

MITIGATING DISASTER: LESSONS FROM MISSISSIPPI*

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I. INTRODUCTION

Hurricane Katrina blew open the door to perhaps the largest and broadest outpouring of pro bono legal assistance in the history of the American legal profession. The Young Lawyers Division (YLD) of the Mississippi Bar estimates that it coordinated free legal help for over 5,800 storm victims in the six months following the storm.¹ The Mississippi Center for Justice and its national affiliate, the Lawyers Committee for Civil Rights Under Law, estimate the value of pro bono legal services provided to storm victims in Mississippi in 2006 alone to exceed three million dollars.² Volunteer legal representation underpins many accounts of the recovery process in both the national media and specialized journals of law,³ housing,⁴ and philanthropy.⁵ This article offers lessons learned about disaster lawyering and leveraging pro bono by two public interest attorneys brought together at the inception of the disaster recovery effort.

Four overriding themes link these lessons together and give meaning to the details: (1) one's ability to triage and absorb a massive new caseload is only as good as the strength and integration of the state's delivery and pro bono system before the disaster, so work to improve existing service now; (2) to ensure that the pro bono client community gets a fair share of the recovery pie, advocates must get a seat at the policymaking table; (3) the recovery phase is an opportunity to reject the status quo of poverty by rebuilding and reinventing new systems

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¹ Amanda K. Jones, *Young Lawyers Message: Standing Ready to Assist the Public after Hurricane Katrina*, THE MISS. LAWYER, Winter 2005-06, at 14.

² Nicole Wallace, *Legal Wrangling*, THE CHRON. OF PHILANTHROPY, Aug. 23, 2007, at 34 (noting 2006 hours). Records for 2007 hours are on file at the Mississippi Center for Justice offices.

³ Jonathan P. Hooks & Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most In Need*, 43 Cal. W. L. Rev. 21 (2006).

⁴ Trisha Miller, *After Katrina: Fighting to Survive*, SHELTERFORCE, Sept.-Oct. 2005, <http://www.nhi.org/online/issues/143/afterkatrina.html>.

⁵ Wallace, *supra* note 2, at 34.

that promote fairness and equity for all; and (4) lawyers play an essential role after a disaster in helping people put their lives and communities back together.

Mississippi as a case study for lessons and imperatives learned may seem too extreme to be instructive in other states, as demonstrated by its worst-place ranking on key measures of social well-being.⁶ The picture for Mississippi's working poor is the second worst in the nation: 41% of working families with children earn no more than 200% of the federal poverty limit; among minority households, the rate jumps to 57%.⁷ This entrenched, manmade social disaster exacerbates difficulties inherent in any recovery effort. Mississippi started with one legal aid attorney for every 18,266 poverty-level Mississippians⁸—compared to one for every 6,861 nationally⁹—one sparsely staffed pro bono program, and a lackluster pro bono culture.¹⁰

Then Katrina delivered a massive new population of income-eligible clients, many of whom still remain far from

⁶ As of 2000, Mississippi ranked first in child poverty (27%) and elder poverty (18.8%), and second in overall poverty (19.9%). Mississippi ranked fifty-first in household income as measured by the United States Department of Housing and Urban Development Area Median Income (\$40,700) and by Average Adjusted Gross Income (\$34,006), and fiftieth in median household income (\$31,330). Mississippi ranked first in percentage of persons over twenty-five years old without a high school diploma or its equivalent (27%). Mississippi ranked first in percentage of single parent households with children (10.1%). UNITED STATES CENSUS 2000.

⁷ EDWARD SIVAK & VINCENT MANGUM, MISSISSIPPI ECONOMIC POLICY CENTER, ENTERPRISE CORPORATION OF THE DELTA, INCREASING THE RETURN: INVESTING IN MISSISSIPPI'S FAMILIES 7 (2006), http://www.mepconline.com/images/admin/spotedit/attach/0/MEPC_-_Working_Families_Report_-_Web.pdf; see also The Working Poor Families Project, Mississippi Indicators and Data, <http://www.workingpoorfamilies.org/indicators.html> (last visited Feb. 1, 2008).

