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Cover Story

What Did Katrina Teach Us?

Lawyers say they’ve learned from New Orleans and they’re ready for the next disaster. Lawyers who were there say maybe not.

By G.M. Filisko

The residents of New Orleans love their celebrations. But Aug. 29 is a date that brings little cheer to the Crescent City. On that day in 2005, Hurricane Katrina blew into town.

Everybody knew Katrina was coming, but even now—six years later—debate continues on why preparations to meet the storm’s onslaught turned out to be so inadequate. It’s a debate that encompasses the justice system along with other government and civic institutions, and it has produced no definitive answers.

Efforts were made. Initially, New Orleans Mayor Ray Nagin urged residents to flee. On Sunday, Aug. 28, he ordered a mandatory evacuation of the city. But when Katrina made landfall in Louisiana on Monday, an estimated 100,000 of the city’s half-million residents were still there.

Katrina packed a history-making wallop. At the time, it was the strongest hurricane ever recorded in the Gulf of Mexico, only to be surpassed by Hurricane Rita a month later. Katrina left more than 1,800 people dead—at least 1,400 of them in Louisiana—and in terms of property damage, it still ranks as the costliest storm in U.S. history.
Yet at first, it looked like New Orleans had been spared the worst, as Katrina veered east along the Gulf Coast into Mississippi and Alabama. But by Tuesday, water was pouring through numerous breaks in the city’s extensive levee system. Some 80 percent of the city flooded. Routine government services came to a standstill, and the city’s “refuges of last resort,” including the Superdome, were inundated—with desperate people and a sense of near anarchy.

There were also gaping breaches in the legal system. Many courts in Louisiana were shuttered for months after the storm. Prisoners in Orleans Parish jails were evacuated only after their facilities flooded. Thousands of residents desperately needed legal help to rebuild their devastated lives. But for weeks the offices of thousands of lawyers were flooded or inaccessible because New Orleans was guarded like an armed camp.

“Katrina was a gut check,” says David F. Bienvenu, a partner at Simon, Peragine, Smith & Redfearn in New Orleans who chairs the ABA Special Committee on Disaster Response and Preparedness. “What struck me most at the time was how frail our institutions were. I wondered then, as I do now, whether any other American city in similar duress could have fared better. But with benefit of the long view, I am now struck by how resilient the fundamental pillars of our justice system really are.”

A leading member of the Louisiana judiciary expresses a similar view. “The system was challenged by the devastation to the infrastructure—no power, no cellphone signals, no working landlines,” says Madeleine M. Landrieu, a civil district court judge in Orleans Parish who will move up to the state court of appeals in January. “It was also challenged by the massive displacement of our population” in the aftermath of Katrina.

“But the judicial system was not near collapse,” says Landrieu, whose brother Mitch is New Orleans’ current mayor and whose sister Mary represents Louisiana in the U.S. Senate. “To the contrary, despite the vast devastation to our
community, the fact that approximately 25 courts were affected in some way, and over 1.2 million people were evacuated from the region, courts were only temporarily disrupted.”

Members of Louisiana’s legal community say they’ve learned important lessons from Katrina. “We’re much better prepared, but we won’t know until we have another disaster whether the plans are adequate,” says Frank X. Neuner Jr., a founding partner of Laborde & Neuner in Lafayette. He was president of the Louisiana State Bar Association for both hurricanes Katrina and Rita, and he currently is a member of the ABA disaster response committee.

Disaster preparedness also has become a priority for the ABA since Katrina.

In 2007, for instance, the ABA’s policymaking House of Delegates adopted a Model Court Rule on Provision of Legal Services Following Determination of Major Disaster (PDF). Known as the “Katrina rule,” it permits out-of-state lawyers to provide pro bono legal services when a disaster affects the justice system.

The House also has adopted at least six other post-Katrina policy recommendations, on a variety of disaster-related topics such as federal flood insurance, the handling of insurance claims, legal assistance for low-income residents, and even standards for the care and disposition of animals. In August 2007, the House adopted 12 principles for preserving the rule of law in times of major disaster.

Encouraging lawyers, the courts and bar associations to be ready for the worst is a key to the mission of the ABA committee. “I was a reluctant warrior to this post, but it’s been enriching,” Bienvenu says.

