STRATEGIES FOR ENVIRONMENTAL JUSTICE AFTER HURRICANE KATRINA AND RITA*, at vi (2008), *available at* www.lawyerscommittee.org/admin/environmental_justice/documents/files/0001.pdf ("The Commission's recommendations are directed to both federal and state policymakers to take immediate action that would ensure greater protection for the Gulf Region and its residents. The Commission is also providing recommendations for grassroots organizations to strengthen their local advocacy."); *infra* note 75 (sample of legal scholarship).

⁵ H. REP. 109-377(2006) *available at* www.katrina.house.gov, *archived at* <http://perma.cc/DP9P-S9N6>.

⁶ *Id.* at ix (the report's scope included "(1) the development, coordination, and execution by local, State, and Federal authorities of emergency response plans and other activities in preparation for Hurricane Katrina; and (2) the local, State, and Federal government response to Hurricane Katrina" (quoting H. RES. 437 (2005))).

dramatic breakdowns that occurred before Katrina struck and in the days and weeks that followed. The challenges faced by communities and households in the years afterward were still to unravel. Sandy, Katrina, and other disasters offer windows into the future as much as their study may benefit efforts to promote recovery and resiliency now. It is crucial to deepen our understanding of what terms like resilience and a fair and sustainable recovery mean in practice. These concepts lack meaning without grounding in the communities and lives that they touch.

When our Disaster Relief Clinic began representing clients starting three months after Sandy, seniors who had lost their homes in the storm would come to the law school seeking help with their flood insurance claims. Time and again, they would lay pictures of the devastation on our conference room table and weep. We have seen cases in which water damage was not adequately documented by insurance adjusters or addressed by contractors, leading to harmful levels of mold growing within new construction, compromising health, and adding to rebuilding costs. This affects an untold number of households, including those most vulnerable to such health risks, and it is only one dimension to the recovery challenges that these and other households face. We have found children and elderly individuals living in mold-infested homes or unsafe structures. We have witnessed asbestos siding dangling off of houses two years after the storm. Some households are facing administrative recoupment actions in an effort to reclaim grant proceeds, such as rental assistance, awarded in the storm's aftermath and spent long ago on essential recovery demands. We represent a displaced Sandy survivor with meticulously organized paperwork kept neatly inside a box, which is so travel-worn from being carted around to every place that he has been directed and redirected that it has become more duct tape than cardboard. We represent another with a home that is elevated on an improperly reconstructed foundation and in such disrepair from substandard contractor work that wires are exposed, and animals are now living in the home. The couple remains displaced, and the current calculus is that their best option, even with a full insurance recovery at this point, would be to sell the property.

We have counseled households whose insurance claims were paid far below what reputable contractors would charge for necessary repairs and replacements, after faithfully paying their premiums and mortgages for years and never filing a claim until Sandy. We represent

displaced elderly clients for whom there is a real possibility that they will never return to a permanent home. Contractor disputes present a major ongoing set of issues. In part, because housing costs were already high in the Sandy-affected region, we have seen working families with mortgages and outstanding losses that amount to half a million dollars of debt for modest homes, and often more. It is hard to imagine how they can be expected to pay that down and plan for retirement or their children's education. We have seen how Sandy can contribute to the risk of foreclosure, which was already at crisis levels and presenting access-to-justice problems before the storm.⁷ The overwhelming majority of our clients never had a flood loss before Sandy or, in some cases, Hurricane Irene the year beforehand. Like millions of Americans, their communities were often planned and built before the risks of a changing climate were assessed or regulated through zoning codes or other land use controls, to say nothing of the fact that flood risks are encroaching deeper into coastal areas, among them parts of New York City itself.

These are just some examples of longer-term needs for recovery assistance. For every matter in which we provide representation, there are orders of magnitude of others without such access to legal services, yet their hardships are no less complex or compelling. This orientation to the lives of honest, hardworking people is what we mean when we call for a reconceptualization of national policy, including federal, state, regional, and local dimensions, that advances sensible solutions. There are no simple or perfect approaches, and we are increasingly coming to grips with the sobering reality that climate change will be disruptive in even the most optimal, or "best case," of scenarios. This helps explain why it is so imperative to analyze the essential connections between disasters, recovery, and resiliency with the broader picture of climate change mitigation and adaptation in mind, in order to promote solutions that are financially, environmentally, and socially acceptable. Constructive approaches that draw from experience and best practices, and which productively harness public-private-nonprofit/community resources,

⁷ See, e.g., EMPIRE JUST. CTR., *THE LONG ISLAND FORECLOSURE CRISIS: STABILIZING THE COMMUNITIES MOST IMPACTED BY FORECLOSURES IN NASSAU AND SUFFOLK COUNTIES 2* (2013), available at www.empirejustice.org/assets/pdf/publications/reports/li-foreclosure-report-42013/li-foreclosure-report-exec.pdf ("In the first half of 2012, 159, 357 90-Day PreForeclosure Filing (PFF) Notices were sent in New York State: 25.7% (40,915) on Long Island . . . ; 27.1% in NYC; 47.2% in the rest of state.").

are necessary if we are to address the enormity of climate disruption and flood risks to which millions of Americans are exposed, and the critical threats that they pose to communities, society, and our national interests.

II. BUILDING A DISASTER LAW PROGRAM

Touro's Disaster Law Program began to take shape three days after Sandy with the start of the law school's hotline for Sandy-affected households on Long Island. It was the vision of Dean Patricia Salkin that the institution play a special role in the response and the longer-range recovery process. In the days and weeks following the storm, many Long Islanders had no electricity and thus no heat or hot water. Class was suspended for over a week because, in addition to this lack of power, the metropolitan transportation system was severely disrupted. There were multi-hour waits to buy gasoline, and often no gas stations were open. Students lost cars, clothing, computers, and books. Despite this devastation, the school community filled the auditorium with donated clothing, food, water, blankets, and gift cards. Law school personnel and the student bar association funded a preexisting nonprofit named the Tender Loving Care Community Fund (TLC) in order to assist students with emergency needs.

The hotline was housed in Touro's William Randolph Hearst Public Advocacy Center (PAC)⁸ and staffed and aided by faculty, administration, staff, students, recent law graduates fresh from the summer bar exam, and attorney volunteers.⁹ Jack Evans, PAC Staff Attorney, addressed the significant need for Sandy-related landlord-

⁸ The law school had previously created the PAC in order to have a positive impact on social justice, legal training, and the lives of individuals in and beyond the local community. The PAC occupies a separate wing of the law school and provides furnished offices to local nonprofits that mentor Touro law students in these organizations' advocacy, research, and client relations. Students work with these organizations in order to satisfy their pro bono requirements while developing an understanding of the problems facing the local communities. See generally *William Randolph Hearst Public Advocacy Center (PAC)*, TOURO LAW CTR., www.tourolaw.edu/PublicServiceInitiatives/?pageid=150 (last visited Mar. 16, 2015), archived at <http://perma.cc/UDC3-U4JP>.

⁹ Faculty including Lynne Adair Kramer, Marianne Artusio, Eileen Kaufman, Tracy McGaugh Norton, Patricia Rooney, and Rena Sepowitz, administration including Linda Baurle, Paula Kutch, Kenneth Rosenblum, and Margaret Williams, and Gould Law Library staff including Irene Crisci worked with the hotline. Linda Howard Weissman and Patricia Desrochers provided public communications that spread the message about our program to affected communities and media and advancement essential to the program's funding.

tenant advocacy. Michael Aronowsky and Therese Ebarb joined the hotline as attorney volunteers and remained active with the clinical program through the storm's one-year anniversary. The Young Lawyers Division of the American Bar Association (ABA),¹⁰ as well as the Nassau County,¹¹ Suffolk County,¹² and New York State¹³ Bar Associations, assisted with the recruitment and training of volunteers. A large body of students responded to the call for assistance, despite their own crises and the demands that they faced in making up for the lost time in their coursework.

The hotline received hundreds of calls in the months following Sandy. They reflected the gravity of a catastrophic storm in which lives were lost.¹⁴ In the days and weeks that followed, we received calls on a wide variety of issues, not all of which were legal. Many of the initial calls concerned the basics of life, including where to obtain shelter, food, and medical attention, and it became necessary to train our hotline on how to respond. Fortunately, the law school already had

¹⁰ *Young Lawyers Division*, AM. BAR ASS'N, www.americanbar.org/groups/young_lawyers.html (last visited Dec. 22, 2014), *archived at* <http://perma.cc/9SVN-S2YE>.

¹¹ NASSAU COUNTY BAR ASS'N, www.nassaubar.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/2SEE-PTJ2>.

¹² SUFFOLK COUNTY BAR ASS'N, www.scba.org/eva/index.php (last visited Dec. 22, 2014), *archived at* <http://perma.cc/5SB5-MCED>.

¹³ N.Y. STATE BAR ASS'N, www.nysba.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/FPF9-FKGP>.

