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Reflections on "Public Service in a Time of Crisis"

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REFLECTIONS ON "PUBLIC SERVICE IN A TIME OF CRISIS"*

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INTRODUCTION

The New York and national legal community are to be commended for their organized, systematic response to 9/11. This Volume of the Fordham Urban Law Journal affords a valuable opportunity to consider the lessons derived from disaster legal assistance, both to improve on the crisis response model and to design systems for ongoing delivery of pro bono services in the absence of dramatic, precipitating events.

Disasters come in many sizes and forms. As usually defined, the word "disaster" refers to "a calamitous event, especially one occurring suddenly and causing great loss of life, damage or hardship, as a flood, airplane crash, or business failure."1 Disasters can result from forces of nature, from human actions, or a combination of both. Bombings, massacres, and similar terrorist attacks inflict large-scale loss of life, serious injuries, and property damage.2 Natural disasters such as earthquakes and tsunamis may take an ever greater toll, killing tens if not hundreds of thousands of people and destroying billions of dollars worth of property.3 Smaller scale di-


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3. See, e.g., Douglas Frantz, Cheap Housing Cited in Toll in Turk Quake, N.Y. TIMES, Nov. 19, 2000, at 26 (discussing 1999 earthquake in Istanbul that killed 18,000); Geography of Need, GUARDIAN, Feb. 17, 2005, at 17 (estimating that 294,000 people are dead or missing after December 2004 tsunami); Neil Johnson, Mudslides, Floods in Storm Deliver Deadliest Blow, TAMPA TRIB., Nov. 3, 1998, at 10 (discussing the
Disasters also regularly occur: wildfires, tornados, train wrecks, bridge collapses, and maritime accidents. Sudden, dramatic, and horrible disasters prompt extraordinary volunteerism from the entire community. In all walks of life, ordinary time is suspended, riveting attention to the crisis at hand. Everyone feels compelled to do whatever they can to help, including those in the legal community.

Whatever the cause, all of these events are physically dramatic, and result in extensive personal, property, economic, and environmental harm. Public response varies with the extent of loss, moral outrage, and the community's sense of violation. The events of 9/11 shocked the nation and much of the world. Firefighters became national heroes because they could do something tangible: search, rescue, and remove the dead for burial.

The legal community's remarkable response to the terrorist attacks of September 11, 2001 should be viewed in that context. As trained professional technicians, skilled at designing creative solutions to vexing problems, lawyers were prompted to help to alleviate the human suffering. Serendipitously, New York's first ever Access to Justice Conference was scheduled to begin in Albany the morning of September 11, with over 250 participants concerned about delivery of legal services scheduled to attend. Because the conference machinery was set in place, and committed lawyers physically present (and out of harm's way), the fortuitous timing enabled prompt organization of disaster legal assistance. Thus, although the enormous losses from the attacks required an unprecedented level of disaster legal assistance, New York's legal community, which had long paid thoughtful attention to its pro bono responsibilities, rose quickly to the challenge.

This Essay reflects upon the lessons learned from the legal community’s massive effort to help sort out the legal problems of those

deadliest hurricanes including Hurricane Mitch which left 7000 dead in Central America and a 1900 hurricane which devastated Galveston, Texas leaving 12,000 dead; "Mourning in Iran," N.Y. TIMES, Jan. 2, 2004, at A1 (discussing December 2003 earthquake in Iran that killed upwards of 40,000).
5. Id. at 10.
affected by the tragic events of 9/11, and then applies those lessons to the challenge of designing delivery of pro bono services for less spectacular and hence less sympathetic disasters. It considers what design strategies were particularly effective, how these pro bono efforts were different from other disaster relief legal programs, and how these experiences can inform nationwide deliberations on expanding Access to Justice. The greater challenge for the legal profession is in delivering sufficient and sustainable pro bono legal services for everyday disasters, such as poverty, homelessness, substance abuse, crime, domestic violence, and deprivation of civil liberties. These disasters are not as sudden, dramatic, or immediately damaging, hence they do not provoke a national outpouring of empathy, generosity, or volunteerism. And yet, these ordinary disasters result in enormous untold harms to those affected. Maybe, just maybe, what the legal community has learned about disaster legal assistance could be used to create ongoing systems for pro bono delivery of legal services to alleviate the harm of quiet disasters suffered on a daily basis.

I. EARLIER RESPONSE OF ORGANIZED BAR TO MASS DISASTERS

A. Mass Torts: Trains, Planes, Buses, and Hotels

The legal profession’s strict anti-solicitation rules have historically evoked strong disciplinary responses against the offending lawyers, often at the behest of counsel for prospective civil defendants. Where there is probable legal blame for a mass disaster resulting in many deaths, personal injury lawyers are well-situated to gather evidence and seek representation of victims and their families. Lawyers retained immediately after the event may represent many clients, justifying the costs of expensive investigation into causation and liability. Significant strategic advantages inure to

7. In re Teichner, 387 N.E.2d 265, 271-72 (Ill. 1979) (upholding two year suspension of attorney for improper solicitation through runners, but not for solicitation as part of bona fide relief effort, involving associational values protected by First Amendment); JEROLD S. AUERBACH, UNEQUAL JUSTICE 43-45 (1976).

