

Louisiana Lawyers after the Storm: Problems and Solutions

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I. Introduction

I was eager to accept the invitation extended to me to be with you today. Not so coincidentally, Hurricane season opened this morning along my beloved Gulf Coast. My decision to be with you, however, was motivated by a commitment to share with you our “Katrina and Rita” experiences, what we learned, and what we hope we will do better in the future should—or when—tragedy strikes again.

Let me also say that I am impressed with this panel and the message it seeks to convey. Tragedies are both man made and are the handwork of nature. No one will ever forget the horrors of September 11, 2001 and with it the senseless loss of life and the numbing of our souls. Bob Saltzman lived that day and the challenges that ensued. His perspective is one that we all pray we will live only vicariously—never to be repeated.

Nature is neither kind nor is she capable of our gentle control. Along the coastal areas of our country, hurricanes and flooding are reminders of our impotence in the grand scheme of things. For other areas, earthquakes, tornados, blizzards, volcanoes, mudslides and drought are but a few of the calamities not only in our memories, but on our horizon as well.

It is beyond the scope and time permitted me today to discuss the many heart wrenching stories that played out in the aftermath of Hurricanes Katrina and Rita in my home state of Louisiana. What I do hope to share are the obvious and not so obvious difficulties these events left for us in the legal profession, and more particularly the systems of justice and regulation there.

II. Problems and Solutions

- From the outset, the displacement of people from their homes and places of business reflected a catastrophe of unparalleled proportions. For many lawyers, their homes and offices were submerged in flood waters often reaching 10-12 feet. To be sure, possessions were lost, many of which were treasures of the heart reflecting years of accomplishment. Insurance coverage can reasonably be expected to replace the value of much. But lost as well were the records of years of legal effort, client files, important evidence and indeed client lists. Many lawyers found themselves evacuated hundreds of miles away armed with only a cell phone and

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what meager belongings they were able to scoop up as they fled in a 1.2 million person exodus. In the days and weeks that followed, frantic phone calls were placed as clients searched for lawyers and what was to become of their pending legal matters. Lawyers faced the overwhelming tasks of trying to recreate their files, locate clients and provide service expected of them by our ethical rules and our sense of duty and purpose. Through that process, certain things became clear. We had not properly anticipated or planned for the kind of practical problems this disaster created. I urge you to learn from our experience and address some of these areas in the hope never to need them:

- Creation of a Universal Point of Contact: In the days following the storms, lawyers were scattered across the country. It has been estimated that of our nearly 20,000 member bar, more than 8,000 were displaced. We did not have in place a central, universal point of contact. We scrambled as a bar to establish a web based point of contact where lawyers could, online, contact the bar, provide their whereabouts, and serve as a vital link for information and planning. Additionally, clients seeking to locate their lawyer could provide information on a chat board that lawyers were encouraged to check frequently. *I urge each and every one of you to return to your home jurisdiction and consider the creation of such a vehicle. Test it, modify it and explain it BEFORE you ever need it. It will serve you, your members and your clients well.*
- Transitioning A Law Practice: Louisiana lost over 1100 of our loved ones in Katrina. Several were lawyers who practiced in solo settings. Others were injured or so overwhelmed that the return to practice was and will be impossible. Unlike some states, Louisiana does not have a system of receiverships to take over the practice of a lawyer who dies or who is removed from the practice of law. For those of you who do, the cost of receiverships on a magnitude created by Katrina would be overwhelming. We have learned that we will have to create a mechanism for designating those who will take on the burden of assuming a lost or abandoned practice so that the needs of the clients are met and system of justice can go forward. One such mechanism is to require that every member of your bar enter into transition agreements with another lawyer to address that problem should tragedy strike. *I again urge you to return to your jurisdiction and fashion a solution that meets the needs of your membership in this critical area. While no one plan may be right for every jurisdiction, do not be dissuaded by the enormity of the task. Implement a plan, even one that will require later revision. Should a disaster strike, it will be too late.*

