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Mitigating Disaster: Lessons from Mississippi

As a native Californian, the sum total of what I knew about disaster preparedness was what should go in my earthquake kit. When I moved to Washington DC it became a terrorist kit, but that hardly deepened my knowledge. All that changed in September 2005, thanks to Hurricane Katrina.

When Katrina hit, I also knew precious little about either disaster response or Mississippi – but I did watch the news of the hurricane slamming against the Gulf Coast on August 29, 2005, churning storm surge and tornados and devastating destruction an astounding distance inland. Two days later I called Martha Bergmark, Founder and President of the Mississippi Center for Justice, and asked if I could do a fundraiser in DC. She replied, “Can you just come down here?” As a consultant with some flexibility, I cleared five days on my calendar. Five became ten, and before leaving Jackson I’d booked my return ticket. My four-months volunteering became a half-time consultancy thanks to the generosity of the ABA Section of Business Law.

Those are my meager credentials for the following top-ten-plus lessons learned. In addition, I offer my top-three imperatives that thread throughout those lessons, and without which the details become far less meaningful: 1) your ability to triage and absorb a massive new caseload is only as good as the strength and integration of your state’s delivery and pro bono system *before* the disaster so work to improve yours now; 2) you must ensure that our client community gets a fair share of the recovery pie so get a seat at the policymaking table; and 3) reject the status quo of poverty for our clients by rebuilding and *reinventing* new systems that promote fairness and equity for all.

Mississippi as a case study for lessons and imperatives learned may seem too extreme to be instructive in your state. The state’s status quo of eye-popping poverty is reflected in its first place ranking on most bad lists for social progress. This pre-hurricane disaster exacerbates difficulties inherent in any recovery effort. Mississippi started with one legal aid attorney for every 19,000 income-eligible Mississippians -- compared to 1:10,000 nationally, one sparsely staffed pro bono program, and a lackluster pro bono culture.

Then Katrina delivered a massive new population of income-eligible clients – right now, Mississippi has about 92,000 people living in FEMA trailers, thousands still receiving rental assistance, and untold numbers who have doubled and tripled up in the homes of friends and relatives.

Much has changed, by necessity. New private and public Mississippi legal community collaborations, access to justice initiatives and funding mechanisms, and significant progress towards creating a first-class call center, have been the cornerstone of Mississippi’s response. So despite the extreme poverty baseline, the unmitigated determination and inspiration of so many dedicated Mississippians, and their legions of

national partners, who are working to reinvent more just and inclusive communities in our nation's poorest region, can indeed provide a useful blueprint if the unthinkable happens in your state.

Before the disaster.

1. It's all about relationships.

If a program operates in isolation pre-disaster, it amplifies the impact of the disaster. An effective response requires coordination, coordination requires trust, and trust in turn must precede the chaos. Tangible fruits of pre-existing relationships include, for example, the exchange of contact information with those who run the local pro bono program and state and local and minority bars, do pro bono at local law firms, and staff other legal services and advocacy organizations, law schools, government law and policy offices, and the social service agencies that work with your client population. If your program doesn't have this broad network and it seems too daunting to develop, break it down into manageable parts. Determine which new relationships will best leverage your existing goals, and start there.

2. Launch a Disaster Preparedness and Response Committee.

You don't have to *lead* the effort – unless you see it as a way to facilitate relationships. The Committee approach is an organic way to develop relationships with the broad spectrum representing the profession and academy and new synergies having nothing to do with disasters. Regardless of who leads the discussion, you should make every effort to advance the preparedness conversation. A preliminary agenda for the Committee might include the following:

- **Define everybody's role.**
 - Does each office have its own disaster plan, assurance that all computer documents and records are being backed up and the ability to retrieve information remotely in an emergency?
 - Who checks on the safety of staff and reports out to the partners?
 - What if telephones, cellphones and/or electricity fails?
 - Which entity will facilitate the local and national (if needed) volunteer effort?
 - Who will obtain a Supreme Court Order allowing out-of-state volunteers to give in-state pro bono assistance?
 - Will firms each take responsibility for updating an issue in the Attorney Training Manual (see below)?
 - Have point people from each office been identified and their contact information circulated?

- **Volunteer Attorney Disaster Training Manual.** You do not want to write a manual AFTER the disaster strikes. Updating is one thing, first-time drafting

(which turns on quirks of local and state conditions and legal doctrine) is quite another. This lesson has an important footnote: if the disaster zone lacks electricity or the internet, make hard copies of the manual and deliver them. In Mississippi, it took us a while to realize that resources weren't being used because first responders weren't aware they existed.

