RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial authorities to identify and address the special needs of vulnerable populations, including but not limited to individuals with disabilities, children, the frail, elderly, homeless persons, domestic violence victims, undocumented persons, the impoverished, and persons with language barriers, when planning for and responding to disasters.

FURTHER RESOLVED, That Congress, state legislatures, territorial legislatures, tribal and local authorities should adequately fund departments and entities charged with responding to and assisting disaster survivors to cover the increased and unique needs of and disparate impact upon vulnerable populations in planning for, responding to, and recovering from major disasters.

FURTHER RESOLVED, That lawyers should participate in community-wide disaster planning activities to ensure that plans comply with legal and regulatory requirements applicable to the provision of government services and benefits to all disaster survivors, and to identify and help address gaps in policy, practice, and regulation that disproportionately and adversely affect vulnerable populations in times of major disaster.
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REPORT

Introduction

Virtually every major disaster, by definition, harms persons and damages homes, infrastructure, and businesses in affected communities. The disaster affects the lives and livelihood of everyone in the community to some degree. But for some, the harms are more severe and the ability to recover is substantially more difficult. These include the impoverished, who lack private transportation to evacuate, hotels to fall back on, and resources and disposable income to get them back on their feet; the frail and elderly, who are trapped in high rise apartment buildings unable to leave or get assistance when the elevators go down; the disabled, who may seek temporary shelter in a facility not equipped to handle their special needs; the non-English speaking, who cannot follow directions from first responders or understand their rights to assistance; the medically fragile, who are often left without their medications, ventilators, or other critical medical devices; and infants and children, who may be separated from their caregivers. Together these and others who are vulnerable or disadvantaged, individually and collectively, need help from lawyers, both before and after a disaster strikes.

The lawyer’s role to help the vulnerable and disadvantaged following a disaster is clear. Lawyers advocate for disaster victims to help overcome legal obstacles. They assist in obtaining Federal Emergency Management Agency (FEMA) and other public benefits and private insurance, help in landlord tenant disputes, intervene when there are fraudulent consumer practices, and help when critical vital documents are destroyed. This role has long been at the forefront of the organized bars’ commitment to serve the community following a disaster. The ABA Young Lawyers Division (YLD), through a Memorandum of Understanding (MOU) with FEMA, coordinates Disaster Legal Services (DLS). DLS is one of the individual assistance services offered under the Stafford Act, which is the statutory authority for most federal disaster response activities especially as they pertain to FEMA and FEMA programs. Through this MOU, when invoked by FEMA following a major disaster, the ABA YLD sets up and ensures staffing of a disaster legal services hotline and works with local bar associations, attorneys, pro bono programs, law schools, legal services entities and others to make available and often train lawyers to assist disaster victims.

After a disaster, lawyers may also advocate for the collective needs of disadvantaged populations. For example, following Hurricane Katrina, a large number of elderly, low-income, and minority groups were without adequate housing. Yet, the media reported that nearly $600 million of Mississippi’s federal disaster grants were being reallocated to expand the state port at Gulfport. The Mississippi Center for Justice filed suit on behalf of community groups and individuals against the U.S. Department of Housing and Urban Development, resulting in a settlement with $132 million set aside to assist low-income households.

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2 Mississippi Center for Justice, http://mscenterforjustice.org/our-work/disaster-
A lawyer’s ability to help the vulnerable and disadvantaged prior to a disaster may be less clear, but is equally if not more important. The more prepared a community is for a disaster, especially for the disadvantaged, the more manageable the after-effects will be. A community’s failure to incorporate in its disaster planning the special needs of its most vulnerable residents and visitors places them at an added risk of injury and even death, should disaster strike. Indeed, federal judges across the county have confirmed that a community’s failure to incorporate the needs of vulnerable populations in their community disaster plan violates federal law. Lawyers should be at the table as advocates, community leaders, and problem solvers as their communities develop, test, and update community-wide emergency management plans, with special attention to the disadvantaged, who are the most in need of a lawyer’s advocacy skills.

