

CLINICAL EDUCATION IN THE AFTERMATH OF HURRICANE KATRINA: A MULTI-FOCUSED COLLABORATION

by:

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I. LOYOLA LAW CLINIC AND GREATER NEW ORLEANS BEFORE KATRINA

The Loyola Law Clinic has a long and unique history in the City of New Orleans, having the distinction of being the first law clinic of its kind in the area. From its inception in 1972, until August 28, 2005, it was a clinic deeply rooted in the local community and attentive to local needs. The law clinic could be best described as a litigation clinic, typically centered around civil rights, criminal and domestic law litigation, homeless advocacy and the representation of long term immigration detainees. Its pedagogical focus was, as it remains today, to provide to its student practitioners the greatest degree of involvement in the practice of law. As set forth below, Katrina brought new pedagogical challenges for its teachers as well as social challenges to its students who now operate in a new learning environment.

A. CRIMINAL LAW SECTION

Approximately 80% of the criminal defendants who appear in Criminal District Court are indigent. Loyola Law Clinic was regularly appointed to represent indigent clients in matters ranging from misdemeanors to felony offenses. Representation could start as early as the initial appearance, which occurs within 48 hours of arrest, prior to formal charges being accepted. In other cases, appointments would not be made until after arraignment. In all cases student practitioners represented the client in every aspect of the criminal process. They learned the importance of early intervention by interviewing the client, and witnesses, conducting fact investigation, and filing the necessary pleadings for discovery and motion practice. Students were also trained in legal research and writing, oral argument and direct and cross examinations at both the pre-trial and trial level. In addition, student practitioners argued before the 4th Circuit Court of Appeal as well as the Louisiana Supreme Court.

B. FAMILY LAW SECTION

Students represented indigent clients in divorces, child and spousal support, and custody cases in two Parishes, Orleans and Jefferson. Additionally, we were court appointed “attorney for the child” in highly contested custody cases and in juvenile “Child In Need Of Care” (CINC) cases. The Family Law section consisted of: courtroom observations, client interviews, assignment of family law/juvenile/curator cases, fact investigation, discovery, preparation of pleadings, legal research, memoranda writing, court hearings, status conferences, settlement conferences, preparation for trial, and trial.

C. IMMIGRATION LAW SECTION

The Immigration Law Section represented non-citizens, including asylum seekers, torture survivors, arriving aliens, stowaways, long-term permanent residents, and aliens with criminal convictions, who were placed in removal proceedings while detained by the U.S. Department of Homeland Security. We also conducted “Know Your Rights” immigration law seminars to pro se litigants at detention centers in Louisiana.

D. PROSECUTION SECTION

Students were placed in the Orleans Parish and Jefferson Parish District Attorney’s Office and the Domestic Violence section. Student prosecutors were assigned to a section of court, handled a docket with their senior and junior prosecutors, and conducted trial investigation and preparation of witnesses. Additionally, the student prosecutors participated in all aspects of the trial process, including judge trials, motion hearings, jury trials, jury selection, and direct and cross examination of witnesses.

II. KATRINA AND THE CONDITION OF GREATER NEW ORLEANS AFTER

In the aftermath of Katrina, the yearly expectation of evacuating the city only to return two or three days later did not hold true. Family, friends and fellow citizens were effectively forced to abandon the city for much longer periods of time; some still remain unable to return. The infrastructure of New Orleans broke down. New Orleans had no electricity, natural gas, running water, schools, doctors, hospitals, mail service, working telephones, internet access, functioning traffic lights, or garbage pick-up. The City of New Orleans was effectively shutdown. Loyola University and all other universities stopped functioning. The Dean of Loyola Law decided to hold the fall semester in Houston after a generous offer by the University of Houston School of Law to house the school.

