

**WRITTEN STATEMENT OF REILLY MORSE
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**UNITED STATES SENATE HEARING OF
AD HOC SUBCOMMITTEE ON DISASTER RECOVERY
“A NEW WAY HOME: FINDINGS FROM THE DISASTER SUBCOMMITTEE
SPECIAL REPORT AND WORKING WITH THE NEW ADMINISTRATION
ON A WAY FORWARD”**

March 18, 2009

INTRODUCTION

Good afternoon. I am Reilly Morse, a senior attorney in the Katrina Recovery Office of the Mississippi Center for Justice in Biloxi, Mississippi. I thank Madam Chair Senator Landrieu, Ranking Member Senator Graham, and the members of the subcommittee for holding this hearing to address the findings of the investigative report, *“Far From Home: Deficiencies in Federal Disaster Housing Assistance After Hurricanes Katrina and Rita and Recommendations for Improvement,”* and also the U. S. Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA) for their efforts to meet housing needs of the Gulf Coast States following emergencies and natural disasters.

The Mississippi Center for Justice (“MCJ”) is a nonpartisan, nonprofit, civil rights legal organization that was founded in 2003. It was formed to provide a home-grown means to advance racial and economic justice in Mississippi. In 2005, MCJ became the Deep South affiliate of the Lawyers’ Committee for Civil Rights Under Law, a national civil rights legal organization formed in 1963 at the request of President John F. Kennedy to harness the private bar’s resources to remedy racial discrimination. Shortly after Hurricane Katrina struck the region, MCJ opened a Katrina Recovery office in Biloxi, where we joined forces with the Lawyers’ Committee and attorneys and law students who descended from all corners of the nation to provide free legal representation to all kinds of people, but especially low income people. Our efforts yielded emergency shelter and temporary housing; access to FEMA trailers for disabled victims of the storm; protection of basic tenants’ rights in eviction proceedings from both public and private housing; disaster recovery grants and loans for homeowners; and protection for homeowners faced with inequitable foreclosures, insurance company stonewalling, contractor fraud, and heir title problems.¹

To achieve these results, MCJ and the Lawyers’ Committee conducted direct service clinics, research, surveys, policy advocacy on behalf of lower-income and minority hurricane victims and communities in the region. Further evidence of our projects appears in Appendix A to my testimony.

¹ MCJ’s responses draw in part upon our experiences in partnership with the Lawyers’ Committee for Civil Rights Under Law, which is described in Jonathan P. Hooks, Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 California Western Law Review 21 (Fall 2006).

I speak as a third-generation Mississippi lawyer, as a former municipal judge and before that a prosecutor for the city of Gulfport. I joined the Mississippi Center for Justice in October, 2005, after Katrina reduced my law office to a slab of concrete, forcing me into bankruptcy since the only thing remaining, literally, was the shingle hung out in front of my office. Entirely destroyed were all files from two decades of my practice in general civil, environmental commercial, insurance, and maritime litigation. My parents and grandparents weathered two major hurricanes of their day, the 1947 storm and Camille, but nothing approaching the damage from Hurricane Katrina. Miraculously, my family and I rode out Katrina safely, leaving me in the fortunate position to assist and speak for the clients I represent here today. On behalf of those clients, and on behalf of the brave and resilient souls of the Gulf Coast, I enthusiastically support the recommendations of this subcommittee's investigation.

Recommendation 1: Establish a Standing Rental Repair Program and Corresponding Stafford Act Authority.

The Subcommittee's proposal to amend the Stafford Act to authorize rental repair in catastrophes is sensible and should be adopted. Katrina damaged at least 62,470 rental units in Mississippi, over 29,000 of which were single family rentals that suffered relatively minor and remediable damage. Repairing existing rentals is faster, more cost effective, healthier, and more humane than trailers. Quickly repairing rental properties, regardless of the degree of damage, also would prevent further housing losses through mold infestation and other deterioration, and moreover curb community blight. Viewing Edgewood Manor Apartments two months after Katrina, a subsidized rental complex which the owners appeared to have walked away from, was shocking. The conditions included missing roofs, no running water, no trash pickup, and in some cases, no basic plumbing. The conditions are visually documented in a Lawyers Committee video, "**Rebuilding Lives.**" The Mississippi Housing Data Project estimates that, as of June, 2008, at least 7,500 small rentals and 1,750 deep subsidy rentals with major to severe damage remain unrepaired. From my personal observations of coastal Mississippi since Hurricane Katrina, the blight due to the failure to repair rental properties remains pronounced. There were significant delays in creating and implementing rental rehabilitation projects in Mississippi, and too many of those projects were greenfield developments, as opposed to repair and rehabilitation, which forced residents to remain in temporary housing far longer than would have been the case if FEMA would have had authority to perform or cover the cost of repairs to existing rental housing.