¹⁴ Mary Casey-Lockyer et al., *Deaths Associated with Hurricane Sandy— October— November 2012*, MORBIDITY & MORTALITY WEEKLY REP. 393-97 (May 24, 2013), www.cdc.gov/mmwr/preview/mmwrhtml/mm6220a1.htm (last visited Dec. 22, 2014), *archived at* <http://perma.cc/4UKU-NMQF> (referencing “117 hurricane-related deaths captured by American Red Cross . . . mortality tracking” domestically, subject to reporting limitations, meaning that “the cases presented in this report are likely to be actual cases but are unlikely to include all Sandy-related deaths”). As stated in an editorial note in the publication of the Centers for Disease Control and Prevention cited above:

The “perfect storm” weather conditions of Hurricane Sandy resulted in extensive damage to infrastructure and large flood zones. The direct and indirect impacts of the storm led to challenging, and sometimes deadly, conditions for residents, including prolonged power outages, storm surges, and disrupted services. More than half (51.3%) of deaths from Sandy occurred within the first 2 days of the storm, and the most common cause of death was drowning. Approximately half of the drowning deaths were in flooded homes located in areas that were under mandatory evacuation orders as of October 28, 2012, the day before Sandy's landfall.

Id. CNN has reported that, “[a]s a hurricane and post-tropical cyclone, Sandy is responsible for 117 deaths in the United States and 69 more in Canada and the Caribbean.” *Hurricane Sandy Fast Facts*, CNN (Nov. 5, 2014), www.cnn.com/2013/07/13/world/americas/hurricane-sandy-fast-facts, *archived at* <http://perma.cc/9DFJ-VH8N>.

good working relationships with our local emergency response organizations, government agencies, and community groups, and was a member of the Long Island Volunteer Organizations Active in Disaster (LIVOAD).¹⁵ For a number of years before the storm, our students had been a part of the national Student Hurricane Network,¹⁶ through which they volunteered in the Gulf Coast to provide legal services to Katrina survivors.¹⁷ Although this national group had since dissolved, it influenced the institution's will to be involved in the Sandy recovery. Alumni including Ray Malone and Michael DeTrano, leaders in our Student Hurricane Network, returned to become consistent volunteers with the hotline.¹⁸

We already had many nonprofits in the building as PAC tenants, and connections with others as affiliates,¹⁹ which helped make the PAC a logical place for the nonprofit and legal community to come together. Altogether, this groundwork was valuable in harnessing a concerted response to Sandy's destruction with government agencies, communities, and nonprofits like the American Red Cross,²⁰ the United Way of Long Island,²¹ and the Health and Welfare Council of

¹⁵ *Disaster Recovery | LIVOAD*, HEALTH & WELFARE COUNCIL OF LONG ISLAND, www.hwcli.com/?PageID=601 (last visited Dec. 22, 2014), *archived at* <http://perma.cc/6VLC-6DJ7> [hereinafter *LIVOAD*].

¹⁶ *Welcome to the Student Hurricane Network*, STUDENT HURRICANE NETWORK, www.studentjustice.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/7M4D-2J9H>.

¹⁷ The Student Hurricane Network had been "a national network of law students dedicated to advancing the cause of social justice in communities affected by Hurricanes Katrina and Rita by coordinating volunteer efforts, aiding public interest organizations, and educating members of the legal community about legal crises in the region." *About the Student Hurricane Network: Mission Statement*, STUDENT HURRICANE NETWORK, www.studentjustice.org/about (last visited Dec. 22, 2014), *archived at* <http://perma.cc/NW5Y-THG5>.

¹⁸ Both Ray and Mike expressed that their experiences volunteering with the Student Hurricane Network were motivators for their decision to volunteer with the hotline. Ray was an early leader of the Student Hurricane Network, and Mike played a huge role with the hotline for over six months after the storm. We also had a number of regular volunteers from the Nassau and Suffolk County Bar Associations who committed to helping the hotline in the weeks following the storm to address the significant call volume.

¹⁹ Because of the demand by nonprofits wanting to be a member of the PAC, we have also created affiliate members. These members enjoy many of the same benefits of PAC tenants and are an important part of our community, although they are not housed within the law school. For example, they work with our students and attend PAC meetings to discuss legal issues and strategy.

²⁰ AM. RED CROSS, www.redcross.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/72XZ-D7HT>.

²¹ UNITED WAY OF LONG ISLAND, www.unitedwayli.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/P6DH-75TV>.

Long Island (HWCLI).²² HWCLI staff hosted teleconferences bringing disaster responders together in the weeks and months after the storm, including regular teleconferences to coordinate the response. This coordination alerted our hotline to the information necessary to address emergency inquiries. It also led Touro to create a subgroup of Long Island legal services providers.

The weeks and months following the storm involved a constant thrum of activity, and requests for longer-term assistance were growing. The Disaster Relief Clinic launched approximately three months after Sandy made landfall with seed funding from Martin and Reva Oliner²³ and critical early grant support from the Robin Hood Foundation, the Long Island Community Foundation (LICF),²⁴ and the United Way of Long Island. Our Disaster Law Program has continued with grant support from these organizations, in addition to the Rauch Foundation,²⁵ the New York Bar Foundation,²⁶ the New York Community Trust,²⁷ Sullivan & Cromwell,²⁸ faculty contributions,²⁹ and a Social Services Block Grant.³⁰

From early on, legal problems ranged widely across several practice areas.³¹ They presented as disputes with landlords, insurance

²² HEALTH & WELFARE COUNCIL OF LONG ISLAND, www.hwcli.com (last visited Dec. 22, 2014), *archived at* <http://perma.cc/9P4G-3G3H>.

²³ *See Disaster Relief Clinic Starts at Touro Law*, TOURO LAW CTR. (Jan. 31, 2013), www.tourolaw.edu/News/NewsDetails.aspx?id=157. Martin Oliner serves as Mayor of the Village of Lawrence, New York and is a member of the Touro College Board of Trustees.

²⁴ ROBIN HOOD FOUND., www.robinhood.org (last visited Dec. 22, 2014), *archived at* <https://perma.cc/596N-Y6RA>.

²⁵ RAUCH FOUND., www.rauchfoundation.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/J83J-H3DJ>.

²⁶ N.Y. BAR FOUND., www.tnybf.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/WZQ3-Y2QX>.

²⁷ N.Y. CMTY. TRUST, www.nycommunitytrust.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/9UYX-BN9W>.

²⁸ SULLIVAN & CROMWELL LLP, www.sullcrom.com (last visited Dec. 22, 2014), *archived at* <http://perma.cc/FJK3-EKQ5>.

²⁹ Special thanks are owed to Samuel Levine.

³⁰ *Social Services Block Grant Program (SSBG)*, OFFICE OF CMTY. SERVS., OFFICE OF ADMIN. OF CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., www.acf.hhs.gov/programs/ocs/programs/ssbg (last visited Dec. 22, 2014), *archived at* <http://perma.cc/V5J3-ZCP7>.

³¹ For additional information about Sandy legal issues with which legal services providers have assisted, *see* LEGAL SERVICES NYC, DISASTER RELIEF LEGAL ASSISTANCE MANUAL (2012), available at www.legalservicesnyc.org/storage/lsny/PDFs/disaster%20relief%C20legal%C20assistance%C20manual%12-20.pdf, *archived at* <http://perma.cc/J8M3-CRVA>; MCCARTER & ENGLISH, LLP, HANDBOOK FOR VICTIMS OF SUPERSTORM SANDY, ME1 14406813v.4 (2013), *available*

carriers, contractors, utilities, and mortgage banks/servicers,³² as well as employment/unemployment issues, education-related issues for children displaced from schools, denials of public benefits including healthcare, pollution from dislodged heating oil tanks, gasoline releases from submerged cars, sewer line backups into basements and collapsing cesspools, disputes over uprooted trees or the erosion of bulkheads or other forms of lateral support, and requests for assistance involving FEMA programs. These FEMA programs included the Transitional Shelter Assistance (TSA) program,³³ which involves payments to hotels/motels intended to address pressing housing needs for qualifying applicants, and the Individuals and Households Program (IHP), which provided up to \$31,900 (as of the time of Sandy) in grant-based assistance to qualifying applicants for unmet needs, such as rental assistance and uninsured damage to housing and personal property.³⁴ Oftentimes, households presented many of these issues in succession or all at once, as well as additional dimensions, including issues of disability rights, elder law, social services, and psychosocial dimensions.³⁵

at www.mccarter.com/files/uploads/documents/website/sandyhandbook_2013.pdf, archived at <http://perma.cc/Q5YK-N3N8>; see also KATRINA LEGAL RELIEF, HURRICANE KATRINA: LEGAL ISSUES (2006), available at law.olemiss.edu/assets/katrina_manual.pdf, archived at <http://perma.cc/NPZ5-EKHC> (authored by organizations including the University of Mississippi Civil Legal Clinic, the Clinical Legal Education Association, and the Association of American Law Schools Section on Clinical Legal Education).

³² See, e.g., Jordan Ballard et al., *Natural Disasters, Access to Justice, and Legal Services*, 17 C.U.N.Y. L. REV. 1, 28-29 (2013) (discussing how mortgage banks/servicers have held back insurance proceeds for Sandy losses and damage).

³³ See *Transitional Shelter Assistance Fact Sheet*, FEMA (Feb. 19, 2015), www.fema.gov/public-assistance-local-state-tribal-and-non-profit/recoverydirector/transition-shelter (last visited Mar. 28, 2015), archived at <https://perma.cc/L2ZV-R8S9>.