⁸ Mississippi has thirty legal services lawyers. Mississippi Volunteer Lawyers Project, Mississippi Collaboration Expands Pro Bono Resources (Oct. 12, 2007), <http://www.mvlp.net/news/80/>. Mississippi's poverty population in 2005 was 548,000. Legal Services Corp., Program Information: Mississippi, http://www.lsc.gov/map/state_T32_R31.php.

⁹ Alan W. Houseman, Ctr. for Law & Soc. Policy, The Future of Civil Legal Aid in the United States 11 (Nov. 2005), http://www.clasp.org/publications/future_legal_aid.pdf.

¹⁰ According to Shirley Williams, the Executive Director of Mississippi's only pro bono program, fewer than 500 cases had been formally placed with Mississippi lawyers in 2004.

recovery. As of August 29, 2007, Mississippi had about 50,000 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.¹¹ Of the four legal aid attorneys covering the six coastal counties, two lost their homes and their Gulfport office was destroyed.

Much has changed, by necessity. New private and public Mississippi legal community collaborations, access to justice initiatives and funding mechanisms,¹² and progress towards creating a first-class call center have been the cornerstone of Mississippi's response. So, despite the extreme poverty baseline, the unsurpassed 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 elsewhere in the nation.

II. BEFORE THE DISASTER

A. *Build the relationships.*

If a program operates in isolation before a 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

¹¹ Mike Stuckey, *Katrina Dried Up Rental Market*, MSNBC, May 2, 2007, <http://risingfromruin.msnbc.com/2007/05/rentals.html> ("Others, like welder Nathan Cranmer, 27, who grew up in Kiln and lost his \$900-a-month rental home on St. Charles Street in Bay St. Louis in Katrina, bunked in shelters, trailers and with relatives while looking for affordable new digs to rent.") Over the course of forty-four legal clinics over two years, the authors encountered numerous families in similar positions who were temporarily residing with relatives or friends.

¹² A five-dollar charge was added to chancery court filing fees in 2006. See MISS. CODE ANN. § 25-7-9(2)(k) (Supp. 2007). In 2007, the Mississippi Supreme Court distributed over \$250,000 to legal services programs for the poor. Press Release, Mississippi Supreme Court, Mississippi Supreme Court to distribute Civil Legal Assistance Funds (July 25, 2007), <http://www.mssc.state.ms.us/news/071907CivilLegal%20Assistancefunds.pdf>.

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information with those who run the local pro bono program and state and local and minority bars; do pro bono coordination 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 the pro bono client population. If a program does not have this broad network, and it seems too daunting to develop, break it down into manageable parts. Determine which new relationships will best leverage the existing goals, and start there.

B. Launch a Disaster Preparedness and Response Committee.

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, 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 fail?

Which entity will facilitate the local and national (if needed) volunteer effort?

Who will pursue 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?

Who will provide bilingual services?

On September 8, 2005, a historic convening occurred among representatives of the Mississippi and Magnolia Bars, the judiciary, the state's law schools, and the legal services and public interest law firms.¹³ Key pieces of Mississippi's recovery puzzle sprang from this early coordination, including the Mississippi Supreme Court's adoption of a rule admitting out-of-state attorneys to practice *pro hac vice* for clients referred by the Mississippi YLD.¹⁴

C. Draft a Volunteer Attorney Disaster Training Manual.

In prior hurricanes, the Mississippi YLD developed and implemented some disaster response systems and materials, including an early version of a Disaster Legal Assistance Reference Manual. Following the hurricane, this manual was substantially expanded and updated to cover a wide array of topics.¹⁵ Updating is one thing; first-time drafting, which turns on quirks of local and state conditions and legal doctrine, is quite another. The message is clear: every state should have a disaster manual for volunteers before it is actually needed. 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 a while to realize that resources were not being used because first responders were not aware they existed.