Recommendation 2: HUD Must Prepare a National Post-Disaster Housing Stock Plan and Have Direct Access to DRF Funding if Post Disaster Housing Responsibility Increases

HUD should enhance its role in responding to catastrophes provided that it plans for housing stock needs and obtains funding to cover the cost. HUD will need to have a housing stock plan and a housing inventory database. The Mississippi Center for Justice conducted a student-led survey in 2006 to determine the condition of multifamily apartments to assist renters who sought legal assistance following evictions or other displacement. This report filled a gap left by

Mississippi itself, which failed to prepare and publicly release a detailed housing data report until January, 2009. In the aftermath of Katrina, government and other files were often as decimated as my own office was. Consequently, conflicting and mismatched data sets on the availability of public and subsidized housing crippled efforts to place displaced residents into repairable or available housing. HUD had difficulty serving its own population of tenants due to the high losses of subsidized and public housing. An improved response will require that HUD develop a plan and maintain a consolidated database cataloguing all federal housing available in each agency of the federal government. Having these records would have enabled agencies to better help displaced renters and homeowners who were forced into becoming renters. The necessary corollary is funding: HUD needs to have access to Disaster Recovery Funding to implement the plan. In particular, HUD needs the ability to use DRF for all necessary repair, housing stock on top of other recovery needs.

A single federal housing inventory database is essential to meet the various waves of housing needs that emerge in the wake of a catastrophic disaster. The need for such a database is obvious in the immediate aftermath, but it becomes no less important as the federal housing effort transitions residents into permanent housing. For example, as recently as January, 2009, FEMA put out a public appeal for landlords to enroll in a program to take Section 8 vouchers as part of the transition from FEMA trailers to HUD programs. See FEMA Press Release 1604-698. The poor coordination between FEMA and HUD, after the transition occurred, and more than 3 years after Katrina, needs to be remedied.

Recommendation 3: The Feasibility of Expedited Repair Sweep Teams and an Expanded Role for the Department of Defense Must finally be Determined.

Military teams and bases can play a crucial role in repairing infrastructure and providing housing after disaster strikes, adding significance to the already-important role of American military forces on the Mississippi Gulf Coast. Coastal residents recall with gratitude the Naval Construction Battalion's reconstruction following Hurricane Camille. Indeed, for many years, every traveller coming through the Gulfport/Biloxi Airport was welcomed by a huge metal SeaBee sculpture wearing a navy hat and wielding tools in each of its six hands. There are useful roles for military teams and military bases to fulfill in repairs and provision of housing, and it is worthwhile to properly define and lay out the lines of authority for those roles following a national disaster. The Federal Government should integrate military repair sweep teams and housing resources into the civilian-led housing response effort.

Recommendation 4: The Stafford Act Must be amended to Provide Enhanced Assistance for Catastrophic Disaster With a Catastrophic Designation.

Hurricane Katrina showed us the necessity of altering the Stafford Act to account for catastrophic disasters. Current restrictions in the Stafford Act generated problems and delays for people who then turned for assistance to Mississippi Center for Justice. The Act should extend emergency shelter and Section 408 assistance, increase financial assistance for individuals and households, and streamline administrative policies and procedures to more speedily solve thousands' of peoples housing and financial crises by efficiently transitioning them from

emergency shelter to Section 408 housing, resolving denials of re-certification, and remedying mass evictions and displacements.

Federal law must eliminate public cost shares and reimbursement-based assistance, now that we know what happens when three counties' local government are reduced to ruin in a matter of hours. Just as people and families need enhanced financial assistance to restore their stability, so also do local and county governments need federal public assistance without having to shoulder additional cost shares in the wake of a catastrophic loss. Restoring public infrastructure greatly facilitates the restoration of habitable housing, a goal that is best accomplished without burdening local governments with cost-shares at the very time when they can least afford the time or money to pay and process them.

