

The Silver Lining Beyond Katrina Practicing Law After a Disaster

By Hannah Hayes

One of the new houses built in New Orleans, Louisiana, after Hurricane Katrina. This photo was taken in February 2010.

Like most Americans, Carmelite Bertaut watched mid-March's unfolding catastrophe in Japan with growing distress. But for Bertaut, special counsel to the Louisiana firm of Stone Pigman Walther Wittmann L.L.C., the images brought back memories of a disaster that overturned the lives of many Americans almost six years ago when Hurricane Katrina wreaked havoc along the Gulf Coast.

"It was very difficult to watch," says Bertaut, speaking of the aftermath of Japan's 9.0 earthquake and tsunami. "We didn't have a nuclear reactor blow up and nothing near the loss of life [following Katrina], but when you're in the midst of all of that, you can't see a future."

Bertaut was president-elect of the New Orleans Bar Association when Katrina struck in August 2005. Amid the devastation and overwhelming task of rebuilding, she recalls one of her partners saying to her, "We're going to work this out. We've got a brain; we are problem solvers suited for this type of situation."

When tragedies strike, people often look to lawyers for help obtain-

ing government assistance, filing insurance claims, and changing laws in the insurance and construction areas. That is why the legal community often is the first to recover. "Lawyers have to make things work—we're used to straightening up a mess," says Helena Henderson, executive director of the New Orleans Bar Association. "We're used to taking tangled situations and deconstructing them and finding a better solution. That's what lawyers do—and that's why they came back."

Nearly six years, another hurricane, and an oil spill later, Louisiana lawyers have learned how disasters can change the way they do business. Often it takes time to see new opportunities and learn the lessons that come out of bad situations.

Coping with the Aftermath

When Katrina hit land in Louisiana on August 29, 2005, many who evacuated assumed they would be back in three or four days. But after the levees broke, 80 percent of New Orleans was underwater and 90 percent of the residents of southeast Louisiana were evacuated. With the tremendous damage and loss of life, people did not seem to notice that the courts had been shut down.

"It was a revelation that we could be evacuated and not be right back and not have access to our computers or have working cell phones," says Judy Barrasso, a partner at Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., and a member of the board of commissioners of the Downtown Development District of New Orleans. Because Barrasso's practice

focuses on commercial litigation, including commercial contracts, class actions, and insurance coverage and bad faith issues, many of her clients were monitoring the situation carefully. "But they didn't know how to reach us, and for a while they were more aware than we were about potential claims and litigation down the road," she says.

Beyond the obvious issues like loss of telephone service and lack of computer access, the Louisiana state and federal courts remained closed for months. New Orleans Municipal Court resumed operation in October 2005, but all documents had been swept away in the flood. Nevertheless, Barrasso's firm moved to temporary offices in Baton Rouge, Louisiana, and began work almost immediately.

For Denise Puente, a construction lawyer and partner with Simon, Peragine, Smith & Redfearn, L.L.P., the legal problems were immediate. All bids and records for public work had been lost, so preserving the rights of clients with no documentation presented great challenges. "Within days, contractors were arriving at existing projects to see what could be salvaged," Puente says. The government issued emergency orders extending the prescribed period for filing, and documents that normally were recorded immediately were filed months later. With so many businesses unable to function, out-of-state contractors had licensing requirements waived.

Puente points out that networking and relationships played a big role in her firm's ability to operate. A firm relatively unknown to Simon Peragine offered temporary space in Lafayette, Louisiana, where the lawyers worked until they could return

to New Orleans. “We did a lot of things without written contracts,” she says. “Handshake deals became really important—a lot of insurance issues and commercial contracts went forward that way.”

Back in Business

Many evacuees who lost their homes and workplaces never returned to New Orleans. But unlike many professions, lawyers must be licensed to practice in a given state. Even if it were possible for them to hang a shingle or look for a new firm elsewhere, state law would require them to become licensed in the new jurisdiction.