Speaking two months after Katrina at the annual Equal

¹³ Mississippi Center for Justice, Katrina Archive, <http://mscenterforjustice.org/policy/katrina.html> (last visited Feb. 2, 2008).

¹⁴ In Re: Rules of Professional Conduct, Order Miss. Supreme Court No. 89-R-99018 (Oct. 14, 2005).

¹⁵ See generally THE MISSISSIPPI BAR, YOUNG LAWYERS' DIVISION, DISASTER LEGAL ASSISTANCE REFERENCE MANUAL PART 1, <http://www.msbar.org/admin/spotimages/1036.pdf>; THE MISSISSIPPI BAR, YOUNG LAWYERS' DIVISION, HURRICANE KATRINA: DISASTER LEGAL ASSISTANCE REFERENCE MANUAL PART 2, <http://www.msbar.org/admin/spotimages/1069.pdf>.

Justice Works conference, Karen Lash asked for a show of hands from everyone living in a state that could experience a natural and/or manmade disaster.¹⁶ Every hand went up. But when she asked for a show of hands indicating which states had a disaster plan and existing manual for pro bono disaster volunteers, only individuals from California, Florida, and New York raised their hands. Even individuals from these three states were not sure whether their materials were comprehensive or outdated. Sadly, too few of us are ready.

At that two-month mark Mississippi pro bono advocates were just finalizing a state-specific manual. Building on Morrison & Foerster's quick update of their 9/11 Helping Hands Disaster Manual,¹⁷ advocates 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 Deborah Bell coordinated the manual drafting effort, assisted by a talented team of clinicians and students recruited through requests for help on the clinical professors' listserve.¹⁸

D. Review existing state laws, policies and regulations.

Analyze laws defining the governor's powers and

¹⁶ Karen Lash, Hurricanes Rita & Katrina Panel, Equal Justice Works Career Fair & Conference (Oct. 18, 2005).

¹⁷ MORRISON & FOERSTER LLP, HURRICANE KATRINA HELPING HANDBOOK: A RESOURCE FOR INDIVIDUALS, FAMILIES, AND SMALL BUSINESSES (Sept. 9, 2005), <http://www.mofo.com/about/Katrina.pdf>.

¹⁸ See KatrinaLegalRelief.org, http://katrinalegalrelief.org/index.php?title=Katrina_Legal_Relief.org; see also KatrinaLegalRelief.org, Hurricane Katrina: Legal Issues, http://katrinalegalrelief.org/katrina_manual.pdf. Deborah Bell credits the Manual to:

[A] joint effort of the University of Mississippi Civil Legal Clinic and volunteer students and professors, the Clinical Legal Education Association and the Association of American Law Schools Section on Clinical Legal Education. Clinical faculty and students from the law schools at Arizona State, Arkansas (Little Rock), Ave Maria, California (Boalt Hall), Columbia, Connecticut, CUNY, Detroit, Drake, Georgia, Harvard, Howard, Illinois, Minnesota, New Mexico, St. John's, St. Thomas, Syracuse, Thomas Cooley, Tulsa, Western New England and Yale contributed to this effort.

KatrinaLegalRelief.org, <http://katrinalegalrelief.org/index.php?title=Introduction>.

responsibilities in emergencies, the state's ability to regulate private activities, and the laws that protect—or fail to protect—lower-income client populations. Every state has gaps and obsolete statutes that need updating, many of which can help 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 do not apply to rents or eviction doctrine fails to provide tenant protections in disasters.¹⁹ 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 that 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,²⁰ and immediate advocacy persuaded Governor Barbour to issue the required executive order.²¹

An invaluable tool now available for this kind of review is *A Resource Guide of Emergency Disaster Response, Relief, and Recovery Law* co-authored by volunteers at Mintz Levin Cohn Ferris Glovsky and Popeo, P.C., and King & Spaulding, LLP.²² Their eleven-state survey of state laws identifies key legal provisions to give disaster legal response committees a huge head start.