³⁴ See FEMA, *HELP AFTER A DISASTER* 545 (2008), available at www.fema.gov/pdf/assistance/process/help_after_disaster_english.pdf, archived at <http://perma.cc/QBK5-RPSS>.

³⁵ Ongoing trauma following a disaster is a serious consideration. “Responding to a disaster is not just about treating physical injuries—it is also about healing psychological wounds.” Jean-Luc Martinage, *Post-Disaster Psychosocial Support an Obligation, Not an Option*, INT’L FED’N OF RED CROSS & RED CRESCENT SOCIETIES (Jul. 21, 2009), www.ifrc.org/fr/nouvelles/nouvelles/common/ifrc-post-disaster-psychosocial-support-an-obligation-not-an-option (last visited Dec. 22, 2014), archived at <http://perma.cc/LY9G-V5F9>.

For additional information about disaster-related psychosocial support, see *Psychosocial Support*, INT’L FED’N OF RED CROSS & RED CRESCENT SOCIETIES, www.ifrc.org/en/what-we-do/health/psychosocial-support (last visited Dec. 22, 2014), archived at <http://perma.cc/ZV2J-GM8N>.

There were heartbreaking issues involving domestic abuse or neglect and families in conflict over title or obligations for severely damaged homes. We have handled matters in which elderly life estate holders were left with large gaps in rebuilding costs, and resulting disputes with remaindermen, who were sometimes family members. We have talked with individuals who shared a title with family members but were unable to reach agreement over items as basic as signing paperwork necessary for available grant assistance. We have counseled households through the heartache of losing their possessions, the sanctity of their homes, and the fabric of their communities, and through the vulnerability, disempowerment, and uncertainty concerning what lay ahead.

The clinic initially took cases referred by the hotline, and on an ongoing basis, it provided information and handled matters received through direct calls to the faculty director's telephone line, which was fueled primarily through publicity about the clinic and nonprofits and community groups. The clinic and hotline worked closely together on these issues and began to consolidate in the summer. Their merger ensured consistency, allowed for an economy of scale, and consolidated Sandy-related intake into one data management system. Shortly after the one-year anniversary, we generally embraced a walk-in clinic model for intake. Under this model, we met with individuals one-on-one at regular times that ran into the evening for working households. This model served as an effective basis for training students on interviewing and counseling, building rapport, and assessing new matters for limited- or full-scope legal services.³⁶ With the addition of two full-time staff attorneys in April and May 2014, Daniel Strafer and Melissa Luckman respectively, we transitioned to scheduling appointments for households at various times throughout the week.

The hotline cemented the law school's role in the recovery and led to the creation of our Disaster Law Program, which brings together the personnel and resources of our Disaster Relief Clinic and PAC, as well as our Land Use and Sustainable Development Law Institute, with its focus on resilient land use planning. This program was made possible after Sandy by Dean Salkin and co-author Thomas Maligno, Executive Director of the PAC and Director of Public Interest. When the clinic started three months later with co-author Benjamin Rajotte

³⁶ See Part IV.B.

as its faculty director and sole attorney, it benefitted greatly from the law school's experience in the preceding three months, in addition to the goodwill that the institution had engendered before the storm. Since Sandy, the clinic has grown to include the two full-time staff attorneys mentioned above, and well over 100 students have taken part in our program. This includes up to ten Touro law students each semester in the clinic, as well as resident students fulfilling pro bono requirements, and visiting students.

While we, of course, appreciated the value of clinical education from the beginning, we did not anticipate the abundance of teaching opportunities that have presented themselves over the past two and a half years.³⁷ Students have worked with a high volume of households in turmoil and learned what it means to be a counselor and advisor in the full dimensions of those terms.³⁸ Their work generally falls into four models: (1) full-scope legal services often continuing over multiple semesters, such as federal litigation involving flood insurance disputes; (2) limited-scope arrangements that may start and stop within the semester, such as certain disputes with contractors; (3) meetings and consultations that provide information and assistance but may not lead to representation; and (4) research projects related to representation or promoting systemic reform.³⁹ This spectrum of work--from intake-level interviewing and counseling, to short-term and long-term advocacy models--has provided students with a wide range of learning experiences and teaching moments.⁴⁰ The

³⁷ We wish to acknowledge Myra Berman, Associate Dean for Experiential Learning, for advancing the learning opportunities that our program provides.

³⁸ See N.Y. R. OF PROF'L CONDUCT R. 2.1 ("In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, psychological, and political factors that may be relevant . . ."); MODEL RULES OF PROF'L CONDUCT R. 2.1 (same but omitting reference to psychological factors).

³⁹ See Part IV.B.

⁴⁰ We wholeheartedly agree with the position, however, that these experiences can be just as rich and genuine when students are focused on taking on aspects of matters that, reflecting features of the recovery itself, do not respect the academic calendar. See Nancy M. Maurer, *Handling Big Cases in Law School Clinics, or Lessons from My Clinic Sabbatical*, 9 CLINICAL L. REV. 879, 882 (2003) ("The unique benefits of handling big cases in law school clinics are many. First, handling big cases inspires faculty development and learning which in turn leads to better teaching. Second, participation in such cases under the supervision of an enthusiastic clinic faculty enhances student learning. Third, because of the long term nature of such cases, both faculty and students have the opportunity to get to know our clients better as individuals rather than as problems or disabilities. Fourth, since big cases typically require students to work with each other as well as with faculty, students are exposed to a collaborative learning process. Fifth, the community receives a public service benefit from such pro bono assistance, which may not otherwise be available from the private bar. Finally, the law school also

consequences of failing to adequately translate complicated insurance deadlines at a walk-in clinic, for instance, served as a highly effective tool for instilling what it means to be “diligent in practice.” This is an important concept that touches everything we do because it forces students to grapple with the seriousness of their work and the importance of doing it well. The pros and cons associated with different strategies have led to important teaching moments about informed consent. Students have developed and exercised judgment by interviewing and counseling households in distress, pinpointing the relevant sections and deciphering meaning from large volumes of paperwork, and taking part in negotiations and civil and administrative practice.⁴¹

Acting swiftly and strategically to address the changing demands of a complex recovery process has supplied a kind of vibrancy like what Paul Reingold has described as “serendipity”:

In my experience, as a rule, the very best teaching material emerges from the cases unpredictably, its roots traced not to the substantive law, and not to the degree of complexity of the case, but to happenstance. This chanciness is one of the joys of working in a real-client clinic, where the hit or miss of practice provides the vehicle for teaching. We never know what issues will arise from day to day, and at almost every point we are willing to chuck the “lesson plan” and go

satisfies its commitment to the community and derives public relations benefits through such representation.”); Paul D. Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLINICAL L. REV. 545, 546-47 (1996) (advocating a model that is unafraid of taking on matters that are “likely to outlive (figuratively if not literally) the students”).

See also Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 CLINICAL L. REV. 39, 50 (2013) (describing the issue as: “Some clinicians assert that such cases have no place in clinical education because students cannot take full ownership of their work given the complexity and protracted nature of complex litigation. Other clinicians state that long-term matters offer unique benefits for students and for clinical programs, benefits that can only come from involvement in the most sophisticated complex litigation practice.”); Meredith J. Ross, *A “Systems” Approach to Clinical Legal Education*, 13 CLINICAL L. REV. 779, 806 n.8 (2007) (summarizing the issue with citation to additional sources).

⁴¹ See, e.g., Jayashri Srikantiah & Janet Martinez, *Applying Negotiations Pedagogy to Clinical Teaching: Tools for Institutional Client Representation in Law School Clinics*, 21 CLINICAL L. REV. 283, 291 & n.8 (2014) (discussing the connection between clinical problem-solving and the exercise of judgment); Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm into the Clinical Setting*, 11 CLINICAL L. REV. 15, 47 (2004) (discussing the role of clinical education in “enhanc[ing] our students’ ability to exercise ethical and socially responsible lawyering judgment”).

with what is presented by the cases. We tend to teach from the material; we take what it gives, and we run with it as far as we can.⁴²

A disaster law clinic at a law school with a student body drawing from affected communities has an added benefit of strong student appeal, and it can create a powerful outlet for reflecting on matters of justice. As described by a former clinic student: “As a Hurricane Sandy survivor--my house lost one wall of its foundation and was flooded with 6 feet of water--I was able to help other [households] . . . It was so rewarding because by giving people even a little advice, we made their lives so much easier.”⁴³ The administrative dimensions to the recovery, moreover, have canvassed much of co-author Rajotte’s Administrative Law syllabus. This has provided entry points for students to discover the prevalence and wonder of administrative law and policy, through a working environment in which they engage with staff to elected officials and agencies, media, social services providers, legal services providers, households, and the courts, and it has spurred their critical thinking about how theory and public-minded goals translate into practice.

III. NONPROFIT LEGAL-NONLEGAL COORDINATION

We have spoken with a diverse array of people and groups from all walks of life. We have consulted with and learned from private bar attorneys handling insurance disputes, pro bono coordinators at large law firms, nonprofits active in the recovery or related consumer issues, such as United Policyholders,⁴⁴ other Sandy legal services providers, community groups, and lawyers involved in the recovery from Katrina⁴⁵ and other disasters, in order to discuss shared issues and strategies. For example, we have worked with United Policyholders and Staten Island Legal Services⁴⁶ in order to provide public education

⁴² Reingold, *supra* note 40, at 550.

