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OUTLINE

When disaster strikes – how lawyers can mobilize to restore order and preserve access to justice

I. Response of Legal Community

a. Overview:

- i. At times of disaster, legal services are required immediately and long term.
- ii. Immediate Legal Needs. Although most legal needs evolve over time, there are certain needs that require immediate attention. For example, child custody matters arose for evacuees whose children were evacuated with an ex-spouse or estranged parent.
- iii. Continuing legal needs. Issues developing over time included: Landlord/Tenant issues, employment issues, probate matters, FEMA (Federal Emergency Management Administration) claims. These issues often take months to develop and can continue to arise for years after a disaster.
- iv. Lawyers can play a key role in prodding the government to provide needed services through various forms of advocacy, can identify gaps in service, and can help individuals in claims and cases both against the government and private entities such as insurance companies.

b. Issues & Best Practices

i. Transportation:

1. Many evacuees have no access to transportation; therefore can not travel to traditional centers staffed with lawyers willing to help.
2. Recommendations/Examples

- a. Organizations that recognized this had a better time providing assistance to those in need
- b. Georgia disaster legal services program calls for lawyers to travel to disaster outreach sites to provide legal services (A Continuing Storm, Report Appendices, Atlanta, § VII). These lawyers assisted evacuees in meeting their immediate needs at site e.g. food stamps, employment, housing benefits, insurance, and child custody.
- c. Georgia Legal Services is now investing in “Disaster Mobile Law Unit Systems” – Kits that contain all necessary items to get support up and running at disaster/evacuation site. (id.)
- d. Acadiana Legal Services created a disaster response team. Team members stationed themselves in Baton Rouge disaster recovery centers to conduct client intake. (Id., Baton Rouge § VII, C).

ii. Information/Communications

1. Traditional communication systems are disrupted in times of disaster. Hindered organizations’ ability to provide service due to inability to inform those affected by storm.
2. Recommendations/Best Practices:
 - a. Use public service announcements to explain common legal issues. (Id, Atlanta, § VII).
 - b. Issue current and annually updated detailed emergency service manuals to all local law firms/volunteer organizations. (id).
 - c. Distribute pamphlets regarding general issues and issues specific to particular disasters and long-term evacuation. (id).

iii. Jurisdictional Practice Rules

1. States’ rules regarding the unlicensed practice of law did not take into consideration the provision of legal services following a major disaster. Additionally, National Legal

Services Corporation (NLSC) rule states that legal aid organization can serve only residents of their parishes/counties. (Id., Baton Rouge § VII, C). Best Practices/Recommendations:

- a. Ad Hoc:
 - i. Supreme Courts of Louisiana & Mississippi issued orders allowing out of state lawyers to provide pro bono assistance
 - ii. NLSC rule was relaxed to allow lawyers from other areas of the state to travel to affected areas/areas with large evacuee populations.
 - b. ABA Model Court Rule on the Provision of Legal Services Following Determination of Major Disaster – model court rule to accommodate non-disaster jurisdiction lawyers wishing to provide legal services in areas of major disaster as well as disaster jurisdiction lawyers wishing to continue their practice outside of their jurisdiction following a disaster. Appleaseed is promoting adoption of this rule so as to facilitate pro bono legal assistance.
- iv. Coordinating influx of volunteer attorneys/handling vast needs of evacuees immediately following major disasters
1. Issues:
 - a. Vast, immediate outpouring of offers to help. However, victims may not be focusing on legal needs because immediate basic needs are not met.
 - b. Legal service organizations were not equipped to handle volume of lawyers offering service (See, id. Baton Rouge VII § C; Atlanta § VII).
 2. Best Practices/Recommendations:
 - a. Organizations with pre-Katrina disaster plans managed better than those with no plans. “Pre-disaster identification of contact people at pro bono organizations and law firms is an essential step in

reopening the lines of communications after an event.” Additionally, disaster plans must be sufficiently flexible to allow for contingencies that arise during major disasters. (Id., New Orleans § VII, H).

- b. Web-based case management and communication systems are crucial for access to materials and coordination of massive volunteer efforts following large-scale disasters. (Id., § VII, I).
- c. Houston Volunteer Lawyers Program drafted a manual relating to hurricane assistance and conducted a training program to train over 500 volunteer lawyers. (Id., Houston § VII, A).
- d. At times of disaster, local legal services organizations are often overwhelmed with their own personal issues, and often can not offer much by way of coordination. Legal volunteer groups traveling to the site of a major disaster should have plans to be self-sufficient, arranging housing and facilities and independently provide emergency assistance without help or direction of local pro-bono groups. (Id., New Orleans § VII, H).