¹⁹ Mississippi advocates helped secure an Attorney General's opinion that the price-gouging statute, MISS. CODE ANN. § 75-24-25 (1972), applied to rent. Price Gouging, Op. Miss. Att'y Gen. No. 2005-0554, at 2 (Nov. 21, 2005), available at 2005 WL 3775648.

²⁰ See MISS. CODE ANN. §§ 89-1-301 to -329 (2006).

²¹ Haley Barbour, Miss. Gov., Ex. Order No. 939 (Aug. 27, 2005), available at <http://www.governorbarbour.com/old/EO939.htm>.

²² Mintz Levin Cohn Ferris Glovsky and Popeo, P.C., & King & Spaulding, LLP, *A Resource Guide of Emergency Disaster Response, Relief, and Recovery Law* (Oct. 2006) (on file with authors).

III. AFTER THE DISASTER

What follows will be easier if some or all of the above has been done beforehand. But in any event, the following additional items should be on post-disaster response to-do lists:

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

Key players on the team could include representatives from the ABA Center for Pro Bono, ABA YLD, local and national legal services offices, national firms, law school clinics, IT professionals, and activists and professionals who know about local resources in the affected area. It is particularly useful to call on people and organizations with disaster response experience. The team can take inventory of needs and publicize how those outside the region can help. Many in the Mississippi disaster legal recovery world 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.

There is great value in speaking to those with long-term disaster response experience. To cite but one experience, North Carolina Legal Services attorneys recounted problems that arose years after Hurricane Floyd struck the area, including discriminatory municipal rezoning practices and predatory lending practices that siphoned off equity from low-income home grant recipients, impacting our dealings with local governments and subprime lenders.²³

B. 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

²³ Regional Convening on Affordable Housing, Jackson, Miss., December 15-16, 2005. Children's Defense Fund, North Carolina Association of Community Development Corporations, co-convenors.

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, because 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. Make it a top priority to have or add on-line donation capability to the websites of disaster legal response partners. Probono.Net helped the Mississippi Center for Justice achieve this technological staple in the first few days post-disaster, enabling immediate contributions.

C. Expand fulltime lawyer capacity—if possible.

An essential need is to expand capacity of local public interest lawyering. Legal services programs were not able to meet the pre-disaster need—adding staff post-disaster is not a luxury item. The Gulf Coast benefitted immeasurably by the Katrina Initiative launched by Equal Justice Works, adding nineteen lawyers to local advocacy firms in the four hurricane-affected states.²⁴ This effort was funded by matching foundation money with law firm and corporate funding partners and has proven to be very effective for post-disaster mitigation of disaster-related damage. By drawing upon existing locally-rooted talent, and by including experienced attorneys along with new graduates, Equal Justice Works accelerated the ability to engage in advocacy on behalf of lower-income and minority storm victims. Other organizations made key contributions to expanding Mississippi legal staff, including JEHT Foundation, Minnesota Bar Association, American Bar Association Section of Business Law, AARP Foundation, Ford Foundation, and Fannie Mae Foundation.

²⁴ Equal Justice Works, Katrina Legal Fellowships, <http://www.equaljusticeworks.org/programs/katrina/fellow> (last visited Feb. 1, 2008).

D. 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 individual members implement their response plans. Key to success will be bulking up the staff it takes to coordinate and build suitable pro bono projects—it is never fully appreciated how much effort goes into multiplying services through pro bono help. Trainings and new materials must be developed, along with intake forms, procedures for processing cases, lawyers to determine which matters are ripe for volunteers, whether it can be handled remotely or will require local assistance, staff to answer volunteer questions, mechanisms to update volunteers with the many inevitable regulatory and rules changes, and much more.

Mississippi Center for Justice’s Biloxi office depended first and foremost upon the well-stuffed rolodex of its founding president, Martha Bergmark, who drew on decades of public interest legal service to recruit first-responders²⁵ who helped coordinate hundreds of volunteers from the Student Hurricane Network and law firms, ensuring that orientation packages and files were ready for the upcoming week. As the flow of volunteers continued, the Mississippi Center for Justice developed orientation materials including short films and audio slideshows to enrich the volunteers’ experience with images and maps, to recruit other volunteers upon return home, and to free up local staff to conduct other work.