⁴³ Margot Slade, *Law Student Limelight: Touro Law’s Alanna McGovern*, LAWDRAGON (Dec. 21, 2014), campus.lawdragon.com/2014/12/21/law-studentlimelight-alanna-mcgovern-touro-university-law-center (last visited Dec. 22, 2014), *archived at* <http://perma.cc/Z2SY-TVAU>

⁴⁴ UNITED POLICYHOLDERS, www.uphelp.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/JT8D-JFCC>.

⁴⁵ We wish to thank Davida Finger, Loyola University New Orleans College of Law.

⁴⁶ STATEN ISLAND LEGAL SERVS., www.statenislandlegalservices.org (last visited Apr. 22, 2015).

and online training sessions for nonprofits in New York and New Jersey. We regularly discuss with our nonprofit legal and nonlegal colleagues in both states the evolving spectrum of recovery issues and strategies for approaching them, as well as the need for new and renewed avenues for grant funding.

In terms of the day-to-day delivery of legal services, we coordinate with nonprofits providing Disaster Case Management services through a Disaster Case Management Program (DCMP).⁴⁷ Disaster case managers (DCMs) work with disaster survivors in order to help develop and implement recovery plans, which are achieved through a range of social services and other nonlegal practical assistance to affected households, such as information and referrals, access to emergency financial assistance and longer-term charitable and public assistance, and periodic home visits. For instance, DCMs help identify and pursue avenues for charitable work, such as debris removal, and mold remediation, as well as financial assistance. Examples include helping complete FEMA TSA and IHP applications, IHP appeals, and paperwork involved in the state and local administration of the U.S. Department of Housing and Urban Development's (HUD's) Community Development Block Grant-Disaster Recovery (CDBG-DR) program.⁴⁸ Additionally, they present cases to the Unmet Needs Roundtable,⁴⁹ a nonprofit consortium dispensing charitable funds to fill crucial recovery gaps.⁵⁰

⁴⁷ See *Disaster Case Management Fact Sheet*, FEMA (Apr. 2014), www.fema.gov/media-library-data/1400186513405-1e9c8c2fb88eb30d399d0e1345c56885/FactSheet%20DCM%20-%20April%202014.pdf, archived at <http://perma.cc/K9RN-CHHH>.

⁴⁸ See HUD Exchange, *Community Development Block Grant Disaster Recovery Program*, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT (2014), www.hudexchange.info/cdbg-dr (last visited Dec. 22, 2014), archived at <https://perma.cc/D2DC-7AXK>.

⁴⁹ UNMET NEEDS ROUNDTABLE, www.unmetneedsroundtable.org (last visited Dec. 22, 2014), archived at <http://perma.cc/YZ3M-DFEF>.

⁵⁰ As described by HWCLI:

Additionally, HWCLI, the United Way of Long Island and other agencies across Long Island [have initiated] a Long Island Hurricane Sandy Unmet Needs Roundtable to help community members hardest hit by the disaster. This tool, frequently used after federally declared disasters, connects donors with storm victim cases in which all other means of assistance have been exhausted.

In this model, trained case workers present selected cases to a round table of funders, who then determine whether they will meet the expressed needs based on predetermined criteria. Any funding provided by the donors goes directly to whatever vendor can meet the need—for example, a contractor or a landlord—ensuring a transparent system for aid.

DCMs help thousands of households in working through the trauma of the disaster and the stressors and practicalities that have followed, obtaining and parsing through complicated paperwork, identifying alternative housing options, and addressing critical aspects of recovery programs. DCMs from various organizations have referred clients to us, and they have sought our input on legal issues that can arise in addition to the many practical aspects of the recovery that DCMs handle without the need for legal intervention. Examples include their work in getting an insurance claim file, helping a client understand aspects of an insurance adjustment that estimates the client's loss and damages on a room-by-room basis and interfacing with government agencies and contractors. These examples reveal the often complimentary but differently oriented roles of DCMs relative to legal services providers. To paraphrase former hotline volunteer and staff attorney Michael Aronowsky, who was pivotal in building our hotline and clinical program from early on after forty years in practice, there is almost always a practical dimension to these problems.

We adopted an office-sharing arrangement with FECS Health & Human Services (FECS),⁵¹ a nonprofit organization that was deeply involved in the storm recovery process on Long Island, whose DCMP has since become part of Catholic Charities.⁵² Through this arrangement, a FECS (now Catholic Charities) DCM, Christina Lipski, is located onsite at the law school. Our work with Christina and other DCMs has helped us to learn more about various aspects of the recovery process while focusing on issues that require legal knowledge and skill. There are also areas of expertise and strategies that lawyers need not undertake alone, and coordinating with nonlegal services providers, as well as community groups, can provide a more

LIVOAD, *supra* note 15; *see also* HEALTH & WELFARE COUNCIL OF LONG ISLAND, TWO YEARS AFTER SUPERSTORM SANDY: A LONG-TERM RECOVERY 6 (2014), *available at* www.hwcli.com/documents/709.pdf, *archived at* <http://perma.cc/3Q7A-2YQ8> (“To continue to respond to the changing needs of Sandy survivors, the Long Island Unmet Needs Roundtable, in partnership with the Community Development Corporation of Long Island, has established a bridge loan fund for homeowners whose rebuilding projects are stalled while they await the release of funds they have been awarded by other assistance programs. This ensures maximization of resources and avoids duplication of benefits. The Roundtable provides additional support to bridge loan clients by helping meet needs not covered by other means—for example, home contents, credit card debt and mortgage arrears.”).

⁵¹ FEDERATION EMPLOYMENT & GUIDANCE SERVICE (FECS), www.fecs.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/VH8W-M7TZ>.

⁵² CATHOLIC CHARITIES, www.catholiccharitiesny.org (last visited Mar. 28, 2015), *archived at* <http://perma.cc/EJZ6-JPY8>.

holistic model that synergistically improves both the process and outcomes. Our work with community groups and the greater nonprofit community has enhanced our collective competence and diligence, as well as our legitimacy with affected communities. This approach has helped us avoid the counterintuitive trap of well-meaning lawyers effectively disempowering the community.⁵³

Pedagogically, this has demonstrated the multifaceted and interrelated roles that different actors may play in achieving client objectives. In addition to working directly with affected households, working with nonlawyers has been a vehicle for helping students identify the human and policy dimensions of legal issues, frame objectives more expansively beyond purely legal contexts, and partake in multidisciplinary interactions that can influence their thinking on issues of law and policy. For survivors, the ongoing coordination of DCMs and legal services providers has enabled them to work through problems more efficiently with greater resources.

For example, a Sandy survivor called the hotline in poor health as a result of living in her truck with a disability after being displaced from her trailer. FEMA had denied her IHP application to repair or replace the trailer, which she had been living in before Sandy because she lacked acceptable proof of ownership. Problematically, the trailer had been gifted to her more than a decade ago from a friend, who had found it abandoned on her property. It was significantly damaged and contaminated with mold. She called the hotline two days before the blizzard that hit the Northeast in February 2013, informing us that she was planning to stay in her truck with her dog through the blizzard because her dog was not allowed in temporary shelters. Once she called, a student was on the phone with FEMA throughout the day. Over the phone, FEMA agreed to pay for two months of temporary housing with the potential for renewal, and we helped arrange for her to stay with relatives in the interim until the housing became available. We then connected her with a DCM in order to help address medical and social services issues, and we followed up with the DCM in formulating next steps.

⁵³ The late Luke Cole has written persuasively about the ways in which lawyers can empower versus disempower communities in the context of environmental justice. See Luke W. Cole, *Empowerment as the Key to Environmental Protection*, 19 *ECOLOGY L.Q.* 619 (1992). This context has important parallels owing, for instance, to the community-wide scale of the devastation and the recovery, its political and policymaking dimensions, and power asymmetries on multiple levels.

Internally, we have sought to align our work with the law school's other clinical and student-placement programs through cross-referral networks, including with the Mortgage Foreclosure Clinic, Bankruptcy Clinic, Veterans' and Servicemembers' Rights Clinic, Small Business and Not-for-Profit Law Clinic, Elder Law Clinic, and Senior Citizens' Law Program. Likewise, the PAC has provided opportunities to work with its tenants and affiliates, including Nassau/Suffolk Law Services,⁵⁴ Empire Justice Center,⁵⁵ the Long Island Advocacy Center,⁵⁶ the Long Island Coalition for the Homeless,⁵⁷ and Long Island Housing Services,⁵⁸ among others.