Attorneys and other community advocates cannot alone safeguard the well-being of the disadvantage and vulnerable following a disaster. Governments, especially state, local, and territorial, must execute its primal duty of helping those most in need. Toward this end, governments can and must: survey and pre-understand the prevalence of different vulnerable populations in the community; coordinate interagency and intergovernmental implementation of emergency plans related to the vulnerable and disadvantaged; consider and plan for the needs of their own public employees who are at risk; allocate sufficient resources so that shelters can accommodate persons with special needs or those without ready access to transportation such as the homeless; ensure hospital patients and nursing home residents are evacuated and emergency notification and communication methods are accessible to those with vision and hearing impairments and in languages prevalent in the community; increase awareness level of first responders and emergency managers on issues relating to individuals with disabilities and other vulnerable populations; and ensure that relevant laws, such as the Americans with Disabilities Act are followed, and where necessary, ensure new laws are enacted or regulations and policies implemented to cover gaps in services and protections to vulnerable disaster survivors.3

Problems Faced by Disadvantaged and Vulnerable Populations

A great deal of public awareness and attention to the importance of planning for vulnerable populations can be traced back to Hurricane Katrina, when the public’s attention was riveted by images of individuals who were already vulnerable and as a result were unable to protect themselves. The aftermath of Superstorm Sandy served as a painful reminder. Both events focused public attention on the plight of our most vulnerable populations and the realities they confront during and after a disaster. Among the biggest challenges faced by these vulnerable populations is transportation, short and

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long-term shelter, post-disaster housing, food, accessibility, communication, medical care, and supervision. Individuals without access to a car or who are physically unable to drive will need help through public transportation. However, public transportation systems are often damaged or overtaxed following a disaster. Limited hearing, vision, speech, and English proficiency can restrict an individual’s ability to receive and appropriately respond to important information in times of emergency. Some conditions, particularly mental illness or disorder, will require supervision and many of these people are pushed aside because of the higher level of complication or difficulty of their situation or because their behavior is misunderstood and can make people uncomfortable.

Images of disaster survivors in makeshift shelters with limited food and water and rapidly deteriorating sanitation are seared in our memories. Not to be forgotten is that most of those trapped in the Superdome were the impoverished and lacked the means to escape the city or find other accommodations. Post mortems of Katrina are replete with statistics and stories of how the storm devastated the most vulnerable – and how much of this devastation could have been avoided. For example, around 75% of reported deaths in New Orleans occurred among the city’s elderly, many of whom were unable to escape the storm. Yet, according to aftermath reports, the majority of nursing homes remained full even though school buses were available to transport the patients as the storm approached. Tragically, however, there were not enough bus drivers or enough buses equipped to transport patients in need of wheelchairs or other medical devices.5

While incredible strides have been made since Katrina, Superstorm Sandy reminded us that much remains to be done. Like Katrina, the Sandy aftermath reports provide stories and statistics of its disproportionate impact on disadvantaged and other vulnerable populations. One such report by the New York Women’s Foundation described the immediate and long term (one year later) impacts of the storm: undocumented immigrants were unable to understand storm “surge” warnings, children were traumatized by multiple school transfers, jobs and wages were lost among those least able to recover, subsidized housing dried up, the instances of rent gouging and evictions rose, homophobic violence increased in shelters, homebound seniors were overlooked and left isolated in their apartments, and low-income residents were fearful of abandoning their homes because they were uncertain of where to go or whether they could return.6

4 Nat’l Council on Disability, Effective Communications for People with Disabilities: Before, During, and After Emergencies 40-48 (2014), http://www.ncd.gov/publications/2014/05272014 (This report shares some of the common, overlooked problem areas, such as televised emergency announcements by officials that do not include American Sign Language (ASL) interpreters, inaccessible emergency notification systems, inaccessible evacuation maps, websites with emergency information that is not accessible to screen readers used by people who are blind or who have low vision, shelters at which no one is able to communicate with people who are deaf or hard of hearing. Key to its findings and recommendation is the engagement of the disabled and advocates in the planning process).