The stream of in-state volunteers has been invaluable—there is no substitute for “boots-on-the-ground,” particularly when the ground is wet. Mississippi Center for Justice and its national affiliate, Lawyers’ Committee for Civil Rights Under Law, mitigated Katrina’s damage with the help of scores of lawyers and law students who showed up—and continue to do

²⁵ These first responders included Bonnie Allen, Benetta Mansfield and Karen Lash, who arrived in Jackson while countless others worked from afar on raising funds; collecting materials, prospective volunteer names, and contact information; improving the website to ensure timely updates; and other activities.

so—with appropriately modest expectations about the level of organization they will 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; Citigroup's and Pfizer's in-house corporate law departments; and nonprofit organizations like AARP Foundation Litigation. These lawyers diligently did whatever needed to be done.

As the team and response plan are pulled together, remember the need for customized strategies to reach traditionally invisible populations. Mississippi 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 bilingual lawyers and students from around the country to staff a clinic that targeted Vietnamese Mississippians needing legal services post-Katrina.²⁶ 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. Mississippi Center for Justice also served as custodian for wireless translation headsets to enable non-English-speaking communities to participate in civic events in Mississippi and Louisiana.²⁷

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 cannot travel for work or other reasons. Therefore, think creatively about identifying cases and projects that can be efficiently exported to volunteers out-of-state. It would be impossible to list all the firms, organizations, and individuals that pitched in

²⁶ See Vietnamese American Bar Association of Northern California, News, California Vietnamese American Attorneys Provide Legal Aid to Katrina Survivors in Biloxi, <http://www.vabanc.org/news3.html> (last visited Feb. 8, 2008); see also Audio tape: Gary Michaels, Mississippi Public Broadcasting, Legal Clinic Meets Needs of Coast's Vietnamese (Jan. 22, 2007), <http://www.mpbonline.org/news/local-news/0701-archives/documents/070122-gary-Vietnamesehelp.mp3>.

²⁷ Posting of Truc Nguyen, About the Language Access Project, <http://justice2biloxi.wordpress.com/> (Sept. 24, 2006, 12:45 a.m.).

from far and wide to help Mississippians in the wake of Katrina, but the following examples chart the tip of the iceberg. Once it became clear that Federal Emergency Management Agency (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 the Lawyers' Committee for Civil Rights Under Law.²⁸ As a result, more than five hundred 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 Frequently Asked Questions²⁹ and provided back-up coaching to legal services lawyers unfamiliar with giving insurance-related advice. Mintz Levin helped with foreclosures, work-outs, and drafting "know your rights" materials as well as a travel guide for our out-of-state volunteers; while Nixon Peabody³⁰ and Citigroup prepared materials so coast residents could understand the state's grant program and appeals process. DLA Piper partnered with the Lawyers' Committee and the Mississippi Center for Justice to develop an heir's property program to clear title in African American communities. O'Melveny & Myers prosecuted fraud cases for storm victims who lost their recovery funds to unscrupulous contractors. 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.

Seek resources beyond traditional representation and brief counsel and advice. Within two weeks of the storm Pfizer donated twelve laptop computers; Morrison & Foerster sent

²⁸ Press Release, Weil, Gotshal & Manges LLP, Weil, Gotshal & Manges Externship Program Focuses on Mississippi Katrina Victims (March 8, 2006), <http://www.weil.com/news/newsdetail.aspx?news=25073>.

²⁹ COVINGTON & BURLING, FREQUENTLY ASKED QUESTIONS: POST-HURRICANE INSURANCE ISSUES (Sept. 7, 2006), <http://www.probono.net/ms/library/item.114112>.