Additionally, the Long Island Community Foundation has convened periodic meetings of community groups and other nonprofits during the recovery. These meetings have proven important for networking, scoping the range of recovery issues, and sharing information and strategies. Along these lines, we work closely with HWCLI, which had staffed the LIVOAD before Sandy and now coordinates the Long Island Long Term Recovery Group (LTRG). "Through subcommittees made up of participating organizations, the [Long Island LTRG] is helping manage key areas related to disaster response, including casework, home cleanup, and other housing issues, volunteering, donations, and the special needs of the undocumented population."⁵⁹ LTRGs are located throughout the Sandy-affected region, and they "are made up of representatives from different organizations that can provide resources for the long term disaster recovery process."⁶⁰ As described in HWCLI's report on the storm's two-year anniversary:

For two years, the [Long Island LTRG] and its members have been active in communities across Long Island, connecting Sandy

⁵⁴ NASSAU-SUFFOLK LAW SERVICES COMM., INC., nslawservices.org/wp (last visited Dec. 22, 2014), *archived at* <http://perma.cc/9C5U-THMT>.

⁵⁵ EMPIRE JUST. CTR., www.empirejustice.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/LZ6W-NZJW>.

⁵⁶ LONG ISLAND ADVOC. CTR., www.theliac.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/278W-GLHW>.

⁵⁷ LONG ISLAND COAL. FOR THE HOMELESS, www.addresssthehomeless.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/W4AR-NWPX>.

⁵⁸ LONG HOUSING SERVS., INC., www.lifairhousing.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/B53X-STKD>.

⁵⁹ *Id.*

⁶⁰ *Long Term Recovery Groups Help New Jersey Sandy Survivors*, FEMA, www.fema.gov/news-release/2013/05/22/long-term-recovery-groups-help-newjersey-sandy-survivors (last visited Mar. 28, 2015), *archived at* <http://perma.cc/F8JS-DFYA>.

survivors with important resources and helping them navigate the complex web of disaster services. Because of these efforts, thousands of Long Islanders have accessed financial and other supports enabling them to return to self-sufficiency faster.⁶¹

We have also reached out to national groups. We consult with the Disaster Legal Aid National Advisory Group,⁶² a consortium designed to serve as an online resource for legal disaster preparedness and recovery assistance across the country.⁶³ It was created through partnering organizations including the ABA, the Legal Services Corporation (LSC),⁶⁴ the National Legal Aid and Defender Association,⁶⁵ Pro Bono Net,⁶⁶ Lone Star Legal Aid,⁶⁷ and the Texas Legal Services Center.⁶⁸ This relationship has taken on added meaning with disasters occurring throughout the country.

We were fortunate to obtain an AmeriCorps VISTA attorney, Patricia Sturm, and funding by Robin Hood in order to direct a program that placed visiting law students in the PAC, the clinic, and at legal services organizations throughout Long Island and New York City. It was symbolic that our first organized group consisted of faculty and students visiting from the Southern University Law Center in Baton Rouge. Their dedication and orientation on these issues provided an exciting addition to our program and enriched everyone's experience. Students came from other law schools across the country, and two students visited from the University of York in Great Britain. Through a series of visitorships by students enrolled in Duke University School of Law's LL.M. program, for instance, our students worked on matters

⁶¹ HEALTH & WELFARE COUNCIL OF LONG ISLAND, *supra* note 50, at 4.

⁶² *Disaster Legal Aid National Advisory Group*, NAT'L DISASTER LEGAL AID RES. CTR., www.disasterlegalaid.org/legalaidstaff/item.5428-Disaster_Legal_Aid_National_Advisory_Group (last visited Dec. 22, 2014), *archived at* <http://perma.cc/HNJ6-A4HG>.

⁶³ NAT'L DISASTER LEGAL AID RES. CTR., www.disasterlegalaid.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/NAM8-YRZF>.

⁶⁴ LEGAL SERVS. CORP., www.lsc.gov (last visited Dec. 22, 2014), *archived at* <http://perma.cc/5BHE-VT93>.

⁶⁵ NAT'L LEGAL AID & DEFENDER ASS'N, www.nlada100years.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/H798-T9AB>.

⁶⁶ PROBONO.NET, www.probono.net (last visited Dec. 22, 2014), *archived at* <http://perma.cc/F3Q4-WPY7>.

⁶⁷ LONE STAR LEGAL AID, www.lonestarlegal.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/RP5A-6RHB>. Saundra Brown with the Disaster Relief Unit of Lone Star Legal Aid deserves credit for this website.

⁶⁸ TEX. LEGAL SERVS. CTR., www.tlsc.org (last visited Dec. 22, 2014), *archived at* <http://perma.cc/N7WU-PXWN>.

alongside foreign-trained lawyers, and these LL.M. students were immersed in our clinical practice.⁶⁹ It is our feeling that creative interscholastic opportunities such as these ought to be explored in disaster law programs, and likely in other areas,⁷⁰ and that they exemplify why law schools should make public service an integral part of the curriculum.⁷¹

IV. REFLECTIONS FROM THE FIELD

A. The Need for Legal Services

There remains a core and long-range need for lawyers to provide guidance and to serve as a resource to the greater nonprofit community, as well as to provide legal services to communities and households. Shortly after the storm's first anniversary, a report to Chief Judge Jonathan Lippmann by the Task Force to Expand Access to Civil Legal Services in New York found the following:

Tragically, . . . over the past year, the need for civil legal assistance for low-income New Yorkers has grown in the aftermath of the devastation of Superstorm Sandy, the upstate storms, and the lingering aftereffects of Hurricane Irene. For many New Yorkers, the

⁶⁹ These efforts are discussed in a working manual developed by Patricia Sturm. See *Restoring Power: How a Law School Responded to Sandy*, TOURO LAW CTR., www.tourolaw.edu/DisasterReliefManual (last visited Dec. 22, 2014), archived at <http://perma.cc/JD2U-5XTT>.

⁷⁰ For instance, Laurie Morin and Susan Waysdorf have written about leading students into service-learning experiences in the Gulf Coast during the Katrina and BP oil spill recoveries. Laurie A. Morin & Susan L. Waysdorf, *Teaching the Reflective Approach within the Service-Learning Model*, 62 J. LEGAL EDUC. 600 (2013); see also Davida Finger et al., *Engaging the Legal Academy in Disaster Response*, 10 SEATTLE J. FOR SOC. JUST. 211 (2011) (discussing experiential learning models post-Katrina, including a law school clinic, a disaster law course, and a visiting student program to provide legal services).

Consider also the Alternative Spring Break program offered by The University of Memphis Cecil C. Humphreys School of Law. *Alternative Spring Break*, UNIV. OF MEMPHIS CECIL C. HUMPHREYS SCH. OF LAW, www.memphis.edu/law/career/asb.php (last visited Dec. 22, 2014), archived at <http://perma.cc/RJ4T-X8D4>.

⁷¹ See *Pro Bono*, AM. BAR ASS'N, www.americanbar.org/groups/legal_education/resources/pro_bono.html, archived at <http://perma.cc/ZPK4-U3PR> ("Students learn firsthand that for many people, pro bono legal assistance is vital to maintaining minimum levels of basic needs such as government benefits, income, shelter, utilities, child support and physical protection.").

help of a lawyer has been critical to helping survivors recover and to obtain essential assistance.⁷²

At the Chief Judge's hearings, which led to the report mentioned above,⁷³ "a number of officials emphasized the important role that civil legal services play in meeting basic human needs" after disasters like Sandy.⁷⁴ The hearings highlighted the need for legal services, such as demonstrated through other disasters, including Katrina.⁷⁵

⁷² TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2013) [hereinafter TASK FORCE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK], available at www.nycourts.gov/IP/access-civil-legal-services/PDF/CLS-TaskForceReport_2013.pdf, archived at <http://perma.cc/YV2W-8JQM>.

⁷³ The Chief Judge conducted public hearings in New York's four Judicial Departments in order to "assess the extent and nature of unmet civil legal services needs in all parts of the State in order to recommend to the Legislature and the Executive the level of public resources necessary to meet those needs." *The Chief Judge's 2013 Hearings on Civil Legal Services*, TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., www.nycourts.gov/ip/access-civil-legalservices/public-hearings-2013.shtml (last visited Dec. 22, 2014) (linking hearing transcripts), archived at <http://perma.cc/VB6X-MKJH>.

⁷⁴ TASK FORCE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, *supra* note 72, at 12.