“We’re trying to raise awareness among all lawyers in this country that there’s a responsibility to our clients to make sure we’re adequately prepared to address possible emergencies.”

There are signs that the preaching is paying off. “It’s hard to imagine in these days and times that people whose livelihood relies on them having access and being online don’t take this seriously,” says Charles P. Adams Jr., the managing partner of Adams and Reese, who is based in the firm’s Jackson, Miss., office. “But I don’t think they can afford not to do this when their clients and their own future rely on it. It’s just a matter of your firm’s competitive position—and it’s just good business—to be reliable suppliers of whatever they want people to buy.”

A TERRIBLE SURPRISE

To hurricane-hardened residents of New Orleans, the approach of Katrina didn’t seem all that unusual.
“I don’t know that there was any pre-storm preparation,” says Marta-Ann Schnabel, a shareholder in the four-attorney firm of O’Bryon & Schnabel in New Orleans who was president-elect of the Louisiana State Bar in August 2005. “How could there have been? It was a perfect conflagration. We all left work Friday afternoon thinking it’s not coming toward us and woke up Saturday, and it was.”

Bienvenu and his family remained in New Orleans despite a dire warning from a friend in Lafayette. “Patrick Ottinger called me before the storm and said, ‘You really need to get over here. That storm is coming to New Orleans,’ ” recalls Bienvenu. “He was the Lafayette city attorney, so he was in on emergency preparation briefings. But I had a commitment on Saturday. On Sunday morning, we opted to go to the Hyatt Regency” and ride out the storm there.

The real disaster didn’t become apparent until early Tuesday. “It was 5:30 a.m., and this woman comes up and looks like she’s in despair,” Bienvenu remembers. “She said, ‘I just came from the front of the hotel, and the levees have broken. The city is filling with water.’ My reaction was, ‘My God, this really happened.’ Not, ‘That’s impossible!’ In a community where there’s water all around us, when scientists were telling us that coastal erosion problems were in a crisis condition, suddenly they weren’t crying wolf.”

In that moment, Bienvenu joined the ranks of Gulf Coast lawyers who would spend months rebuilding their practices and the region’s legal system. “Almost 9,000 Louisiana lawyers were evacuated for a minimum of 30 days,” says Neuner. “Some lawyers lost both their home and office.”

For law firms, the first recovery tasks were finding office space and employees. Bienvenu’s 30th-floor downtown New Orleans office wasn’t flooded, but that hardly meant it was open for business. “Technically, the city was barricaded, and certain credentials were needed to get in,” he says. “Through the generosity of my very dear friend Patrick, my firm set up camp in his building in Lafayette. But most of the firm’s employees, with very few exceptions, had left the city. It took us at least a week to find everyone. The person who had the firm’s network backup tapes couldn’t be located for a week.”

From that point, Bienvenu’s 35-lawyer firm resumed operations, but only in a patchwork way. In addition to its temporary quarters in Lafayette, he says, “several partners went to Houston, where they worked out of a client’s office, and we had a smattering of lawyers functioning remotely from wherever they happened to be. With all that, work as we knew it came to a standstill. People were doing very little in-depth work.”

Before Katrina, emergency preparedness plans were nonexistent at Bienvenu’s and Schnabel’s firms, and Neuner says the plan at his 20-lawyer firm was “bare bones.” Today, all three have plans. At Bienvenu’s firm, select personnel are
required to evacuate in certain circumstances. A committee maintains a digital toolkit with instructions, mostly covering how to access and retrieve data off-site, and how to communicate through an online bulletin board.

“We’ve done a wholesale review of all our insurance coverages and made sure our policies are easily retrievable,” Bienvenu says. “Individual packets, which everyone has, have hard-copy contact information. Our clients are able to access us through our website, and we back up data to a remote site.”

Many smaller firms, however, often have to make do with less, says Schnabel. “Everybody now has a plan about how to be in touch and whom to check in with,” she says. “At my office, we close and lock the file cabinets and pull down the blinds each night. A surprising amount of damage can be avoided just by having blinds down and files stored properly. Our email service is Web-based rather than hosted on our own server, and our backup is remote. What we do in preparation is in reaction to what worked and what didn’t work the last time.”

Photo of the BP oil spill in the Gulf of Mexico by AP/Eric Gray.