³⁰ NIXON PEABODY LLP, NIXON PEABODY AND THE MISSISSIPPI CENTER FOR JUSTICE OFFER HELP WITH THE MISSISSIPPI HOMEOWNER ASSISTANCE GRANT PROGRAM: A NEW "HOW-TO" MANUAL WILL BE USED TO EXPLAIN THE GRANT PROGRAM FOR HOMEOWNERS DISPLACED BY HURRICANE KATRINA (Jan. 4, 2007), <http://mscenterforjustice.org/NixonPeabody.swf>.

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; and 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 particularly 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 in otherwise overlooked populations.³¹ The Public Interest Law Project and Sergeant Shriver National Center on Poverty Law created the indispensable website FEMA Answers,³² and the National Low Income Housing Coalition, Public Interest Law Project, National Consumer Law Center, Oxfam America, 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 other states are in need.³³ 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 student volunteers during semester and spring breaks who paid their own way and slept on church floors to do client intake,

³¹ See Lawyers' Committee for Civil Rights Under Law, Community Development Initiative, <http://www.lawyerscomm.org/2005website/projects/housing/communitative.html>.

³² FEMA Answers Home Page, http://femaanswers.org/index.php/Main_Page.

³³ Student Hurricane Network Home Page, <http://www.studenthurricanenetwork.org/>.

community education and massive data collection projects that continue to underpin most of our advocacy efforts.³⁴ To tap this invaluable resource, think about the information needed to advocate for impacted communities, then dispatch teams of students with survey instruments and specific instructions on where to go and how to organize the data in usable formats. Mississippi Center for Justice used volunteers to conduct surveys of justice court evictions, apartment complex damage,³⁵ FEMA trailer park conditions, community history work, and other projects detailed in the Mississippi Center for Justice's newsletters.

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

In the triage stage disaster victims need 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.

F. Quickly adopt a pro hac vice order.

If the need is great enough, seek 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, the Mississippi Bar petitioned quickly, and the Mississippi Supreme Court responded immediately with orders permitting *pro hac vice* pro bono disaster recovery service that the bar and Mississippi Volunteer Lawyers Project are administering with minimal administrative burden.³⁶ In February 2007, the American Bar Association

³⁴ See, e.g., Amy Applegate, Professor of Law, Indiana University, Biloxi Journal-PILF Hurricane Relief Trip (Dec. 2006), <http://mscenterforjustice.org/policy/katrina.html> (follow "Journal of an Indiana University Law Student's work on the Gulf Coast" hyperlink); Mississippi Center for Justice, <http://mscenterforjustice.org/policy/katrina.html>; Wisconsin Blogspot, <http://wisconsinshn.blogspot.com/index.html>.

³⁵ Mississippi Center for Justice, Rental Unit Survey of the Mississippi Gulf Coast, <http://mscenterforjustice.org/about%20us/survey.html>.

³⁶ In Re: Rules of Professional Conduct, Order Miss. Supreme Court No. 89-R-99018

House of Delegates adopted a Model Court Rule on Provision of Legal Services Following Determination of Major Disaster that can be adapted to any state, to prevent the delays experienced in Mississippi and Louisiana in getting such vital early assistance from willing volunteers.³⁷

G. 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 Robert T. Stafford Disaster Relief Act specifically addresses the provision of free legal services to low-income individuals affected by a disaster. Responsible for implementing the Stafford Act, for the last two decades FEMA's Office of Disaster Assistance Programs has fulfilled this mandate per a letter agreement with the ABA YLD to provide volunteer lawyers through the ABA and its local YLD district representatives.³⁸ However, this means the exemplary Mississippi YLD leadership and its armies of volunteers were "conflicted out" of helping with FEMA problems.³⁹

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

(Oct. 14, 2005).

³⁷ MODEL RULES OF PROF'L CONDUCT R. 5.5 & cmt. 14 (2007) (amended Feb. 12, 2007), available at <http://mebaroverseers.org/Ethics%202000%20Web/Report%20and%20Recommendations/Sec.%206b%20Legal%20Services%20after%20Disaster.pdf>.