⁷⁵ See, e.g., Davida Finger, *50 Years After the "War on Poverty": Evaluating the Justice Gap in the Post-Disaster Context*, 34 B.C.J.L. & SOC. JUST. 267, 267 (2014) ("Today, the increasing number of people living in poverty, coupled with decreased funding for legal services, has resulted in a significant justice gap in the provision of civil legal services. Poor people do not have the kind of access to legal services that was envisioned when the LSC was created. This justice gap is no more apparent than in the post-disaster context."); Robert H. Edmunds Jr., *Are You Ready?*, JUDGES' J., Fall 2013, at 1 ("As lawyers and judges, we find that records and documents have been damaged or irretrievably lost. Trials are interrupted. Equipment is ruined. Citizens discover that courts are inaccessible. Death and taxes are inevitable, but death certificates and tax records may be unavailable. Disasters disrupt the smooth and reliable access to justice on which American society relies."); Laurie A. Morin, *A Tale of Two Cities: Lessons Learned from New Orleans to the District of Columbia for the Protection of Vulnerable Populations from the Consequences of Disaster*, 12 U. D.C. L. REV. 45, 80 (2009) ("Hurricane Katrina created an overwhelming demand for services to help individuals and communities with recovery and rebuilding [and] pressing legal needs faced by Katrina survivors, especially those in vulnerable populations. Even now, over three years after the disaster, the demand for legal services far outstrips the ability of the legal services organizations in the Gulf Coast area to respond."); John Jopling, *Two Years After the Storm: The State of Katrina Housing Recovery on the Mississippi Gulf Coast*, 77 MISS. L.J. 873, 894 (2008) ("Grassroots organizations on the Gulf Coast have aggressively advocated for more attention to the needs of low- and moderate-income Mississippians. Over fifty organizations have banded together in the Steps Coalition to promote a more just and equitable recovery. These organizations include many mainstream social service agencies, as well as progressive and reform-minded groups, faith-based and otherwise."); see also Ballard et al., *supra* note 32 (discussing New York Legal Assistance Group's (NYLAG's) post-Sandy advocacy); Sharona Hoffman, *Preparing for Disaster: Protecting the Most Vulnerable in Emergencies*, 42 U.C. DAVIS L. REV. 1491, 1493 (2009) ("[Disaster preparation initiatives] often disregard the special needs of vulnerable populations. During and after a catastrophic event, vulnerable

The report, for example, referenced that now-former New York City Corporation Counsel Michael A. Cardozo expressed “the City’s enormous thanks to [the] legal service organizations and the volunteer attorneys who made such an extraordinary contribution in this time of crisis,” describing it as a “shining example of efforts that former Chief Judge Judith Kaye, speaking after the events of 9/11, characterized as ‘the bar’s finest hour.’”⁷⁶

Complex systems that operate on a mass scale tend to present greater challenges for those who have been traditionally disenfranchised, such as persons who are elderly, disabled, poor or working poor, and non-English speakers.⁷⁷ Moreover, we have observed that sizeable numbers of people who might not ordinarily consider themselves as vulnerable are facing the prospect of unsustainable debt, which threatens their self-sufficiency and sense of well-being. This includes seniors and working families, many with young children, who often were barely making ends meet before the storm. Although funding is diminishing, a large demand for legal and nonlegal recovery assistance remains. Our feelings about the longer-range need for a robust nonprofit and community-oriented presence in the recovery process, and the benefits to the affected communities and students through clinical offerings in these areas,⁷⁸ mirror the reflections of our colleagues from the Gulf Coast:

My own experience as an attorney with the Katrina Clinic at Loyola Law School in New Orleans following the 2005 Gulf Coast hurricanes has changed the way I think about the provision of legal services. Eight years after Hurricanes Katrina and Rita, our law clinic

populations may include individuals with disabilities, pregnant women, children, the elderly, prisoners, ethnic minorities, people with language barriers, and the impoverished.”).

⁷⁶ TASK FORCE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, *supra* note 73, at 12 (quoting Chief J.’s Hearing on Civil Legal Servs., 2d Dep’t, Oct. 1, 2013 (testimony of Michael A. Cardozo, now-former N.Y. City Corp. Counsel, at 16:10-11)).

⁷⁷ Consider the history behind the formation of the LSC. President Nixon’s message described the federal legal services program as “a workhorse” in the effort to secure equal rights in America. The neighborhood law office was the crux of the program, the President wrote:

Here each day the old, the unemployed, the underprivileged, and the largely forgotten people of our Nation may seek help. Perhaps it is an eviction, a marital conflict, repossession of a car, or misunderstanding over a welfare check—each problem may have a legal solution. These are small claims in the Nation’s eye, but they loom large in the hearts and lives of poor Americans.

History: The Founding of LSC, LEGAL SERVS. CORP., lsc.gov/about/what-islsc/history (last visited Dec. 22, 2014), archived at <http://perma.cc/Y8HM-33C4>.

⁷⁸ See Part II.

is still providing legal services to low-income clients who continue to struggle through a variety of post-disaster issues. Natural disasters are an inevitable part of our permanent legal landscape, and they require a continued effort to provide post-disaster legal services.⁷⁹

“When a disaster strikes, it sets in motion a complicated network of federal, state, local, and private response mechanisms.”⁸⁰ This system may be thought of as a “patchwork” of recovery assistance.⁸¹ From our experience, the programs constituting much of the fabric of the Sandy patchwork have included: (1) state-regulated private household insurance policies, meant to cover items such as wind or rain losses and damage associated with Sandy; (2) FEMA’s National Flood Insurance Program (NFIP),⁸² which includes a Standard Flood Insurance Policy (SFIP)⁸³ Dwelling Form⁸⁴ for homeowners with up to \$250,000 in-building coverage and \$100,000 in contents coverage,⁸⁵ under the National Flood Insurance Act of 1968, as amended;⁸⁶ (3) the U.S. Small Business Administration’s

⁷⁹ Finger, *50 Years After the “War on Poverty,” supra* note 75, at 268.

⁸⁰ Morin, *supra* note 75, at 56.

⁸¹ Edward Thomas of the Natural Hazard Mitigation Association introduced us to the concept of a “patchwork quilt” of recovery assistance. *See, e.g.,* EDWARD A. THOMAS ET AL., PLANNING AND BUILDING LIVABLE, SAFE & SUSTAINABLE COMMUNITIES: THE PATCHWORK QUILT APPROACH (2011), *available at* stormsmart.org/uploads/patchwork-quilt/patchwork_quilt.pdf, *archived at* <http://perma.cc/K9NW-R2A6>; EDWARD A. THOMAS & SARAH K. BOWEN, PATCHWORK QUILT: A CREATIVE STRATEGY FOR SAFE AND LONG-TERM POST-DISASTER REBUILDING (2008), *available at* www.floods.org/PDF/Post_Disaster_Reconstruction_Patchwork_Quilt_ET.pdf, *archived at* <http://perma.cc/8MPJTDVL>. Thomas and co-authors discuss the patchwork metaphor as including elements such as community leadership (the quilter), technical assistance and hazard mitigation planning (the pattern), and an array of programs (the fabric). *Id.* at 6, 9-12, 16-32.

⁸² *See The National Flood Insurance Program*, FEMA, www.fema.gov/national-flood-insurance-program (last visited Dec. 22, 2014), *archived at* <http://perma.cc/YY4W-NM8Z>.

⁸³ 44 C.F.R. pt. 61, app. A(1)-(6) (2014); *see also Standard Flood Insurance Policy*, FEMA, www.fema.gov/national-flood-insurance-program/standard-floodinsurance-policy-forms (last visited Dec. 22, 2014), *archived at* <http://perma.cc/N92B-RRDK>.

⁸⁴ 44 C.F.R. pt. 61, app. A(1); *see also Standard Flood Insurance Policy Dwelling Form*, FEMA, www.fema.gov/media-library/assets/documents/18118?id=4099 (last visited Dec. 22, 2014), *archived at* <http://perma.cc/YLD2-D74Q>.

⁸⁵ 42 U.S.C. § 4013(b)(2)-(3) (2012); 44 C.F.R. § 61.6.

⁸⁶ 42 U.S.C. §§ 4001 et seq. (2012). As Dennis Abbott and co-author Rajotte have described:

Flood insurance is available through the National Flood Insurance Act of 1968, as amended (NFIA). The NFIA provides essential economic protection to American homeowners in all 50 states who face flood risks. As a general matter, insurance is deeply connected with the public interest. The NFIA is no exception. As Congress set out in the NFIA’s opening sections, it was enacted to “promote the public interest” by insuring against flood losses, and it requires that [FEMA] ensure “coverage, so that [policyholders] will be indemnified, for their

(SBA's) disaster loan program;⁸⁷ (4) FEMA's TSA program⁸⁸ and IHP assistance,⁸⁹ under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act);⁹⁰ (5) state and local administration of HUD's CDBG-DR program, also governed by the Stafford Act; and (6) additional actors and resources, such as private contractors, professional expert assistance, non-CDBG-DR state and local programs, and community groups and the overall fabric of the nonprofit community.⁹¹

B. The Clinic's Model

The clinic's model has evolved in order to anticipate and adapt to this changing landscape. This entailed: (1) taking on cases for longer-term representation, including filing federal lawsuits on behalf of Sandy-affected households involving flood insurance disputes, including disputes over the value or scope of covered flood losses and damage, and in some cases coverage limitations and exclusions; (2)

losses." In short, flood insurance is backed by the full faith and credit of the United States, and it is designed to protect the American Dream. The NFIA created the National Flood Insurance Program (NFIP). Before this time, "flood insurance was generally unavailable from private insurance companies as those companies were unwilling to underwrite and bear flood risks due to the catastrophic nature of floods." FEMA promulgates a Standard Flood Insurance Policy (SFIP), although separate "excess" and "force-place" policies are available in the private market. The SFIP provides various coverages for flood loss, which are outside of this article's scope. The vast majority of the SFIPs currently in force are issued by private insurance carriers. These private insurers—such as Allstate, Liberty Mutual, Selective, and Wright, to name just a few of the 84 currently listed on FEMA's website—are known as "Write Your Own" (WYO) companies and act as FEMA's "fiscal agents" under the NFIP. Among other things, WYO companies are responsible for arranging the adjustment, settlement, payment, and defense of all claims arising under the policy. FEMA itself also acts as the direct insurer for the remainder of flood policies through a "NFIP Direct Servicing Agent" (NFIP Direct). The SFIP is the same "insuring agreement" regardless of whether it is issued by a WYO company or NFIP Direct.