Despite the closure of courts in New Orleans, lawyers found plenty to do. “Things came up pretty quickly,” Barrasso recalls. “I think the first class action was filed within three or four weeks after the storm. There were people on the plaintiff side representing policyholders and a lot of claims being pursued.” She points out that nearly every business in New Orleans had a claim to pursue, and plaintiff lawyers were advertising all over town. “Obviously it was a huge disaster, but it resulted in tons of legal work for lots of people on both sides of the table,” she says.

Beyond insurance claims and disputes over flood and wind damage, or whether the damage came from a natural disaster or inadequate levees, a host of other issues arose. Landlords who didn’t know where their tenants were and who lost copies of their leases didn’t know how to evict and rebuild. Family law cases involved parents with weekend custody who fled with their children when the storm hit. Many of those parents ended up relocating and enrolling the children out of state, leaving custodial parents in the bind of trying to locate and have their children returned to them—all without access to court records.

Due to the displacement of the city’s workforce, immigrants—documented and undocumented—descended on New Orleans to fill the vacant jobs, raising a myriad of issues for immigration lawyers.

Property owners had to produce titles in order to file insurance or relief claims, but many New Orleans homes lacked updated titles. Possession had passed from generation to generation without documenting the change of titles.

Solo practitioners soon discovered they needed to expand their practices in order to meet the variety of needs. “You might have had a domestic issue, but suddenly you have an eviction issue or insurance claim or some other issue that drives people to the lawyer they know,” Bertaut says. As a result, many practitioners became conversant in new areas of the law.

Faun Fenderson is a solo practitioner whose primary focus was succession and estate management. Six weeks after Katrina, she returned and operated out of her house for six months before she was able to obtain new office space, where she was kept “really busy” for two years. “Everyone was doing succession because of the Road Home grants given to people to rebuild,” she explains. In fact, Fenderson trained many pro bono lawyers who flew in to New Orleans to assist because so many people had to produce titles before they could rebuild. She hired college students over the summer of 2006 to help scan documents.

“Solo practitioners learned a lot of hard lessons,” says Fenderson, chair of the Louisiana State Bar Association’s Solo and Small Firms Section. “They’re not inclined to have a lot of insurance on computers or software. Now more firms back things up and have digital copies of [documents] offsite.” Fenderson says she finally ended up doing legal work beyond her usual succession specialty “because it was required.” However, she stresses that while she had a lot of paying business, most lawyers handled many cases pro bono. “I didn’t see people taking advantage of the situation—I certainly didn’t charge people in desperate straits.”

Time to Rebuild

It was six weeks before Mayor Ray Nagin announced it was safe to come back to New Orleans. After the initial shock and scramble to locate clients,

contracts, and coworkers, many lawyers and law firms faced the difficult task of rebuilding. “There was a period when people were shell shocked. They didn’t know where their clients or their staff were,” Bertaut recalls. Schools remained closed, and people with children had to make the difficult decision to leave their families in evacuation locales and return to the city to rebuild or to relocate permanently away from New Orleans.

New Orleans houses the state supreme court, the circuit court, and two law schools. For the legal community, a lot was at stake. “There was some sense of civic pride, a feeling that with this legal presence we had to get back on track,” Bertaut says. But with conditions the way they were, “it was something like the chicken and the egg. Judges didn’t want to come back until the infrastructure was up and running.” But lawyers questioned how they could ask their staff to leave their displaced families behind and return to maintain a professional presence.

“The legal community played an extensive, significant role in getting things up and running in the community at large,” says Kim Boyle, a partner in the New Orleans office of Phelps Dunbar LLP, who was chair of the Louisiana Recovery Authority’s Health Care Committee when Katrina struck. Later she joined the Bring New Orleans Back Commission and testified before a Senate subcommittee on the inadequate protections for low-income people in times of catastrophe.