- Preservation of Client Files and Evidence: While it is said that “a lawyer’s time is her stock in trade”, our client’s files are the tools of our trade without which we are empty handed and idle. Clearly, we are entering a new age of information management and retention. Digital files stored on the Internet or in secure locations may not yet have arrived for most practitioners. Nonetheless, it is our responsibility to find ways to bring information storing opportunities to every practitioner and to educate them as to the advantages of that security. We in Louisiana learned that many in the larger firms had indeed digitized much of their information and client files; and were able to readily retrieve them as soon as they were able to return to practice. But for many of the nearly 60% of our bar who practice in a solo setting, client files, records and evidence were forever lost. *Education of your membership, particularly that segment of your bar who are solos or members of small firms, as to the opportunities for information management and storage should be a top priority. Help them develop strategies for reconstruction of lost or destroyed files. Develop rules for cooperation with opponents and courts where client information and pleadings can be shared as part of the reconstruction process.*
- Develop Opportunities for Service: It is impossible to describe the countless legal issues that were created by these storms. Renter’s obligations to landlords; insurance coverage questions; delayed trials; pending legal decisions; the virtual shut down of all civil and criminal courts in the state for months; and the ever present myriad of Byzantine regulations from the good folks at FEMA and the Red Cross. Louisiana needed help and our brothers and sisters of the bar from across the country, spearheaded by the ABA, responded with offers of pro bono help, advice and assistance. What they encountered, however, was a series of obstacles in the form of unauthorized practice of law regulations and statutes that must have made those who were so willing to help wonder at our lack of manners. In truth, we in Louisiana were guilty of nothing more than a lack of preparation for such an event. Nothing was in place to permit out-of-state lawyers to provide free legal assistance to our residents who so sorely need help. While our Supreme Court later created the vehicles to authorize such help, preplanning could have expedited the assistance and presented a more appreciative environment for our out of state colleagues. *Upon your return, develop a set of rules and regulations that will, during a time of emergency, allow lawyers not licensed in your jurisdiction, to provide your citizens with legal guidance and direction when they*

need it most. Draft opportunities for appearances in your state by those who are eager to lend a helping hand.

- The Need for Emotional and Medical Support: I would like to address those of you in the audience who may have some attachment to your jurisdiction's lawyer discipline system. As you know, much of the serious disciplinary matters you are called upon to address reflect a common thread. Alcoholism, drug addiction, as well as mental and emotional difficulties are said by many to be present in as many as 50% of serious discipline cases. Having a functioning Lawyer's Assistance Program in your jurisdiction is not a luxury, it is an absolute necessity. The executive director of Louisiana's LAP program has reported that incidents of alcohol abuse and dependence; drug addiction; and mental and emotional difficulties have skyrocketed since Hurricanes Katrina and Rita. Depression, suicides, alcoholic and drug relapses are the lingering, bitter aftereffects of disasters. You can do something about it. *If your state does not have a well funded and well developed Lawyer's Assistance Program, get one. Invest your time and your resources here. If you don't know where to start, the ABA Commission on Lawyer Assistance Programs can provide the support and expertise you need. Educate your law students, your bar members and your judiciary about the toll that alcoholism, drug addiction and mental or emotional disorders can have on the legal professional. During good times, a LAP program can save a career, save a marriage, and—indeed—save a life. After a disaster, a meaningful LAP program can help save your system of justice.*

III. Conclusion

- I explained when I began that time would not permit me to share with you the countless heart wrenching stories of Hurricane Katrina. As I close, I would like to share just one. As 150 mph winds leveled vast stretches of Louisiana and failed levees burst allowing New Orleans to become a vast lake, land line communications were lost and cell phone towers toppled. Baton Rouge, our state capital and which is farther inland from the coast, was largely unscathed. My office is there. We had power and phone service. Several days after the storm passed, and while much of New Orleans was still 10-12 feet underwater, my phone in Baton Rouge rang. On the other line was a lawyer calling on his cell phone from Arkansas. He had tried to call areas of New Orleans to get information, to anchor his life; but obviously could not get through. He began to speak to me about the home he had lost; about an office submerged in sickly water laying all to ruin; he spoke to me of his successes and his failures in a career spanning over three decades; he worried aloud about his clients and what was to

become of them; and he began to sob quietly at first and then louder and more deeply. And then he asked me, “Chuck, what do I do now?” Somehow, “Hang in there. It’ll be alright.” seemed pretty inadequate. He hasn’t returned and I’ve never heard from him again. Please don’t put yourself in the position of not having answers when tragedy strikes. If any good can come of a disaster, it is that we are given the opportunity to become wiser and better prepared.

- On behalf of the lawyers and citizens of the State of Louisiana, I’d like to thank you for your thoughts, your prayers, your support and your dedication to our recovery. Please be patient and stand with us. Soon, we hope to invite you down for dinner.