**COURTING DISASTER**

The courts also were largely unprepared to absorb Katrina’s blow. The federal courts had done at least some disaster response planning after the 9/11 terrorist attacks, says George Huff Jr., an attorney adviser in the Administrative Office of the U.S. Courts. Those plans call for displaced federal courts to relocate to a sister jurisdiction; so after Katrina, the district and bankruptcy courts in New Orleans temporarily relocated to other federal courthouses in Louisiana, while the 5th U.S. Circuit Court of Appeals relocated to Houston.

Federal planning also calls for the creation of an emergency hotline for displaced courts to avoid what Huff terms a “reputational” risk. “When a disaster displaces populations, people start calling the courthouse, either to find out where their lawyer is or what’s happening to their case,” he says. “Now the practice is for some judges to appoint a special master, usually an attorney, to field those phone calls. We think that when a community has gone through a disaster and knows the core functions are back in place—the flag is up at the courthouse and government organizations are available—that’s a boost to the community.”
State courts, however, weren’t as nimble. For the first time, they were closed for more than a smattering of storm-related days.

Protecting citizens’ rights was a key factor in decisions to close the courts, says Judge Landrieu. “It wasn’t until Tuesday, when we realized the severity of the circumstance, that we began working to get orders issued to officially close courts for a period of time,” she says. “We had to officially close them because rights were being eliminated daily. When we close the courts, it’s like a holiday. You get until the next day to do what you had to do.”

But who had the authority to order state courts to go dark? Should they all be closed—even those in unaffected areas? And how long would they stay closed? As crucial as these issues were, local leaders of the bench and bar couldn’t easily contact each other to resolve them. “Nothing worked,” says Catherine D. Kimball, an associate justice of the Louisiana Supreme Court at the time who became chief justice in 2009. “The Army gave us cellphones, but they weren’t worth the powder to blow them up. As soon as it got cloudy, they didn’t work. If you were inside, they didn’t work.”

The supreme court created a webpage and asked local radio stations to air public service announcements instructing people to use it if they needed to contact the courts.

“We started getting communication from all kinds of people,” Kimball says. “Lawyers were saying they couldn’t get into their office because it was underwater, and they know they have a case in Shreveport but have no idea when and which client it’s for. One young lawyer from St. Bernard Parish called and said he was worried he couldn’t get to his documents to be able to file cases within the statute of limitations. We were hearing from courts that their files were underwater. Lawyers couldn’t reach their clients, and clients couldn’t contact their lawyers. We decided to talk with the chief judges of all the courts and help them prepare closure orders.”

But the idea of courthouse closures drew pushback from lawyers. “A lot of lawyers said, ‘Please don’t close all the courts because we still need to make money,’ ” says Kimball. “So we told judges to step down their dress code because we didn’t want lawyers who’d lost their homes to worry about going out to buy a suit. We also asked them to please be mindful when someone missed a court date or said, ‘I’m late because I didn’t know what time I was supposed to be here.’ ” Kimball had to personally contact some judges to get the point across.

Louisiana’s governor, Kathleen Blanco, eventually issued the order to close the courts, but getting to the decision wasn’t all that easy, Kimball says. “Nobody knew who should do what, so we all just did it and decided to worry about the consequences later. Whether it was absolutely legal, it was certainly the right thing to do for the state. We laughed because it was probably the only time all
three branches of government were trying to do the same thing because we all realized real inequities could happen if somebody didn’t do something.” Most of the courts reopened again by early November.

Louisiana courts now have playbooks for the next disaster. “We had all the district courts adopt a plan for their own court, and we have one that looks like it’s about 4 inches thick for the supreme court,” Kimball says. “We have a new emergency phone system. Courts have digitized a lot of their records, and where courts don’t have the ability to have an offsite computer backup system, we’ve designated who’s going to take the backup tapes home. We also have a secondary system for our own records. We flip a switch in New Orleans, and the secondary site picks up everything.”

Landrieu wants even more. She advocates legislation adopting uniform court closures after disasters. “I feel much better about the future, but I’d feel even better if we had legislation that would obviate the need for executive orders,” she says. “It would say that if there’s a parish affected, deadlines there would automatically be extended for 30 days.

**LIFE GOES ON**

The widespread court closures didn’t keep emergency legal issues from arising almost immediately.