Speaking two months after Katrina at a national conference, I asked for a show of hands from everyone living in a state that could experience a natural and/or manmade disaster. Every hand went up. But when I asked for a show of hands indicating which states had a disaster plan and existing manual for pro bono disaster volunteers, only California, Florida and New York hands went up. Even they were not sure whether their materials were comprehensive or outdated. Sadly, few of us are ready. Tragically, Mississippi even less so than most.

At that two-month mark we were just finalizing a state-specific manual. Piggy backing on Morrison & Foerster's quick update of their 9/11 Helping Hands Disaster Manual, we adopted their federal sections and focused on Mississippi law and the endless arcane questions regarding the applicability of existing law in a disaster situation. University of Mississippi School of Law professor and Civil Legal Clinic director Debbie Bell coordinated the manual drafting effort, assisted by a talented team of clinicians recruited through my request for help on the clinical professors listserv.

- **Review existing state laws, policies and regulations.** Analyze laws defining the governor's powers and responsibilities in emergencies, the state's ability to regulate private activities and the laws that protect – or fail to protect – your client population. Every state has gaps and obsolete statutes that need updating, many of which can help our clients under both emergency and ordinary conditions.

Low-income peoples' experiences in disaster states demonstrate the devastating impact of inadequate housing and consumer protection laws. For example, tenants are often pushed into homelessness when price-gouging protections don't apply to rents or eviction doctrine that fails to provide tenant protections in disasters. Similarly, poor tenants' health and safety are jeopardized when local law does not allow tenants to deposit rent in escrow accounts pending repairs to make a home habitable. Especially important will be those provisions to affirmatively protect people after a disaster. For example, Mississippi Center for Legal Services litigation director Jeremy Eisler knew of a state statute authorizing the governor to impose a moratorium on disaster-related mortgage foreclosures, and immediate advocacy persuaded him to issue the required resolution.

Another invaluable tool now available for this kind of review is *A Resource Guide of Emergency Disaster Response, Relief, and Recovery Laws* published at: <http://www.mintz.com/about/probono>, co-authored by volunteers at Mintz Levin Cohn Ferris Glovsky and Popeo, P.C. and King & Spaulding, LLP. Their eleven

state survey of state laws identifies key legal provisions to give you and your committee a huge head start.

After the Disaster.

All of the below will be easier if you've done some or all of the above. But even if you recall your intention to drain the swamp only when you are up to your armpits in alligators, the following additional items should be on post-disaster response to-do lists:

1. Convene a team of local and national experts immediately to assess needs and gaps.

Key players on the team could include representatives from LSC, the ABA Center for Pro Bono, ABA Young Lawyers' Division, a pro bono program, local and national legal services offices, national firms, law school clinics, an IT professional, and activists and professionals who know about local resources in the affected area. And call on people and organizations with disaster response experience. The team can take inventory of needs and get the word out about how those outside the region can help. This suggestion is a product of twenty-twenty hindsight, as we forged relationships in ad hoc fashion as the relief effort developed (and invariably found our colleagues eager to help us and incredibly generous with their time and expertise).

2. Publicize the importance of directing charitable dollars to legal aid efforts.

The philanthropic spirit after a disaster is deeply inspiring. In the wake of Katrina thousands of lawyers and law firms, like so many others, donated generously to the Red Cross and Salvation Army. Although worthy causes, their place at the head of the line for charitable donations meant that by the time legal aid, pro bono and other advocacy organizations asked for money, many wallets were empty. Yet lawyers are essential to the recovery effort. The justice system crumbles post-disaster and creates a whole new population of clients. Either the team described above or the state bar association can help convey this message in the days and weeks after the disaster. Note as well: if you do not already have **on line donation capability**, add it to your website now! Probono.Net helped MCJ achieve this technological milestone in the first few days post-disaster, enabling immediate contributions.

3. Fully exploit pro bono resources: national advocacy groups, the private bar and law schools.

If the disaster is enormous, it may take some time to say "yes" to the offers to help. The team described above should help manage the offers while you implement your response plan. Key to success will be bulking up the staff it takes to coordinate and build suitable pro bono projects – it's never fully appreciated how much effort goes into multiplying services through pro bono help.

There's no substitute for "boots-on-the-ground," particularly when the ground is wet. MCJ mitigated Katrina's damage with the help of scores of lawyers and law students who showed up – and continue to do so – with appropriately modest expectations about the level of organization they'll find when they arrive. DLA Piper and Latham & Watkins, two of the largest firms in the world and country worked alongside small local firms like Harrang Long Gary Rudnick in Portland Oregon and Citigroup and Pfizer's in-house corporate law departments, and nonprofit organizations like AARP Foundation Litigation. These lawyers diligently did whatever needed to be done. Their contributions were particularly crucial in a community that had only four legal aid lawyers for six coastal counties, two of whom lost their homes. Additionally, it has been critical to expand capacity of local lawyering, making the addition of nineteen lawyers in the four hurricane-affected states thanks to Equal Justice Works and its many law firm and corporate funding partners (www.equaljusticeworks.org/katrina-initiative/index.php), particularly important for post-disaster mitigation of disaster-related damage.