Dennis Abbott & Benjamin Rajotte, *The Lawsuit Deadline for Flood Insurance Claims*, 37 STATE & LOCAL L. NEWS 11, 11 (2014); see also Abramovsky, *supra* note 2, at 90-95 (discussing background relevant to the NFIP); Ernest B. Abbott, *Flood Insurance and Climate Change: Rising Sea Levels Challenge the NFIP*, 26 FORDHAM ENVTL. L. REV. 10, 28-35 (2014) (same).

⁸⁷ *Disasters Loans*, U.S. SMALL BUS. ADMIN., www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/disaster-loans (last visited Dec. 22, 2014), archived at <https://perma.cc/3PSM-CXX5>.

⁸⁸ See *supra* note 33 and accompanying text.

⁸⁹ See *supra* note 34 and accompanying text.

⁹⁰ 42 U.S.C. §§ 5121 et seq. (2012).

⁹¹ See, e.g., Thomas & Bowen, *supra* note 81; Thomas et al., *supra* note 81

providing limited-scope arrangements in order to address the high demand for commonly occurring issues that do not require litigation insofar as the facts and circumstances warrant,⁹² such as negotiating fair resolutions with contractors, terminating agreements with public adjusters who failed to meet professional standards, helping clients procure disputed insurance funds by interfacing with insurers, claim servicers, and adjusters in certain matters, handling homeowner insurance mediations, and representing households in adjudications involving the recoupment of IHP benefits; (3) serving as a resource for public information or assistance, such as explaining insurance deadlines in in-person consultations, which become important to help parse through the paperwork that often accompanies the recovery process overall; and (4) coordinating our approach with existing programs at the law school, nonprofits, and affected communities.

For example, we met a homeowner at a walk-in clinic who had been sued by a contractor seeking damages in excess of \$25,000 in apparent retaliation to the homeowner filing of a complaint with the county-level consumer affairs agency. We took on the case and worked collegially with the contractor's attorney, who shared in our approach, in order to both help the client finish the work necessary to obtain a certificate of occupancy, and to have the contractor withdraw his suit with prejudice for the alleged damages. This client is now back in his home with no outstanding Sandy issues. In other contractor disputes, by contrast, we have filed or defended lawsuits and, accordingly, anticipate a longer timeline for resolution.

Although we have handled a fairly wide range of matters, our work with the NFIP has been a long-lasting part of our program and has occupied the greatest expenditure of our time and resources per matter. Starting with the initial six-month phase of the clinic's operation and continuing well beyond the one-year anniversary of the storm, the greatest segment of need began to converge around flood

⁹² See N.Y. R. PROF'L CONDUCT R. 1.2(c) ("A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel."); MODEL RULES OF PROF'L CONDUCT R. 1.2(c) ("A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.").

For additional information about limited-scope, or "unbundled," legal services, see David L. Hudson Jr., *A Boost for Unbundling Lawyers Offering Unbundled Legal Services Must Consider the Ethics Issues*, ABA J., Jun. 2013, at 22; Alicia M. Farley, *An Important Piece of the Bundle: How Limited Appearances Can Provide an Ethically Sound Way to Increase Access to Justice for Pro Se Litigants*, 20 GEO. J. LEGAL ETHICS 563 (2007).

insurance disputes, and increasingly disputes with contractors, which remain a significant issue. Flood insurance disputes, however, were our most frequent intake for this period of time. Virtually all involved disputes over the value or scope of the covered losses and damage and some also involved an asserted exclusion or limitation of coverage. Often, both types of disputes are complicated and require fact experts. They also tend to involve a lot at stake for disaster-affected households, both financially and emotionally.

The complexities involved in these disputes, combined with strict and seemingly intertwined “proof of loss”⁹³ and lawsuit deadlines,⁹⁴ led us to adopt a long, multipoint insurance intake protocol for internal use and several flyers with information for the public, which we shared with legal services providers. We started a blog linking these flyers in order to make this information readily available.⁹⁵ One of the clinic’s first initiatives was to hold an insurance roundtable in February 2013, attended by both policyholder and insurance defense lawyers and legal services providers, in order to strategize constructive solutions for the increasing level of insurance disputes. We have also held public workshops at the law school with experienced insurance and construction professionals, an experienced flood insurance broker, attorneys with whom we consulted in order to gain competence in the claims handling process, and legal services providers who conveyed practical information on how to recover withheld insurance proceeds and how to prepare for the next storm. Near the eighteen-month anniversary of the storm, we and other legal services providers in New York City held a weeklong public workshop to provide information about proof of loss at a different location each day of the week throughout the metropolitan area.

Despite these efforts, flood insurance disputes have presented unique recovery challenges. The proof of loss and lawsuit deadlines

⁹³ For more information about proof of loss, see Abbott & Rajotte, *supra* note 86, at 11; *Disaster Relief Clinic*, TOURO LAW CTR., disasterlaw.wordpress.com (last visited Dec. 22, 2014), archived at <http://perma.cc/7GGE-KMF5> (linking public information about proof of loss).

⁹⁴ See *Interplay Between the Extension of the Proof of Loss Deadline for NFIP-Insureds Damaged by Meteorological Event Sandy and the 1-Year Statute of Limitations* in 42 U.S.C. § 4072 (VII,R, Suit Against Us), FEMA BULL. W-13069, Nov. 21, 2013, available at bsa.nfipstat.fema.gov/wyobull/2013/w-13069.pdf, archived at <http://perma.cc/Q7H5-ZW8U>; see also Abbott & Rajotte, *supra* note 86, at 11-12 (discussing FEMA’s interpretation of the interplay of these deadlines); *Disaster Relief Clinic*, *supra* note 93 (linking public information about the same).

⁹⁵ See *Disaster Relief Clinic*, *supra* note 93.

carry legal consequences, which created an urgency for legal services providers in order to provide information and assistance, where practicable, with this paperwork and in helping to resolve these disputes. Many policyholders were faced with a challenging interplay of deadlines and documentation requirements, along with the prospect of retaining counsel for federal litigation, both in order to prepare this paperwork competently with fact experts and to satisfy these deadlines.⁹⁶ These requirements, deadlines, and uncertainties often made our representation under a limited- or full-scope model untenable in scale. For example, Sandy legal services providers have discussed the proof of loss requirement in the following way:

There are multiple issues that advocates encounter in helping homeowners file proofs of loss. First, as a practical matter, filing a proof of loss for an individual homeowner can be a very substantial undertaking, as a proof of loss must describe, item by item and room by room, the damage that an individual has suffered. More concretely, this means listing exactly the identity of the damaged item, the quantity of damaged item, the replacement cost for that damaged item, the estimated depreciation of the item's value between the time of purchase or installation and the date of the loss, and the resulting current value of the item (called the "actual cash value" of the item). Composing the document itself therefore can take many hours.

In the case of home repairs, there is the additional problem of securing sufficient documentation to justify the individual's position. In addition to the fact that "detailed repair estimates" are required to "justify th[e] amount" claimed under an individual's particular SFIP contract, fully itemized estimates or invoices justifying repair costs are required for a compliant proof of loss. Most individuals are not familiar with the construction industry, and contractors in the New York area are generally unfamiliar with the vastly more detailed requirements of repair estimates that are needed to support insurance claims. Experience shows that contractors will write repair estimates that do not provide detailed line items, including listings of discrete repairs, corresponding quantities, and corresponding prices for each repair.

The reason seems to be two-fold: in a highly skewed postdisaster seller's market, contractors do not want to spend any time doing anything that is not actual repair work; and generally,

⁹⁶ *See id.*

contractors in a regular or average market setting do not write anything remotely close to line-by-line, room-by-room estimates. Therefore, working with contractors to develop these estimates can be a challenging and time-consuming process.⁹⁷

There are other challenging examples. For instance, this includes complicated questions over front-end policy requirements and backend funding availability to elevate homes, the risk of unsustainable premium levels if elevation is required but not performed, and the interplay of local “substantial damage” determinations triggering the need for elevation. Elevation of course also presents another area for potential disputes with a separate set of contractors over a complex construction element. “Duplication of benefits,” as discussed below, also presents another complication in understanding the rules and agency interpretations and as applied to any individual matter and the total picture of disaster assistance that the household receives.⁹⁸

C. Katrina, Sandy, and Patterns for the Future

The administrative aspects to the recovery, and how they bear upon everyday lives, are many. We have encountered breakdowns by private actors holding considerable leverage, such as landlords, insurers, and their claim servicers and adjusters, contractors, and mortgage servicers/banks. There has been “fragmentation” within the patchwork of recovery assistance,⁹⁹ as well as elements of “administrative mystery.”¹⁰⁰ Households have expressed that they feel stymied by limited opportunities for public participation in what appears to be ad hoc policymaking processes, which has contributed to them questioning the verisimilitude of the standards and outcomes. They have faced paperwork burdens, individually and collectively

⁹⁷ Ballard et al., *supra* note 32, at 15-16. As of this article’s writing, FEMA is underway in developing a process for reopening Sandy flood insurance claims outside of litigation, which has the potential to inform how elements of flood insurance claims handling and appeals processes may be reformed. See Joe Ryan, *FEMA Will Allow 144,000 Sandy Victims to Reopen Insurance Claims after Fraud Charges*, NEWSDAY, Mar. 25, 2015, www.newsday.com/business/fema-will-allow-144-000-sandy-victims-to-re-open-insurance-claims-after-fraud-charges-1.10124841, archived at <http://perma.cc/H36Y-2ZBN>.