“One thing we saw were domestic and family law issues,” Schnabel says. “There were practical things like, Suzy was with her father on Friday night, so she evacuated with him, but he hasn’t checked in with his ex-wife, who now doesn’t know where Suzy is. Or a client needs her child support to live, and her ex-husband isn’t around. Landlords were ignoring tenant rights, and tenants just walked away and never paid rent again. Those were the most immediate civil legal needs. But lawyers had a problem because they couldn’t find their clients. Or three lawyers in a case could find their clients, but the fifth and sixth lawyers couldn’t.”

Issues like landlord-tenant matters, insurance and construction contracts are common in the aftermath of disasters, says Mary Ellen Martinet, associate chief counsel of the Federal Emergency Management Agency’s Response and Recovery Division.

“There may also be guardianships, probate of wills and replacing lost legal documents,” she says. “In Katrina, there were issues of folks having to establish ownership of their residence. People may have lived in a home all their lives, but the deed was in the name of their great-great-grandmother, and they had maybe a one-twentieth right because all the cousins had equal inheritance rights. Clearing title was necessary for folks to be eligible for the various assistance programs to repair their homes.”
Local bar leaders helped establish a call center staffed with volunteers from the ABA/FEMA Disaster Legal Assistance Program. Under a 1978 agreement, the project provides legal counseling and related information; referrals to other sources of disaster assistance; and, in some cases, representation for low-income disaster victims. The ABA’s Young Lawyers Division “sets up and publicizes the hotline and recruits volunteer attorneys,” Martinet says. “The YLD may also have volunteer attorneys go to disaster recovery centers and provide on-the-scene legal assistance.”

At the time of Katrina, however, the FEMA-YLD agreement prohibited YLD volunteers from advising victims on matters adverse to the agency, but that provision has since been removed from the agreement.

“Why else would you be at a disaster recovery center at a table with FEMA if you didn’t have a problem with FEMA?” says Martha Bergmark, president and CEO of the Mississippi Center for Justice, a nonprofit public interest law firm based in Jackson.

The YLD also has worked to improve disaster legal services. “We’ve met with FEMA on a regular basis,” says San Diego attorney Elizabeth Blair, the division’s vice-director of disaster legal services. “In 2009, we met three times, and in 2010 we met three times again to discuss various policy issues. We’ve also changed our training. We devise various disasters, split people into groups, and have others play the role of the legal aid group, FEMA and a bar association so volunteers will understand the intricacies of responding. That’s given them a better footing when they’re faced with a disaster in their jurisdiction.”

Individual lawyers from around the United States responded to Katrina by volunteering to help victims in the Gulf Coast states with their legal problems, but those actions raised two concerns. “Our lawyers said, ‘We really have to be able to make a living,’ ” says Chief Justice Kimball. “Plus, we really did have serious concerns about putting out-of-state lawyers in a position where legal terminology was so different,” especially in Louisiana, whose laws borrow heavily from the civil code prevalent in Europe. The supreme court compromised by adopting rules to allow out-of-state volunteers to operate in Louisiana if they worked through a legal services office and did not seek paid business.

The ABA’s Katrina rule should help address those concerns—depending on how many states adopt it. In March, New York became the 11th state to adopt the rule, which is being considered in another 18 states, including Alabama, Florida, Louisiana and Mississippi. So far, six states have decided not to adopt the rule, according to the ABA Client Protection Committee.

“One part of [Louisiana’s] proposed rule that’s a little different from the model would allow lawyers who’ve experienced a disaster in their state to work in our state,” Kimball says. “I don’t necessarily look at it as practicing law in our state.
They’d basically be using space in our state on their existing clients and be prohibited from taking new clients in Louisiana.”

Mississippi also makes it easier for outside lawyers to help disaster victims, says Bergmark. “A few days after Katrina, our supreme court issued a very helpful order that permitted non-Mississippi-licensed attorneys who were doing pro bono work related to Katrina to do it with a very easy affidavit process while working under a licensed attorney,” she says. “That was so successful that our court made it permanent. Now we can do the same thing for any pro bono assistance in the state. Mississippi is in the forefront of what I think is model policy for pro bono assistance in the country.”

The magnitude of the earthquake in Japan, photo by Associated Press.