III. LOYOLA LAW CLINIC AFTER KATRINA IN HOUSTON DURING FALL SEMESTER 2005

Houston became home to a very large concentration of people from New Orleans - FEMA estimated over 80,000 people relocated there as a result of Katrina. The Dean of our law school asked the clinic to provide legal services to the evacuees. The clinic faculty created an advice clinic to assist people with information and informal advocacy about issues including: family law, landlord-tenant, housing, consumer, bankruptcy, how to locate family members who were incarcerated and relocated, immigration, insurance, FEMA, social security, replacing lost documents, and many others. We partnered with U of H, Lone Star Legal Aid (LSC) and the Houston Volunteer Lawyers Association. Our themes for the semester were flexibility, creativity, solidarity, and patience. We were challenged in each of these themes because all of our students and faculty were also evacuees - every person had lost something precious. The stress of moving over three hundred miles away and setting up a new home for ten weeks and continuing law school took an enormous toll on studying, energy, marriages, jobs, families and

on each person's spirit. Our students manned phone banks and went to the Greater Houston Disaster Relief Center (DRC) in shifts that covered most of the day five to six days a week, interviewed evacuees, and assisted them with their problems. The DRC had over 100 agencies inside an old Wal-Mart building with three to five thousand evacuees visiting every day. As of January 2006, Houston is home to more people from New Orleans than any place other than New Orleans- Baton Rouge is third.

IV. LOYOLA LAW CLINIC AFTER KATRINA IN NEW ORLEANS DURING FALL SEMESTER 2005

In addition to helping Louisiana people in Texas, the clinic recognized that many of its clients and therefore much of its responsibility remained in Louisiana. The criminal defense part of the clinic worked on cases of people still incarcerated in Louisiana, visiting, counseling and advocating for clients and their families as well as working to try to get the criminal legal system back into operation - both efforts which continue to this day. Another member of the faculty stayed and helped the Louisiana State Bar conceptualize, organize and staff the statewide legal advice and referral phone service.

There were approximately 6100 people evacuated from the Orleans Parish Prison facility and housed in various jails and prisons around the state. Several of those evacuees were clients of the law clinic. Tracking clients in the immediate aftermath of Katrina proved challenging but all clients were located and personally visited, with the exception of one client who was sent to a facility in Florida. Each client was grateful for the contact as many of them had no contact with anyone since their evacuation. The questions asked by most were had we been in touch with their family members and did we think they had escaped the flood waters of Katrina.

As New Orleans was uninhabitable, the Criminal District Court was operating on the campus of Southern University in Baton Rouge and at Hunt's Correctional facility. Loyola worked with others to bring to the court's attention that defendants (not clients of the clinic) were being unlawfully detained, either because they were held beyond their release date or because the time period to bring formal charges had expired. As a result of that participation, Loyola Law Clinic along with Tulane Law Clinic was appointed by the Chief Judge of Criminal District Court to explore the current state of indigent defender representation in light of the fact that the Orleans Parish Indigent Defender Office personnel has been drastically reduced.

While in Houston, student prosecutors were not able to participate in a prosecutor's office. Some of the students that were in Houston took advantage of the Katrina Advice Clinic and assisted evacuees at the Houston Disaster Center. One student returned to Jefferson Parish and volunteered her time at the District Attorney's Office when they opened in November 2005.

V. LOYOLA LAW CLINIC AFTER KATRINA IN SPRING SEMESTER

As the magnitude of the disaster slowly sank in, clinical faculty, both in Louisiana and Houston, began to re-assess their role in the legal community, as well as anticipate the many new and immediate legal needs of its clients. This included sorting through emergent efforts by local and national groups to sort out the needs and institute various ways to help. The massive

destruction of the infrastructure made clear that our recovery would have to be by the “bootstrap” method. Hence, it became apparent that post Katrina times demanded a new level of involvement by the law clinic- one which would have to look beyond mere litigation.