Recommendation 5: FEMA must Expedite and Complete Needed Administrative and Institutional Reform to Correct Deficiencies in its Post-Katrina Disaster Housing Response.

The critique of Stafford Act and regulatory policy interpretations and agency coordination problems in this report helps the Mississippi Center for Justice better understand why FEMA housing assistance bureaucracy was so chaotic. The defects in the current language and structure of the Stafford Act I have just described severely hampered the Mississippi Center for Justice's efforts to assist storm victims with FEMA housing assistance. Mississippi Center for Justice, in cooperation with the Lawyers' Committee for Civil Rights Under Law and volunteer attorneys and law students from across the nation, navigated a veritable maze of barriers which could have been prevented by uniform, clear, and common-sense policies and procedures. The predominant difficulties were the government's:

- a. misapplying the "shared household" rule;
- b. requiring that storm victims apply for an SBA loan;
- c. erroneous conclusion that insurers had sufficiently compensated our clients;
- d. insufficiently conducting damage inspections;
- e. limiting people's use of federal funds (i.e., prohibiting them for security deposits and utilities);
- f. failing to more fully engage landlords in the direct assistance program;
- g. Failing to account for post-hurricane inflation in the rental market in monthly rental voucher rates;
- h. failing to supply adequate quantity of rental housing;
- i. failing to accommodate people with disabilities; and
- j. duplicating of benefits issues (i.e., vouchers vs. reconstruction subsidies).

The "Shared Household" rule simply ignored the often complex living situations necessitated by living on a lower-income, such as:

- a. adult relatives or friends living together for weeks or months, yet still functioning as economically separate entities;
- b. people renting a room in a relative or friend's home;
- c. live-in care givers; and
- d. separated or divorced adults temporarily sharing or splitting housing.

Requiring hundreds of thousands of people forcibly rendered homeless by Katrina to apply for an SBA disaster home loan produced extraordinary delay and confusion. The forms posed serious barriers to lower-income families with limited reading, literacy, or financial literacy abilities. The requirement was absurd, given SBA's high rate of rejection of applications.² This requirement ultimately was ruled illegal under the Stafford Act, which forbids conditioning housing assistance upon SBA loan applications. *McWaters*, 408 F. Supp. 2d 221, 232 (E.D. La. 2006). In a number of cases, applicants were not informed that they were actually eligible for temporary housing assistance while the SBA loan application was pending. In some cases, clients were approved for loans above their actual ability to pay which disqualified them for FEMA assistance and put them in greater debt.

Recommendation 6: The Policy and Planning Proposals FEMA Began Must Be Completed and Implemented.

A catastrophic disaster like Hurricane Katrina requires a national comprehensive case management system that can serve the diverse needs of a large population of displaced persons. The report correctly pinpoints the need for access to services and resources near post-disaster housing. Across South Mississippi, Hurricane Katrina compromised highways and bridges, destroyed personal and public transportation, damaged retail fuel outlets, and compromised communications networks. MCJ clients experienced problems with the availability or accessibility of FEMA employees or information, including:

- a. the inaccessibility of Disaster Recovery Centers ("DRC") to many lower-income families, including those without transportation;
- b. the reliance upon telephone and on-line registration in areas where these forms of communication were inaccessible, not functioning or, if functioning, not at sufficient capacity to handle the demand, resulting in long delays;
- c. poorly-trained intake workers with insufficient knowledge of the rules and limitations;
- d. pervasive inconsistency in the administration of the programs;
- e. lack of second-language materials and workers, including Spanish and Vietnamese, particularly early in the response. Even more than two years later, MCJ received some flyers purportedly in Vietnamese that were not written in the Vietnamese language; and
- f. difficulties in access for persons with physical disabilities.