**DID YOU HAVE TO BE THERE?**

History and experience have taught the people of New Orleans to deeply respect the whims of nature. Members of the city’s legal profession insist that they are better prepared to cope with the next disaster—whether natural or manmade—but they also say it’s impossible to be prepared for every eventuality.

“Any city that experiences the kind of devastation from Katrina will have difficulty,” Schnabel says. “Most cities experience a disaster, and they do cleanup. We were unable to access our city for eight weeks. The idea that there’s a lot you could do to prevent shutdowns in a situation like that is idealistic.”

Another question is whether you had to be there to learn lessons from Katrina. New Orleans lawyers wonder about that when they look around the country. “The complacency that’s amongst us is my biggest fear,” says Neuner of the ABA’s Special Committee on Disaster Response and Preparedness. “When I talk to people about disasters, they say, ‘That can’t happen here.’ But there could be a flood on the upper Mississippi or Ohio rivers. There could be a dam breaking or an earthquake.”
This year already has provided ample evidence of what can happen. Across the Pacific a devastating earthquake/tsunami combination struck Japan. Domestically, spring flooding on the Mississippi River wasn’t expected to abate until at least early June after causing damage from Missouri to Louisiana. Water was allowed to flood thousands of acres in Louisiana Cajun country to relieve pressure on levees in New Orleans and Baton Rouge. In April, state officials in drought-stricken Texas estimated that all but two of the state’s 254 counties were experiencing or threatened by wildfires. The National Weather Service put the number of tornado deaths in the United States this year through May 22—the day a twister devastated Joplin, Mo.—at 418, compared to an annual average of 95. And the Weather Service is forecasting an above-normal hurricane season.

Lawyers in many of the affected areas have come through relatively unscathed. In Memphis, for instance, Mississippi floodwaters left the downtown business district—where most law firms are located—untouched, although many outlying areas of the city were flooded.

The aftermath of the Joplin, Mo., tornado, photo by Stephanie Himango/NBC/NBC Newswire via AP Images.

LEARNING THE HARD WAY

For some firms, experience has been an excellent teacher. When Katrina struck, the New Orleans offices of Adams and Reese were on the 44th floor of One Shell Square, Adams says. That is also where the firm’s main computer servers were located.

“We didn’t think there was any chance of having no electrical service for more than a few hours at a time,” Adams says. The firm had made contingency plans to move to temporary offices in Baton Rouge, “but we had to wait two weeks until the New Orleans office building operators could get emergency generator power on for us to get the elevators working. We had volunteers who were willing to walk up the 44 floors and tote the servers down in backpacks, but ... the building’s operators weren’t willing to let us do that. We learned our lesson, and that couldn’t happen to us now with the system we’ve created.”

Another firm that learned in the crucible of Katrina how to improve its disaster response plan is Baker, Donelson, Bearman, Caldwell & Berkowitz, which has
offices throughout the South, including New Orleans. “We learned about the incredible importance of redundancy of systems, both from a firm and a personal standpoint,” says George T. Lewis III, a shareholder in the firm’s Memphis office. “If you have a landline, a laptop and BlackBerry, you’ll have more of a chance of being able to communicate."

But a problem, says Lewis, a past president of the Tennessee Bar Association, is that “many of the firms and state agencies can’t afford the redundant system that you’d like to have in a first-class disaster preparedness plan. There’s no question that a lack of state resources is a problem for disaster planning for the state judiciary.”

There are more resources for law firms and courts seeking to create or improve disaster plans. The ABA’s disaster response committee, for instance, offers a full range of information on its website for law firms, courts, bar associations and the public. The webpage of the YLD’s Disaster Legal Services Program contains links to various government programs and other resources.

Members of the legal community in New Orleans and elsewhere think they have learned more about what caused the justice system’s temporary breakdown after Hurricane Katrina.

“There are two important lessons for leaders of judicial systems during and after any disaster,” says Judge Landrieu. “The first is to have someone in charge—clear command and control. You will not be able to meet or gather as a group to make decisions. Second, your plan’s first priority should be to restore communications as quickly as possible within the court, among justice partners. The public’s confidence in us depends on us doing those things well.”

Schnabel urges lawyers to take disaster threats seriously in the interest of clients, if not for themselves. “We’ve learned yet again,” she says, “how important the legal system is to the average person.”

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