Loyola retains its commitment of several decades to teaching our students through the actual practice of law in civil and criminal courts. But the factual and legal ground has shifted beneath us and we are faced with unprecedented challenges. For the clinic, the inability of the state criminal and civil courts to get fully back up and operational has forced a change in all phases of teaching and advocacy. While it is hoped that these changes will be temporary, methods of teaching over the past years have had to be modified for the new environment. The need for legal services in the metropolitan area has greatly expanded while the people who can assist with pro bono and free legal services has been dramatically reduced as many lawyers have not returned or have returned to greatly reduced practices.

Each faculty member is trying their best to find ways for our students to practice law and to contribute to the reconstruction of our broken community. Members of the Loyola Law Clinic are involved in most of the legal advocacy work to rebuild New Orleans- from a new advocacy effort for workplace justice to challenging the dismal conditions of the criminal justice system; from helping create a local Katrina advice clinic which will be mostly staffed by non-clinic students to joining in efforts to slow down mass evictions and home demolitions. At the same time, the clinic continues to handle individual legal cases of people who need lawyers to advocate in court for them.

This is difficult work that is compounded by the fact that all clinic students, staff and faculty have significant family, housing, economic, and the consequent emotional problems that go with these as well. We are all evacuees, like our clients.

A. CRIMINAL LAW PRACTICE

The climate of criminal litigation for our students has changed. In previous semesters, students would be representing their clients on the merits of the case. Now, since no jury trials have been scheduled and it is still questionable when the first jury panel will be selected, the focus has turned to invoking and arguing the due process rights of clients to have access to their attorney and meaningful and timely access to the court. Additionally, students have been involved in the systemic litigation addressing the issues of post Katrina representation of indigent defendants. Due to a lack of funding, the Orleans Parish Indigent Defender Office had to lay off 30 of the 42 attorneys assigned to represent indigent defendants. While the Indigent Defender Office represented approximately 4,000 clients pre Katrina, they are unable to continue representation in over half that number post Katrina leaving many defendants without representation. Students are working to identify the unrepresented jailed population to bring to the court’s attention the need to address the issue of the right to counsel, the right to a speedy trial, and the right to be released if trial cannot proceed due to the lack of evidence.

B. FAMILY LAW PRACTICE AND KATRINA ADVICE TEAM

In the aftermath of Hurricane Katrina and the flooding of The Greater New Orleans Area, the Family Law practice group is concentrating on locating our Pre-Katrina clients and representing clients in Post-Katrina relocation and custody issues. Some parents have still not seen their children since the weekend of August 27-28, 2005 due to the evacuation and poor communication. Children left the city with the parent having visitation that weekend.

Additionally, we have established a New Orleans Katrina Advice Clinic and Team to assist the people of New Orleans in Katrina issues. Early in the semester many clinic students from all practice groups took a school bus tour of the devastated areas of Lower 9th Ward, St. Bernard Parish, New Orleans East, and Lakeview areas to enable students to see and understand problems and frustrations of our New Orleans evacuees. We collaborated with Loyola's University Ministries and Environmental Communications department to provide the students with a cultural, historical, political, and socio-economical look at the impact of the storm on the areas devastated by Hurricane Katrina. The law clinic set up a Katrina phone line where law students can return phone calls to people seeking advice to their Katrina problems. The students research the issues and assist the callers with advice, referrals and advocacy. Furthermore, the Katrina student coordinators created an intake form and prepared informational, referral, and self advocacy handouts. The students visit local churches and other outreach posts in the devastated areas to assist people with their issues.

Another goal of our Katrina Advice Clinic is to involve the entire law school and train non-clinical law students to be a part of a Katrina Advice Team to enable us to continue our relief effects for years to come. Thus, an orientation was held to involve non-clinical Loyola law students teaching them interviewing, listening, counseling, and research skills and instructing them on Katrina issues. Furthermore, other Loyola law faculty in conjunction with clinic faculty presented a Katrina "Know Your Rights" Day open to the community. Finally, clinical faculty members have collaborated with recovery groups state wide speaking on panels and making presentations to various organizations on a city, state, and national level.