Boyle points out that law professors and defense lawyers worked to locate evacuated prisoners who had lost contact with their families. Some incarcerated persons had the misfortune to be arrested for a minor offense the night before the storm hit and sat for weeks or months without a trial. “Everyone recognized that it was important to get the courts up and running,” she says. Many lawyers also were involved in trying to bring back the indigent defense board. “You had a ton of attorneys involved in their community efforts, school efforts, and

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SOCIAL NETWORKING

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“Most individuals on LinkedIn have accomplished things on a business level that are prominently displayed in their profiles. Because others can make recommendations and share employment histories, it can be a verifiable source for business referrals,” says Bates, who estimates that she’s received five to seven client referrals via her LinkedIn account.

Ethical Concerns

In response to the myriad of ethical concerns that surround the use of social media, firms are drawing up employee guidelines to protect themselves from improprieties, defamation lawsuits, and the disclosure of a company’s proprietary information or information that could be used against the firm during litigation.

Laura Maechten, a partner in the San Francisco office of Seyfarth Shaw LLP who focuses on employment litigation, points out that professional legal mediators sometimes try to link with lawyers on social media sites. However, this can open the door to a potential conflict or appearance of bias. For instance, if that neutral’s name were put forward as a potential mediator in a case,

the opposing counsel could easily view their online relationship and argue that the mediator would be unable to be impartial.

“Any neutral should be careful when engaged in social networking to ensure there is no appearance of bias in favor of the defense or plaintiffs’ bar,” Maechten says. “No attorney should use deception to gain access to opposing parties’ online social networking sites.”

She adds that a number of legal ethics opinions have addressed lawyers’ use of social media, and more are expected.


Elefant, meanwhile, says an easy way of looking at the ethical issues is for lawyers to implement the same familiar rules of professional conduct that have always applied. “If you’re talking about your client’s case in a big crowded bar, and if someone hears you, you’re compromising your client’s confidentiality. It’s the same thing with Twitter.”

Even tweeting a personal opinion can be dangerous, as Indiana’s former Deputy Attorney General (AG) Jeffrey Cox learned when he was fired in late February after using Twitter to urge Wisconsin police to “use live ammunition” against pro-labor demonstrators. The AG office justified the firing by

stating that “as public servants, we are held by the public to a higher standard, and we should strive for civility.”

But despite the potential pitfalls for employers and employees, many law firms today are choosing to harness social media rather than stifle its use by employees. “Our social media guidelines are meant more to encourage than discourage,” says Liz Cerasuolo, director of communications at Fish & Richardson P.C., a national intellectual property firm based in Boston, which urges its lawyers to tweet and re-tweet (re-post) sensible and responsible information on Twitter.

“Just re-tweet it and people will look to you for a resource,” says Cerasuolo, who also takes time to help lawyers optimize their names in search results. “We look to be an aggregate of information. We want to know who’s following us and what do they want to know.”

At the same time, she counsels lawyers not to overdo the social media surfing during office hours because it can look to clients like you’re not working. 

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neighborhood efforts. People were involved in rebuilding all across the state.”

Silver Linings


Damages from Katrina ran into the billions, and with the BP oil spill in the Gulf of Mexico in 2010, the region still struggles. “We see a lot of young entrepreneurs who [first] came from out of state to do volunteer work and came back to set up incubator companies,” says Puente, who points out that Louisiana is one of two states that experienced an uptick in construction during the recent recession. “Construction is a good field. Contracts is a good field.”

Today most law firms, government offices, hospitals, and businesses store their documents and data backups offsite, usually in another state. Barrasso points out that to prepare for future catastrophes, most firms have put together plans that include websites and databases to ensure business continuity.

Laws changed in the insurance arena and construction codes, as well as in the legal and medical fields. New interagency partnerships within the criminal justice system led to improved planning and implementation of crisis management programs, while Medicare regulations now provide hospitals with greater flexibility

in emergency situations. “There were some very positive developments,” Barrasso says.

For New Orleans and other localities hit hard by disaster, it stands to reason that the insurance and federal aid that follow a catastrophe will inevitably present opportunities for lawyers as legal help for the victims becomes a necessity.

“But when you’re in the moment—and that moment goes on for weeks and weeks—you just never think it’s going to get better,” Bertaut says. “All the people who came back are committed . . . it really takes a lot of soul searching.” 

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