5 Martha S. Wingate ET AL., Identifying and Protecting Vulnerable Populations in Public Health Emergencies: Addressing Gaps in Education and Training ( 2007), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1847489/ (Referenced in this report are several other post-Katrina studies that address the disparate impact of the storm on different vulnerable populations).

York City’s own after-action report highlights the needs of vulnerable populations and includes recommendations to address this issue, such as “better coordination of relief to affected areas and to vulnerable or homebound populations, including more efficient deployment of volunteers and donations to residents and business owners” and improved pre-storm communication to vulnerable areas such as public housing.7

**Attorney Involvement in Community Planning**

Successful management of a disaster begins at the local level. A decade ago such planning was the near exclusive domain of emergency managers, but contemporary thinking calls for a community wide approach involving all segments of the community. FEMA now actively encourages citizens to join forces with community planning agencies to prepare for disaster. As part of this effort, FEMA hosts a program called the Community Emergency Response Team (CERT) that helps to educate citizens on this role.8

Despite the growth and acceptance of community-wide disaster planning and response efforts, the needs of vulnerable and disadvantaged populations are not always anticipated and addressed sufficiently.9 Often missing is a lack of education, training and guidance on how to include vulnerable populations at the planning stage, lack of consumer-oriented aids and resources for these populations, and lack of guidelines and testing of how to promote collaboration among agencies and entities that serve the vulnerable.10

To address these shortcomings, disadvantaged and vulnerable populations must have their voices heard and needs anticipated and addressed as part of this planning. Yet there are barriers to their participation. Many times they are reluctant to advocate for themselves. Undocumented immigrants risk deportation if they come forward because they may be turned over to immigration authorities. Domestic violence victims may not wish to expose themselves in a public setting, even though a disaster can place them at even greater risk when courts shut down, police are diverted, and their security systems and safety net worsen. Opportunistic predators may seize upon the comparative chaos and lack of security to rape and assault. The impoverished feel voiceless. Others, by definition – the very young, the mentally ill, the declining senior – may need advocates to speak for or with them. Lawyers can help to fill this role. They often represent these constituencies and understand their needs. They know how to advocate and be heard in the community planning process. And they can ensure that the plans anticipate and comport with applicable laws and regulations, and offer practical solutions.

10 Wingate, supra, at note 4.
One such law, the Americans with Disabilities Act (ADA), is particularly germane to a large segment of the vulnerable population. While the ADA does not mention disasters and emergency preparedness per se, Title II which prohibits public entities from discriminating against disabled individuals through services or programs would cover local government emergency preparedness and response programs. These activities and programs must be accessible to people with disabilities and can cover a wide range of activities. For example, shelters must be ADA compliant and even able to accommodate service dogs, emergency evacuation transportation must be wheelchair accessible, and emergency responders directions must be intelligible to the sight or sound impaired.

Disasters neither excuse nor mitigate the government’s obligations to plan for and protect its most vulnerable citizens. In numerous ways the federal government has acknowledged the ADA’s applicability to disasters and issued orders or guidance. For example, the Department of Justice has issued an ADA guide for local governments regarding community emergency preparedness and response programs and accessibility; FEMA has offered guidance on planning for functional needs support services in shelter plans (i.e. services that enable individuals to maintain their independence) for state emergency planners; President Bush, in 2004, issued Executive Order 13347, “Individuals with Disabilities in Emergency Preparedness,” affirmed the policy “to ensure that the Federal Government appropriately supports safety and security for individuals with disabilities in situations involving disasters....” The Order also created the Interagency Coordination Council on Emergency Preparedness and Individuals with Disabilities. And finally, as part of the Post-Katrina Emergency Management Reform Act of 2006 a disability coordinator to FEMA position was created, reporting directly to the FEMA administrator with a detailed list of responsibility.