⁹⁸ See *infra* note 102 and accompanying text.

⁹⁹ ESNARD & SAPAT, *supra* note 3, at 111.

¹⁰⁰ This term was introduced to us by a Sandy nonprofit colleague, C. Benjie Louis, Maurice A. Deane School of Law at Hofstra University.

among these programs, and encountered problems in the transparency, consistency, clarity, and accuracy of information provided to them. Households have raised concerns relating to the adequacy of factual records and legal process. They have encountered uneven measures for accountability and limited methods to pursue administrative remedies, which is especially problematic for the legal and nonlegal services providers assisting them.¹⁰¹

This includes bifurcated chains of responsibility vesting certain gatekeepers in the field with fact-finding authority to determine the nature and extent of costs or losses, yet which for many households may be compromised by limited time or expertise, vague or opaque guidance, inconsistent and uncertain quality control or assurance standards, or pressures or incentives running counter to the households that they are bound to protect or the principle of objective review. Or the opposite is true, and households feel that frontline staff and intermediaries have relatively little ability to help them and that they are left to submit paperwork and await the results of an impersonalized decision-making process. Households have expressed frustration that these processes are not as collaborative or cohesive as they should be, and that they appear to be about one-sided, unclear, and ad hoc rules that tend to obscure a recovery-oriented mission.

Our experience has included the following core elements of a complex system including (1) three large federal agencies with many separate responsibilities (HUD, FEMA, and SBA), among them separate FEMA programs designed to provide emergency response, short- and moderate-term recovery grants, and longer-range recovery processes under the Stafford Act and NFIP collectively; (2) private actors carrying out elements of these programs (such as flood insurers and claim servicers, adjustment firms and field adjusters, in addition to brokers issuing SFIPs, among others); and (3) state and local administration and coordination of various elements of CDBGDR and other programs. These various programs are often fragmented, yet they adhere to a “sequence of delivery” of assistance with associated complexities, such as “duplication of benefits.”¹⁰² In short, the

¹⁰¹ See, e.g., Jonathan P. Hooks & Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 CAL. W. L. REV. 21, 72 (2006).

¹⁰² See, e.g., Ballard et al., *supra* note 32, at 6 n.13 (discussing FEMA regulations); *id.* at 11 n.31 (discussing duplication of benefits); *FEMA, Lesson 3: Individual Assistance Programs and the Sequence of Delivery*, EMERGENCY MGMT. INST.,

recovery process at the household-level is dynamic and complex, and it is larger than any one person, agency, or program.

The dysfunctions that we have encountered are confounded by the hydras of scale and complexity, in terms of the devastation itself and breakdowns in recovery processes that have followed. Lives have been disrupted, and considerable time and energy continue to be spent by survivors and their advocates that might otherwise have been redirected at the betterment of society in other ways.

Our job as nonprofits is far from done. Disasters cause systemic disruption of epidemic proportions very quickly, and recovery processes involve a web of public-private-nonprofit/community programs operating dynamically at multiple levels. Breakdowns must be identified, assessed, and corrected, and the goals of recovery and resiliency should not be put at odds with one another. Solutions should not be isolated to one element of the patchwork but instead, account for the fact that these programs are interconnected and predicated on shared principles of recovery and resiliency.

Climate change portends greater disruption, and therefore mitigation and adaptation must be considered in the equation. Existing coastal development in the face of climate change creates the recipe for large-scale environmental, financial, and social disruption through rising sea levels and storms that may become more intense, frequent, and severe. The financial sustainability of the NFIP is an obvious concern, showing that climate disruption threatens not only our natural, built, and human environments, but also our very institutions of order, governance, and vitality. We must explore positive systemic reform now, throughout the patchwork, and not artificially isolated to a single program, when solutions may do the most good. Our ability to do so deliberately, however, remains nascent and incomplete. Sandy is a preview into the threats of the future, along both environmental and human dimensions. This is why we call for a recurring, multidisciplinary, and policy-informing study of our national approach to disasters, recovery, and resiliency and ways to promote the overall sustainability of such protection, at the public, private, and nonprofit/community levels, and including federal, state,

emilms.fema.gov/IS403/lesson3/12000.htm (last visited Dec. 22, 2014), *archived at* <http://perma.cc/4H6Y-968L> (training materials); Dep't of Homeland Sec., State of Indiana, *Individual Assistance Sequence of Delivery*, www.in.gov/dhs/files/IHP_Flowchart_FY09.pdf (last visited Dec. 22, 2014), *archived at* <http://perma.cc/R955-DT4P> (flow chart).

regional, and local dimensions. Now is the time to act. Each day our options tend to diminish as flood risks increase and expand.

Our vulnerability to flooding risks is a matter of national concern affecting all segments of society, and Katrina, Sandy, and other storms serve as guideposts to inform policy for the future. While Katrina caused widespread devastation, the Katrina Committee's report¹⁰³ was not intended to study the long-range aspects of recovery assistance and the challenges ahead. It was issued in February 2006, within approximately six months of the storm, because it was designed to analyze emergency planning and the shorter-term phases of disaster response.¹⁰⁴ It has been nearly a decade since Katrina, during which time we have learned from our collective experiences in that recovery and, more recently, from Sandy. There have been important analyses of recovery processes,¹⁰⁵ and there should be ongoing post-Sandy analyses in order to better inform policymaking for the future. The noble mission of such assessments and recommendations should be projected into the future. We also suggest fuller and continuing consideration of community-oriented interests, including how the underlying variables now being balanced and other factors affect everyday lives before and after a disaster.

Such a model could take many shapes and address different recovery priorities, which is also why community involvement in this undertaking is important.¹⁰⁶ An entry point, for instance, could be a top-to-bottom and across-the-board review of the patchwork as applied in Sandy, drawing from our collective experiences in Katrina, Sandy, and other disasters. It would be productive, for example, to enhance collaborative approaches between nonprofits, community groups, and agencies involved in the administration of critical public programs. Input from all stakeholders committed to the recovery may enhance an

¹⁰³ See *supra* note 5 (citing the *Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*).

¹⁰⁴ See *supra* note 6.

¹⁰⁵ See, e.g., NAT'L COMM'N ON ENVTL. JUST. ON THE GULF COAST & THE LAWYERS' COMM. FOR CIVIL RIGHTS UNDER LAW, *supra* note 4; *supra* note 75 (sample of legal scholarship).

¹⁰⁶ See generally Exec. Order 12, 898, 59 Fed. Reg. 32, § 2.2 (1994) ("Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.").

understanding of how policies play out in the field from the perspective of communities and households. Surely, these stakeholders and policymakers will not always agree, but that fact alone should not defeat a starting philosophy of collaborative problem-solving, which is predicated on an objective examination of the underlying issues. For thousands of households and many communities, the recovery process has not only felt disempowering, but also been insufficient to address the future nature and scale of climate disruption. Creative and sensible solutions must be explored.

Such an examination may engender a model where recovery becomes less of a distributive process of funds and paperwork passing hands, which is not results-oriented and may paradoxically wind up being regressive and counter to a resilient recovery, and instead more of a cohesive and prophylactic system that incentivizes resiliency effectively and minimizes waste. Elements and distinctions drawn from comparative models, both domestically and globally, should be closely examined. This includes taking into account climate change mitigation and adaptation, in order to encourage financially, environmentally, and socially acceptable solutions. Lessons from Sandy will go unexplored and unheeded, to our detriment as we continue to confront mounting flood risks, without an ongoing comprehensive and in-depth study along these lines. We call for a multidisciplinary, public-minded, and continuing study process, including community and nonprofit involvement.

V. CONCLUSION

Disasters such as Sandy rapidly disrupt large segments of society, and the recovery process is larger than any one person, agency, or program. The recovery is complex and impacts entire communities on a large and complex scale, disrupting their economies and social order. It is precisely because of the enormous dimensions of these risks and impacts that the government must play an important role in fashioning an approach that promotes recovery and resiliency while remaining flexible enough to address the singular demands that follow different disasters. For the same reasons, which owe to the magnitude and complexities of problems that disasters cause, nonprofit legal and nonlegal assistance are an essential part of the recovery, and we must find ways to fund their presence throughout the recovery process.

These organizations, with their collective field experiences as public resources and problem-solvers, observe firsthand the impact of policy decisions on affected communities.

It is hard to conceive of concepts like resilience, fairness, and sustainability at a macro-level while we continue to see so many families that have lost their financial footing and well-being and, at the same time, feel disempowered to retain it. As with Katrina and other disasters, Sandy provides lessons into how we and future generations must confront the great disruptors of our time, including climate change. As with analyses of climate change mitigation and adaptation themselves, our national approach to disasters, recovery, and resiliency must be studied in these ways. As we glimpse into the future, it is incumbent on us to seize this opportunity.