³⁸ AGREEMENT BETWEEN THE AMERICAN BAR ASSOCIATION ON BEHALF OF ITS YOUNG LAWYERS DIVISION AND OFFICE OF DISASTER ASSISTANCE PROGRAMS, FEDERAL EMERGENCY MANAGEMENT AGENCY CONCERNING DISASTER LEGAL SERVICES 36, 38-39 (July 13, 1993), <http://www.msbar.org/admin/spotimages/1069.pdf>. See also Jones, *supra* note 1, at 14.

³⁹ At the time Hurricane Katrina struck, the Mississippi Bar had 6,655 in-state members and 900 members on the Mississippi coast. Jones, *supra* note 1, at 15.

resources, a burden borne disproportionately by our clients.

Similarly, you will want to ensure that FEMA is being monitored, a central repository for reporting problems identified, and more direct lines of communication with FEMA's General Counsel and leadership established. Hopefully this could help obviate the need for some of the many federal lawsuits that became necessary.⁴⁰

H. Go to where the clients are.

FEMA Disaster Recovery Centers were not set up quickly in Mississippi's most affected region, and many closed only a few months after the storm. But even if they had opened earlier and stayed longer, many of our clients would not have learned about assistance through mainstream 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.

⁴⁰ See, e.g., *Ridgley v. FEMA* 512 F. 3d 727 (5th Cir. 2008) (district court granted motion for preliminary injunction and ordered FEMA to stop terminating rental assistance, collecting overpayments, or resolving appeals until FEMA provides adequate advanced written notice setting forth the reason for the termination or alleged overpayment and further providing the recipient with the opportunity to have a hearing before any action is taken to terminate benefits or recover an alleged overpayment; Fifth Circuit reversed and remanded holding grant of preliminary injunction was abuse of discretion); *ACORN v. FEMA*, 463 F. Supp. 2d 26 (D.D.C. 2006) (restoring Section 403 benefits to all evacuees who, as of August 31, 2006, had been found ineligible for Section 408 benefits until such time as they have received detailed explanations why they were ineligible and are allowed appeals of those decisions); *McWaters v. FEMA*, 436 F. Supp. 2d 802, 813 (E.D. La. 2006) (class action requiring FEMA to extend the hotel/motel program until February 2006); Settlement Agreement, *Brou v. FEMA* 06-0838 (E.D. La. Sept. 26, 2006) (settlement required that FEMA trailers meet Uniform Federal Accessibility Standards for evacuees with disabilities and established special toll-free numbers for evacuees who need accessible trailers from FEMA).

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

It is critically important to minimize the burden on the clients. Reduce the number of times the clients must tell their story, 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 is the only source of help for that particular problem. Repeating a story four times is the kind of emotional and financial strip-searching that can quickly become nearly as frustrating as the original problem the individual sought help to fix.

J. 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 Karen Lash's first Coast visit she and her traveling companions were shocked to find that despite national reporting to the contrary, they could not find evidence that a single FEMA official had established a presence in any of the three hardest hit Mississippi counties.⁴¹ Writing about what they observed, Martha Bergmark and Karen sent an 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, and forwarded to friends and family and colleagues as well as their friends and families and colleagues. The piece caught fire and brought attention, volunteers, and

⁴¹ Karen A. Lash, *The Forever Elsewhere Management Agency: In Gulfport, Miss., 13 days after Katrina roared through, we couldn't find one resident who had ever seen a FEMA official*, SALON.COM, Sept. 14, 2005, <http://dir.salon.com/story/news/feature/2005/09/14/gulfport/index.html>.

other resources because it was a story not being told and desperately needed telling.

Similarly, when local advocates learned in the spring of 2006 that FEMA was beginning to evict as many as 3,000 families from trailers that many of them had only just received, they could not get traction with conventional advocacy methods. We alerted the press, including *Los Angeles Times* reporter Richard Faussett,⁴² *New York Times* reporter Shaila Dewan,⁴³ and National Public Radio's Noah Adams.⁴⁴ 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.⁴⁵

K. 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. Joining the conversation late in the game increases the odds that one's posture will be defensive and/or adversarial and thus far less effective. The highest priority should be strategically influencing decision-making about how federal dollars are spent and putting in place oversight mechanisms to guarantee that these funds reach low- and moderate-income disaster survivors from the very outset. Legislation requiring state oversight and transparency was defeated by Mississippi's Governor Haley Barbour.⁴⁶ Consequently, a significant amount

⁴² Richard Fausset, *30 Days' Notice at the FEMA Trailer*, L.A. TIMES, May 20, 2006, at A1.