This view is also supported by the American Bar Association. At the 2007 annual meeting, the House of Delegates adopted a set of principles, “Rule of Law in Times of Major Disaster.” These 12 principles collectively support the proposition that the rule of law, justice, and rights must be preserved and safeguarded, even in times of major disaster. Additionally, these principles recognize and support the proposition that only by lawyer engagement in advance proactive planning can the rule of law be preserved. In the preamble to the principles, the observation is made that “the legal system cannot create a plan to insure the safety of incarcerated arrestees [a vulnerable population] when all the jail personnel have been stricken with avian flu.”

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Notwithstanding the growing acceptance of ADA as applied to emergency planning, response, and recovery, there is still failure to follow its requirements or anticipate the many ways it can be implicated post disaster. In CALIF v. City of Los Angeles, a federal district court concluded that the City of Los Angeles had violated federal and state disability laws—including the Americans with Disabilities Act (ADA) and the California Disabled Persons Act (CDPA)—by failing to consider the needs of over 800,000 disabled residents in its emergency preparedness program.

In a groundbreaking case that began shortly after Hurricane Irene (2011) but was amplified by the Sandy experience, a federal district court found that New York City’s emergency plans violated the ADA, leaving almost 900,000 residents in danger. In late 2014, the parties agreed to a stipulation of settlement that covers a broad array of remedial actions the City must take to comport with the ADA. These actions include emergency shelter accessibility, post disaster canvassing and services for persons with disabilities, training of staff on the needs of persons with disabilities, ensuring accessible transportation and training of operators of communicating with and serving the disabled, and the creation of a Disability and Access Functional Needs Coordinator and a broad based Disability Community Advisory Panel.

The ADA and its state and local counterparts admittedly do not cover all vulnerable populations disproportionately affected by disasters. Lawyers can utilize other laws and regulations to buttress their advocacy, on behalf of the vulnerable, through the community emergency planning process, including a call for increased funding and specialized services. Where no defining law or regulation exists, the legal profession’s participation in community planning is even more critical. State and local bar associations, as well as individual lawyers, using traditional notions of equal protection and fairness which may be buttressed by state constitutional and statutory civil rights provisions, can lobby, and if necessary litigate, argue for services, programs, and funding. The ABA has already adopted a policy that one type of service – civil legal assistance to help meet the needs of low income disaster survivors – receive increased funding from all levels of government. Professor Sharona Hoffman, in her 2009 law review article, “Preparing for Disaster: Protecting the Most Vulnerable in Emergencies,” argues that “existing legal and ethical frameworks entitle vulnerable populations to significant protection.” At the same time she notes the shortcomings in existing laws and urges for legislative solutions, which can be another opportunity for lawyers to have meaningful impact in community planning.

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15 Communities Actively Living Independent and Free Et Al v. City of Los Angeles, CV 09-0287 CBM (RZx) U.S. Dist. Ct., Central Dist. CA (2011).
18 Resolution and Report #104, February 2009
19 42 U. Cal Davis LR 1491-1547 (2009).
Aside from using law, regulation, and policy to advocate for the needs of vulnerable populations, lawyers can bring practical law or policy-related insights and suggestions to the planning deliberations. For example, lawyers could advocate for mechanisms to suspend in the event of a disaster any existing cooperative agreements between federal and local authorities that refer undocumented immigrants to federal authorities for deportation. Lawyers can also promote proactive policies that reassure all individuals that if they report to shelters or seek other disaster assistance their immigration status will not be questioned. Also, lawyers can work to ensure that allocating resources (e.g., food, blankets, and other rations) are not restricted to “heads of household” so that victims of domestic violence are not made even more dependent on and vulnerable to the abuser.

Conclusion

Much of this resolution and report relies on information arising from Hurricanes Katrina and Sandy, but its importance should not be seen as addressing isolated needs. Even the casual observer cannot escape concluding that tornados, hurricanes, floods, wild fires, earthquakes and other disasters are an almost everyday occurrence, different only by scope and scale of destruction. Every community must engage in disaster planning and hope that it is never needed. Lawyers, in their historic professional role of giving back to the community and protecting the rights of the most vulnerable, must engage in this planning process.