As you compile your team and response plan, remember that you'll need customized strategies to reach traditionally invisible populations. In Mississippi, we benefited from the expertise and relationships of Mai Phan, a San Jose, California lawyer active with the Northern California Vietnamese American Bar Association. She recruited a dozen bi-lingual lawyers from around the country to staff a clinic that targeted Vietnamese Mississippians needing legal services post-Katrina. Largely monolingual, many of these people lost nearly everything. Serving these clients meant obtaining protections for workers who for decades provided the backbone for the shrimping and casino industries.

While many people can and have made the trek to Mississippi to volunteer their legal and other services, many for the first time, many other lawyers want to help but can't travel for family or other reasons. Think creatively about identifying cases and projects that can be efficiently exported to volunteers out-of-state. I couldn't begin to list all the firms, organizations, and individuals that pitched in from far and wide to help Mississippians in the wake of Katrina, but the following examples chart the tip of the iceberg. Once we determined that FEMA appeals were well suited to out-of-state representation, Weil Gotshal sent lawyers to Biloxi for sixteen weeks to design a FEMA appeals pro bono project in collaboration with Lawyers' Committee for Civil Rights Under Law. As a result, more than 500 FEMA appeals cases went to most of the nation's largest law firms. Latham & Watkins took insurance matters, a crucial issue, and a hard one to obtain counsel for since most firms conflicted out. Covington & Burling wrote the insurance FAQs and provided back-up coaching to legal services lawyers unfamiliar with giving insurance-related advice. Mintz Levin helped with foreclosures and work-outs and drafting "know your rights" materials as well as a travel guide for our out-of-state volunteers, while Nixon Peabody and Citigroup prepared materials so coast residents could understand the state's grant program and appeals process. This list leaves out many able attorneys and extraordinary projects, but gives a sense of how disasters require creative thinking about how volunteers can help.

You should also seek resources beyond traditional representation and brief counsel and advice. Within two weeks of the storm Pfizer donated twelve laptop computers,

Morrison & Foerster sent seven printers and a truckload of file folders, Steve Gray of the Legal Services National Technology Assistance Project provided IT help, Manatt Phelps completed 501(c)(3) applications for new disaster assistance nonprofits, O'Melveny & Myers researched legislative fixes, Nixon Peabody conducted tax credit trainings and helped craft affordable housing development strategies.

The national advocacy organizations will provide indispensable help with training, community education, and strategy advice. Mississippi was fortunate to have an affiliation with the Lawyers' Committee for Civil Rights Under Law, whose expertise in community economic development and housing continues to be the engine of progress. National Consumer Law Center, Oxfam, Center on Budget and Policy Priorities and so many others also played critical roles at countless junctures influencing national strategies and providing guidance on local matters.

The most surprising part of the heroic pro bono response may be the legal academy's outpouring of resources and talent. The Student Hurricane Network is a mighty force that, one hopes, will exist when your state is in need (www.studenthurricanetwork.org). Not since Freedom Summer of 1964 have so many young people, including law students, come to Mississippi, changing themselves and the region in the process. Some flanked by administrators and professors, law students from University of Southern California to Columbia Law School and all points in between sent teams of students who paid their own way and slept on church floors to do client intake, community education and massive data collection projects that continue to underpin most of our advocacy efforts. You'll want to tap this invaluable resource, so think about the information you need to advocate for your community, then dispatch teams of students with survey instruments and specific instructions on where to go and how to organize the data in usable formats.

4. Be aware that legal needs after a disaster come in "seasons".

In the triage stage you'll need to give advice and counsel regarding evictions, FEMA applications, price-gouging, and document replacement. Later, insurance disputes, bankruptcy, foreclosures, heir property and title concerns, and consumer fraud issues will become more relevant. Line up volunteer and training resources accordingly.

5. Quickly adopt a pro hac vice order.

If the need is great enough, you'll need out-of-state lawyers to provide pro bono assistance to disaster victims. Have a plan to augment staffing of the pro bono organization in order to handle the increased load. Fortunately, in our case, the MS Bar petitioned quickly and the MS Supreme Court responded immediately with orders that the bar and MS Volunteer Lawyers Project are administering with minimal administrative burden.

6. If the ABA Young Lawyers Division/FEMA contract still prevents volunteers from helping with FEMA matters, establish a parallel system to help with ambiguities, appeals and advice.