⁴³ Shaila Dewan, *FEMA Halts Evictions from Trailers in Mississippi*, N.Y. TIMES, June 22, 2006, at A16.

⁴⁴ Noah Adams: *FEMA seeks to Evict 3,000 Displaced by Katrina* (National Public Radio broadcast May 24, 2006), available at <http://www.npr.org/templates/story/story.php?storyId=5427894>.

⁴⁵ Dewan, *supra* note 43, at A16.

⁴⁶ On March 15, 2006, Governor Barbour vetoed House Bill 1320, which would have required financial accountability through reporting requirements on the use of Mississippi's CDBG disaster recovery funds. H.R. B. 1320 (Reg. Sess. 2006); see also Geoff Pender, *Legislators Weigh in with Their Priorities Post-Katrina*, SUN HERALD, Aug.

of advocate and pro bono hours have been spent attempting to influence spending and policy to ensure an open, fair, and equitable recovery that involves the community in the planning process.⁴⁷

L. Include community lawyering as part of disaster recovery model.

Community organizations are essential partners in disaster recovery from inception to conclusion. Pro bono legal strategies should include assistance to community groups because they provide conduits to direct service, to culturally competent educational outreach, and to economic development opportunities. After natural disasters, it is especially important to provide organizational and compliance services to newly formed community organizations, since these frequently will be led by newcomers to the complex world of nonprofit governance and finance.

Community organizations provide important opportunities for innovation to occur in smaller scale and at greater speed than state or federal recovery programs. As a result, community groups can lead the way with proven pilot programs. Working with community organizations is especially attractive to transaction and real estate practitioners in national law firms, and can augment the power of local public interest advocates.

27, 2006.

⁴⁷ Advocates succeeded in persuading Governor Barbour to double the size of the Phase II home grant program and exempt very low-income households from the insurance penalty. See Press Release, Steps Coalition Welcomes Revisions to Home Grant Program, Dec. 20, 2006, <http://tinyurl.com/22totl>. On the other hand, advocates so far have not prevented Governor Barbour from diverting \$600 million in federal money intended to help low- and moderate-income families rebuild housing and quadruple the size of the state Port of Gulfport. See, e.g., Editorial, *More Housing Woes in Mississippi*, N.Y. TIMES, Sept. 27, 2007, at A32; Jenny Jarvie, *Katrina housing aid going to port instead: The U.S. approves Mississippi's plan to divert \$600 million. Critics say the poor are being shortchanged.*, L.A. TIMES, Jan. 26, 2008, at 14 (Main News); *Bill Moyers Journal: Katrina Recovery Gone Wrong?* (PBS television broadcast Nov. 16, 2007), available at <http://www.pbs.org/moyers/journal/11162007/watch2.html>; Karen Lash & Reilly Morse, *Seeking Shelter from the Storm*, SUN HERALD, Oct. 17, 2007; Karen Lash & Reilly Morse, *CON-Port of Gulfport: Should MDA divert \$600 million in housing funds to restore port?*, CLARION-LEDGER, Oct. 7, 2007.

IV. POSTSCRIPT

The paramount question in public interest work following a massive natural or manmade disaster is how to sustain the advocacy effort over the multiple years it will take to reinvent the impacted area. Imagine the chill Karen Lash felt on a conference call a week after the storm when legal services lawyers in California, New York, and Florida reported 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 pro bono support and interest we are still getting well beyond the twenty-four month mark. We believe 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 cannot possibly express adequate thanks, means we are really ready to "build" upon the premise that preserving the poverty status quo is, finally, no longer acceptable.