Respectfully submitted,

Anthony Barash, Chair
Standing Committee on Disaster Response and Preparedness
February 2015
GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Disaster Response and Preparedness

Submitted By: Anthony Barash, Chair

1. Summary of Resolution(s). This resolution urges federal, state, local, tribal, and territorial authorities and legislative bodies to proactively identify and address the special needs of vulnerable populations that are disproportionately affected by disasters and to provide appropriate funding. It also urges lawyers to participate in community planning to help ensure that plans comport with legal requirement applicable to services and benefits offered disaster survivors, especially for the most vulnerable.

2. Approval by Submitting Entity. This resolution was approved by the Standing Committee at its business meeting on October 24, 2014.

3. Has this or a similar resolution been submitted to the House or Board previously? No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The House of Delegates over the past decade has adopted several policies related to disaster response and preparedness. This Resolution does not conflict with these policies but is rather a natural extension, building upon the concepts of disaster planning, respect for rule of law in times of disaster, and funding of legal services to meet legal needs of disaster survivors. Specifically these policies urge lawyers and law firms to undertake their own disaster planning (August 2011), advocate for increased funding to legal services, pro bono programs, and bar associations to address meet the unmet civil legal needs of disaster survivors (February 2009), and a set of 12 principles supporting the continuation of the rule of law in times of major disaster (August 2007)

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. (If applicable) N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. The Committee will support this policy, if adopted, primarily through educational efforts. This will include, for example, workshops at the Equal Justice Conference, inclusion in trainings the Committee periodically does for state and local bar associations, and incorporation into its existing training “simulation” program on impact of disaster on low income survivors that is offered in communities throughout the country. The Committee will also be prepared, working
with the President’s Office, Media Relations, and Government Affairs Office to “educate the public” on this topic in the aftermaths of a major disaster. Unfortunately, the media and public’s attention to disaster planning is often greatest following a major disaster, at which time a Presidential Op-Ed or letters to Congress, especially to members in affected areas, will resonate strongly.

8. **Cost to the Association.** (Both direct and indirect costs) none

9. **Disclosure of Interest.** (If applicable) NA

10. **Referrals.** A draft of the resolution has been circulated to Commissions who address legal issue representative of the vulnerable populations identified in this resolution and report, including the Commissions on Domestic and Sexual Violence, Homelessness and Poverty, Immigration, Disability Rights, and Youth at Risk, and to the Section of Individual Rights and Responsibilities.

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges federal, state, local, tribal, and territorial authorities and legislative bodies to proactively identify and address the special needs of vulnerable populations that are disproportionately affected by disasters and to provide appropriate funding. It also urges lawyers to participate in community planning to help ensure that plans comport with legal requirements applicable to services and benefits offered disaster survivors, especially for the most vulnerable.

2. Summary of the Issue that the Resolution Addresses

This resolution seeks to address and remediate the tragic, devastating and disproportionate impact of major disasters on disadvantaged and vulnerable populations. Examples of such impact are many: The disabled may have difficulty or be unable to access services and benefits, the frail and elderly may be isolated from emergency responders, the poor do not have disposable income or means to find alternative housing or replace lost wages, the non-English speaker may not understand evacuation instructions or have service providers fluent in their language, children may experience multiple and disruptive school changes.

3. Please Explain How the Proposed Policy Position will address the issue

There is widespread consensus in the emergency management community that the best way to address problems that may be caused by a disaster is to eliminate or alleviate the problem beforehand, through disaster planning. This Resolution addresses the human tragedies identified above by urging all levels of government to identify populations in their communities most vulnerable and to plan for their need should disaster strike. Additionally, the resolution, mindful of the important contributions lawyers can make in advocating for the legal protections and rights of the most vulnerable and in serving their communities, urges lawyers to participate in these planning processes.

4. Summary of Minority Views

We are unaware of any minority views or opposition to this Resolution.