The exemplary Mississippi YLD leadership and its armies of volunteers were “conflicted out” of helping with FEMA problems, per the YLD-FEMA agreement. The sad result was the failure to prevent thousands of hurricane victims from the frustration and in many cases avoidable homelessness associated with the lack of advice at the outset. Had attorneys identified problems early on or given advice individually at the application stage rather than on appeal, the huge number of FEMA appeals would have been greatly reduced. Had that occurred, many Katrina survivors could have avoided considerable misery and despair. Delays ultimately weighed most heavily on those without alternate resources, a burden borne disproportionately by our clients.

7. Go to where the clients are.

FEMA Disaster Recovery Centers were not set up quickly in Mississippi’s most affected region, and they closed only a few months after the storm. But even if they had opened earlier and stayed longer, many of our clients will not learn about assistance through usual outreach efforts. Find the trusted sources of information in low-income neighborhoods and places where people are already gathering. Often these include faith-based organizations, community centers, shelters and high-traffic nonprofits. Make sure legal help reaches non-English speakers, who typically become the most invisible victims of a disaster.

8. Coordinate between YLD intake, legal aid and pro bono programs to ensure issues are covered and with the minimum amount of referrals.

It’s critically important to minimize the number of times someone must tell their stories, deliver their documents, and disclose intimate details about their lives and problems. Without an integrated post-disaster system, a person may start at the DRC with a YLD volunteer, who refers him to a legal aid office, that then sends him to the pro bono program who still needs to find a pro bono attorney because that’s the only source of help for that particular problem. Repeating a story four times is the kind of emotional and financial stripsearching that can quickly become nearly as frustrating as the original problem the individual sought help to fix.

9. Tell the true story about the community.

Misinformation about response and recovery abounds beyond and within the disaster zone. Develop relationships with journalists, and use videos, websites and press releases to make sure the full story gets told, including the role that law and lawyers have in healing lives and solving problems.

After my first coast visit I was shocked to find that despite national reporting to the contrary, my traveling companions and I couldn’t find evidence that a single FEMA official had established a presence in any of the three hardest hit Mississippi counties. Writing about what we observed, Martha Bergmark and I sent my op-ed-like piece out into cyberspace, where it was published in more than a dozen hardcopy and internet

publications, referred to on various public radio stations, forwarded to friends and family and colleagues as well as their friends and families and colleagues (and so on and so on, as the old shampoo commercial went). The piece caught fire and brought attention, volunteers and other resources because it was a story not being told, and desperately needed telling (<http://dir.salon.com/story/news/feature/2005/09/14/gulfport/index.html>).

Similarly, when we learned in the spring of 2006 that FEMA was beginning to evict as many as 3000 families from trailers many of them had only just received, we couldn't get traction with conventional advocacy methods. We alerted the press, including Los Angeles Times reporter Richard Faussett, New York Times reporter Shaila Dewan, and NPR's Noah Adams. These stories, paired with the efforts of the Lawyers' Committee and other advocacy organizations, got the attention of Senator Joe Lieberman, who quickly put an end to this indefensible action, preventing homelessness for these families.

10. Get a seat at the table when policy and resource decisions are made that affect low- and moderate-income disaster victims.

As noted at the outset, ensure that influential public and private sector advocate voices are part of the conversation from day one. As with Letterman's Top Ten Lists, this last one may be the most important. If you join the conversation late in the game your posture is more likely to be defensive and/or adversarial and thus far less effective. Your highest priority should be strategically influencing decision-making about how federal dollars are spent and to put in place oversight mechanisms to guarantee that these funds reach low- and moderate-income disaster survivors from the very outset.

Post script: In another eighteen months I hope to write about how to sustain the advocacy effort over the multiple years it's going to take to reinvent the MS coast. I recall the chill I felt on a conference call a week after the storm when legal services lawyers in California, New York and Florida told us that years later their dockets are still filled with disaster-related cases, but the corresponding surge in interest to do pro bono or fund the extra lawyers needed to handle the caseload had long ago disappeared. We are indescribably grateful but at a loss to explain the on-going support and interest we're still getting at the 18-month mark. I'd like to think the silver lining to the nation's worst natural disaster has been a renewed awakening to the stark realities of racism and poverty in America. And a belief that perhaps this time America can permanently alter living conditions in its two poorest states. And a sense that if we can do it in Mississippi and Louisiana, we can do it everywhere.

That may be the ultimate lesson that has resonance and relevance for the nation. That a terrible disaster may also be an opportunity to reconcile the wealth disparities in the United States, the richest country in the history of the world. Perhaps the on-going outpouring of assistance, for which we can't possibly express adequate thanks, means we're really ready to "build" upon the premise that preserving the poverty status quo is, finally, no longer acceptable.