II. Continuing need for volunteer attorneys

a. Issue:

- i. Many legal problems do not arise for months. Once immediate needs of evacuees are met, evacuees can start focusing on legal needs.
- ii. Katrina Fatigue – Legal service needs are expected to continue. Americans not exposed to Hurricane Katrina seem to be losing interest. In addition, many lawyers who initially volunteered, but whose services were not immediately used, assumed they were not needed.
- iii. It is essential to continue outreach to sustain legal services. The organized bar and NGOs can play a role in sustaining help long after the media has moved on to new disasters and new issues.

b. Examples of Continuing Legal Services

- i. A Continuing Storm: The On-Going Struggles of Hurricane Katrina Evacuees
 1. Part of ongoing commitment to continue efforts to assist Gulf Coast region by addressing systemic issues, highlighting programs and policies that are working and fashion leadership through 2009 (Katrina Board Meeting Power Point)
 2. Volunteer lawyers interviewed 350 people across six cities, 135 lawyers from 7 national firms contributed over \$4 million hours in service. (Id.)
 3. Issued detailed city reports and a national report. (Id.)
 4. Plan read by thousands, received substantial news coverage and has influenced local, state & national law makers, social organizations, etc. (Id.)
- ii. Other Efforts by Appleseed Centers – Appleseed continues to recruit attorneys to find systemic solutions for problems created and revealed by Katrina. Examples of work being done include (All from memo titled: Appleseed, *Hurricane Katrina Project*, Local Initiatives):
 1. Creating a child custody handbook to serve as a guide for Louisiana practitioners and judges handling increased post-Katrina child custody matters.
 2. Advocating the adoption of ABA Model Court Rule on the Provision of Legal Services Following Determination of Major Disaster.
 3. Serving as co-counsel in lawsuit against FEMA on behalf of disaster victims whose rental assistance was terminated without an opportunity to appeal.
- iii. Continued efforts of ABA and other legal service organizations

III. Heir Title

- a. Background: In the US and around the world, poor people often transfer property upon death informally, rather than going through probate or state-administered means of ensuring continuity of title and clear ownership. Thus, title is not clear and people whose families had long

inhabited land and property were ineligible for various forms of assistance and insurance because they did not have clear title. However, potential solutions to recognizing ownership often have unintended consequences because recognizing the inhabitant's claim may dispossess other co-owners (relatives). People who live in low-valued property without clear title are excluded from legitimate lending and most insurance regimes that require having clear title. They are easy marks for predatory lenders and can find themselves paying exorbitant rates of interest when they take on payday or tax refund loans. When homeowners are squeezed out of mainstream systems for conveying property, buying insurance and obtaining credit, they are at greater risk of losing their property.

- i. Like many issues, this was a "Katrina Revealed" problem.
- ii. Problem widespread and occurs affects poor in rural and urban areas in the United States and throughout the world.
- iii. "When an individual dies intestate – or without a probated will – his or her property becomes heir property." Property is passed down to deceased landowner's family members who inherit the land communally. As generations pass, title to the property becomes more clouded and determining ownership becomes trickier. (M. Stern Memo)
- iv. Clouded title takes a potentially powerful wealth generating tool out of the marketplace and the property then becomes "dead capital," as citizens are unable to use their assets as a source of income or repository of wealth. (M. Stern Memo). Institute for Liberty and Democracy calculates the amount of "dead capital" throughout the world as 9.3 trillion. (From www.cato.org/special/friedman/desoto/index.html).
- v. With each passing generation, problems created by clouded title get worse. (M. Stern Memo)
 1. Landowners' ownership interests decrease in size as number of landowners increases → difficulties in management b/c every owner must agree. Often land is managed by one owner or small group of owners.
 2. Mismanagement leads to unpaid taxes and other problems, which could lead to the loss of property. Land may be lost to tax office or real estate speculators who acquire land by paying the taxes themselves.

3. Partition sales may be forced by only one owner. Outsider may purchase one share of property and thereby force a sale. Partition sales result in the owners typically getting a much lower value for their property.
- vi. The states' administrative means of clearing title have associated costs that range around \$5,000. This is not a viable option as the costs of compliance are excessive when compared to the cash flow of the majority of people who encounter this problem.
(Conference Call 8/9)
- b. Katrina related problems: The Louisiana Recovery Authority is charged with distributing federal money to property owners in Louisiana affected by Hurricane Katrina. However, many people cannot establish clear and marketable title, and can therefore not access the funds.
 - c. Short Term
 - i. Short term goal: (1) in hurricane affected areas, find solution to swiftly adjudicate title as it relates to certain programs, enabling people to receive LRA funds and other federal and state funds requiring clear title. (2) Educate pro-bono attorneys and poor communities about the current laws concerning "heir property" to better facilitate clearing of title under current laws. (Conf. Call 8/9)
 - ii. Solutions
 1. Appleseed recruited local real estate attorneys to research problem and try to find solutions. Issued a report outlining steps to streamline adjudication process for determining title for the purposes of the Road Home Program.
 - a. The goal was to find a solution that would balance the desire an efficient/low cost means of determining title, with the equally important need to avoid fraud.
 - b. The LRA did not adopt the suggestions, and instead paid the last tax payer on record. This approach is effective in that it gets the money into the community; however, it does not address the possibility of fraud.

2. Alabama/Georgia Appleseed organized Alabama-wide pro bono effort to assist evacuees to obtain clear title, thus qualifying them for federal rebuilding grants. In addition, AL/GA Appleseed is drafting a training manual for pro bono counsel assisting “heir property” residents. This manual will be published with comparable documents from other states in a single Gulf Coast Heir Property Compilation.

d. Long Term

- i. Long Term Goals: Uniform legislation to lower the cost of clearing title, thereby bringing the poor back into the legitimate property and lending systems. Must balance the need for streamlined/low-cost process with need to uphold due process and avoid fraud.
- ii. Implementation
 1. Bring people together with various levels of expertise – lawyers, title insurers, government officials, economists, etc. – to analyze situation and find systemic solutions to this regional and national crisis.
 2. Draft and advocate uniform legislation
 3. Communicate changes to affected individuals and communities the availability of new procedures.