C. IMMIGRATION LAW SECTION

The New Orleans Metropolitan area lost its long term immigration detention centers due to Hurricane Katrina and there is only one short-term jail where Department of Homeland Security "DHS" keeps non-citizens because the conditions of the jail do not meet the federal detention standards. Immediately after moving back to New Orleans, we began receiving calls from and interviewing undocumented aliens who were the victims of a raid conducted by and detained by the D H S and local police. All of our existing clients have been transferred to different detention centers and jails throughout Louisiana and as far as Alabama. The closest jail is four hours away from New Orleans; however, we are trying to visit them regularly. We also lost the opportunity to visit pro se detainees to provide "Know Your Rights" programs due to the destruction of local detention centers. We are in the process of identifying another detention center with a large immigration detainee population to continue the program. As of this semester, we began representing non-citizens who were affected by Katrina regardless of their detention status. Outside of the immigration law arena, there are many legal issues confronting

hordes of newly arrived immigrants in our community. Non-citizens are arrested by local law enforcement agencies and facing criminal charges daily. We are assisting non-citizens on immigration issues but are also tackling a host of other legal issues that non-citizens face on a daily basis.

D. PROSECUTION SECTION

In the fall semester, 13 students were assigned to the District Attorney's Offices of Orleans and Jefferson Parishes. Only 6 students returned to the prosecution section of the Clinic in the spring semester. Two students are placed in Orleans Parish DA's Office and four at the Jefferson Parish DA's Office. The Orleans Parish DA's Office is a challenge for any attorney because the court system is barely operational. The office has been displaced and is currently operating out of what used to be a night club. The office lost 20% of its prosecutors, all of its investigators, and all of its support staff. Some of the many challenges faced by the office are: not having a physical location, not having financial support, a staff or a budget and most importantly, not having a court house to prosecute its cases. The Jefferson Parish DA's office is in a better position. The courthouse and their building suffered minor damage. They were back in their building two months after Katrina. Five months after Katrina, J.P. Courts had its first jury trial. Student prosecutors in the J.P. DA's office are in a much better environment, but they still face challenges. Although J.P. may have a full docket on any given day, more than half of the cases are continued because witnesses who lived in the devastated areas cannot be found to be served. Victims, witnesses, and defendants are out of state and cannot be notified of court dates. Hence, the dockets just roll over to the next month in hope that things will be better. The challenges of both District Attorney's offices are ongoing.

E. WORKPLACE JUSTICE PROJECT

A large percentage of the city lay nearly destroyed in the wake of hurricane Katrina. Other than emergency workers, the first "inhabitants" became, not its citizens, but hundreds of workers seeking jobs made abundant by the destruction. Many of these workers, some undocumented, others not, have become victims of unscrupulous local and out of state contractors, resulting in a multitude of legal issues ranging from violations of the Fair Labor Standards Act-Wage and Hour Law to non-payment of wages, breach of contract, unjust enrichment, and/or workman's compensation claims. Many workers have been left cheated, homeless and/or injured by virtue of these violations. The legal community, specially those providing free legal services, were simply unprepared for the need; hardly any legal services are available to meet those needs on a no-cost basis. In light of that unmet need, the law clinic re-directed those students doing federal work, into what currently operates as the Workplace Justice Project. This Project has sought out and established collaborative alliances with local and national groups, and has sought to identify the immediate and long term needs of the old and new worker communities, and also address the legal void in enforcing the rights of those workers post Katrina. Much work needs to be done in this area.

VI. CONCLUSION

While the Greater New Orleans Area struggles to get on its feet from the devastation of Katrina, our law clinic is collaborating with groups throughout the city, state, and country to assist the indigent to recover their lives. We face a series of unprecedented legal and educational challenges and constantly evolving problems. The events of the coming years will challenge us to innovate and to create new paradigms for clinical education.