Mississippi Center for Justice's clients with disabilities faced problems with FEMA trailers that led to our participation as local counsel in the federal class action, *Brou v. FEMA*, (No. 06-0838)(E.D. La. 2006). Ms. Brou, 78 years old, became paralyzed on her right side in both upper and lower extremities while serving in the United States Air Force. She was discharged as 100% disabled, and used a motorized scooter. Katrina completely destroyed her Ocean Springs, Mississippi house, which was customized for disability access. The FEMA trailer she was provided was inaccessible because her scooter could not fit through the door. A replacement trailer was equally difficult for her to access due to her right-sided paralysis. The interior of the

² Bill Walsh, *SBA Frustrated in Deliver of Disaster Relief, Loans Approved, but Conditions Must Be Met*, Times Picayune (New Orleans) March 10, 2006 at 4 ("The SBA continues to be criticized for its high loan rejection rate. Of 201,775 applications, 49,153 have been approved -- meaning three out of four applicants are denied.")

trailer was too small to enable her to maneuver, and its switches were not within her reach. Other elderly and disabled displaced storm victims experienced varying degrees of similar problems to those of Ms. Brou. A consent judgment was entered into with FEMA that required compliance. In 2007, Mississippi Center for Justice inspected various sites to verify that FEMA had complied with the terms of the consent decree, and found uneven performance of FEMA's obligations under the settlement. In short, the Federal Government needs to improve its performance with disability access in catastrophic disasters.

Mississippi Center for Justice supports the call to reform and streamline the transition process from Section 403 to Section 408 assistance and the eligibility determination for Section 408 assistance. Our experience is outlined in connection with Recommendation No. 5.

Mississippi Center for Justice also encourages greater coordination between FEMA and HUD in any current or future catastrophic housing situations. In May, 2008, FEMA began a process of transfer of persons from FEMA assistance to DHAP assistance, in connection with plans to close certain FEMA trailer park sites. During this process, Mississippi Center for Justice conducted interviews with 114 FEMA trailer park residents and determined that FEMA housing advisers had misinformed and pressured displaced storm victims as part of FEMA's push to close trailer parks. The largest discrepancy dealt with the final closing date of these parks. MCJ conducted a survey of ten of the fifteen FEMA trailer parks still in existence in Harrison and Hancock counties. Fifty-five of the 114 residents we spoke with had been told they had to leave their FEMA trailer park that summer (May-July 2008). Only residents of Coliseum North had received consistent, uniform confirmation of the park closing in the form of a flyer with the closing date of June 15, 2008. Fifty-one residents in the parks had been told by a FEMA employee that their park would be closing.

Others had received information by word-of-mouth and news media. Few residents had any knowledge that FEMA assistance will continue through March 1, 2009. Many people were under the impression that if they accepted hotel housing, at the end of their one month placement they would no longer be eligible for FEMA housing assistance. Some residents who planned to move into the hotel or were in the process of moving into the hotel were concerned about not being home during meal delivery. Some were told if their belongings were not out of the trailer by May 31, 2008, the door would be locked and trailer destroyed. A few residents did not know how to apply for FEMA rental assistance or even the option of FEMA rental assistance instead of hotel placement. Among those who did get FEMA rental assistance, many residents have not been able to find landlords that will accept housing vouchers. Others were unaware of HUD rental assistance availability after March 1, 2009. Eighty-seven were renters prior to Katrina. Eighteen owned homes, two were renting to own, and seven had other arrangements. The majority of people interviewed were employed. Twenty-nine residents were on disability, and seven had health-related issues not officially classified as disability. Forty-three attributed those health problems to formaldehyde.

Mississippi Center for Justice and its *pro bono* partners also directly represented clients directly who were seeking assistance in this transition. Some of these clients still remained in hotels or other temporary housing situations as recently as January, 2009.

For all these reasons, Mississippi Center for Justice welcomes the report's recommendation to create a single accurate database of information provided by disaster recipients to eliminate repetitive calls for identical information.

Recommendation 7: Operational Plans for Post-Disaster Housing Must be Developed, Implemented and Tested.

As already discussed in detail, the Mississippi Center for Justice agrees that a properly funded and operational catastrophic housing plan with clear guidance on the roles, programs, and procedures is essential for the Federal Government to change from what this report recounts into a more effective and, in the long term, less costly endeavor.

Thank you for the opportunity to bring our personal and professional stories to the discussion of how to prevent the disaster of Katrina from occurring on this scale again.

Very Truly Yours,

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APPENDIX

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2. "Mississippi CDBG Recovery Fund Report Card," Steps Coalition, January, 2008, Reilly Morse, Mississippi Center for Justice, principal author.
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3. John Jopling, "Two Years After the Storm - The State of Katrina Housing Recovery on the Mississippi Gulf Coast," 77 Miss. L. J. 873 (2008)
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