8. See, e.g., Mark Arax, MGM Grand to Get $76 Million for Fire Claims, L.A. TIMES, Apr. 1, 1985, at Metro 3 (reporting that litigation over 1980 Las Vegas hotel fire which killed 85 people and injured 591 involved 49 lawyers for plaintiffs and defendants and resulted in a $140 million total settlement); India Bars Belli in Bhopal Suit, CHI. TRIB., Aug. 11, 1985, at 14 (reporting that the Indian government denied a visa to Melvin Belli, who sought to represent 24,000 clients in a $15 billion suit against Union Carbide for toxic leak killing around 2500 people); William Robbins, Engineers are Held at Fault in ‘81 Hotel Disaster, N.Y. TIMES, Nov. 16, 1985, at 28 (reporting that
those who are first to file. Reports of lawyers descending on the
disaster site, picking through debris and human remains, and in-
truding on private grief evoke images of vultures, preying on the
misfortune of others for their own financial gain. Burnele Powell
uses the pejorative term “the parachuting practitioner” to evaluate
the reaction of the organized bar, with disaster response teams de-
signed to insulate vulnerable persons from unethical solicitation by
out-of-state lawyers or their runners.9 He concludes that journalis-
tic anecdotes of egregious lawyer misconduct are not empirically
substantiated,10 and that response teams are “more significant as
public relations efforts than as meaningful efforts to promote pro-
fessionalism within the bar or to respond to authentic demands for
consumer protection.”11 Some state ethics rules have imposed a
moratorium, prohibiting any communication by lawyers seeking to
represent injured persons for a short time after a traumatic event.12

Of course, plaintiffs’ lawyers are not the only representatives of
potential litigants at the disaster site acting in their self-interest.
Lawyers and investigators for the prospective defendants also whip
into action, gathering evidence and preparing their defense strat-

egy.13 For example, in what became known as the “Delta plan,”
airline representatives were immediately dispatched after a crash
to assist the victims and their families using every available
means.14 Representatives of these “bonding teams” arranged for
hotels, attended funerals, and developed personal relationships
with the family members.15 “Treat the victims and their families
with all the compassion a corporation can muster. And if that
doesn’t work, show them just how painful a lawsuit can be.”16
These efforts were not merely humanitarian, but also aimed to de-
ter lawsuits and gather sensitive information about victims that

10. Id. at 119-23 (including anecdotes of runner disguised as “Father John,” a ficti-
tious priest who “counseled” the bereaved and distributed a lawyer’s business cards).
11. Id. at 111-13.
Went For It, Inc., 515 U.S. 618 (1995)).
13. Powell, supra note 9, at 145-46.
14. Ed Bean, Damage Control: After 137 People Died in Its Texas Jet Crash, Delta
15. Id.
16. Id.
could be used to mitigate damages in any ensuing litigation.\footnote{17} Representatives of insurance companies have been reported to contact potential claimants in efforts to secure early settlements, perhaps at a fraction of their fair value.\footnote{18}

Dean Powell opined that disaster response teams may handicap plaintiffs' "efforts to secure counsel to protect their interest, [while] the defendants have been looking to their legal and financial exposure from day one."\footnote{19} Accordingly, he recommended that the organized bar refashion its efforts to "postdisaster assistance teams," to provide legal services, communicate with the media about the relevant law, and coordinate protection of the disaster site.\footnote{20} His views presaged what was to come, in Oklahoma after the Murrah Building bombing, in New York, and elsewhere.

At least for airline disasters, the legal framework has changed substantially. In 1996 Congress enacted the Aviation Disaster Family Assistance Act, which prohibits any unsolicited communication for forty-five days after an accident, by any lawyer or potential party to litigation.\footnote{21} A subsequent amendment calls for creation of a task force to create a model plan for accident response.\footnote{22} While there are some uncertainties as to its effectiveness, at least the law anticipates that immediate efforts are to be focused on humanitarian assistance and formally protects grieving families from intrusive contacts.\footnote{23}

B. Natural Disasters: Earth, Wind, Fire, and Water

Response to natural disasters is of a different sort, because the precipitating event did not result from human intervention, or if it did, the harm escalated through interaction with natural forces.\footnote{24}

\footnotesize
17. Id. (noting that representatives used knowledge of one deceased passenger's homosexuality to assert his normal life expectancy was reduced because he was likely to contract AIDS, and also used knowledge of another victim's extramarital affair to assert his widow's claim was worth less because of the likelihood of divorce).
18. Frontline: Air Crash (WGBH/PBS television broadcast (Mar. 2, 1983)).
19. Powell, supra note 9, at 153.
20. Id. at 154.
22. Id. § 704.
24. For example, prosecutors contend that some of the fall 2002 Leona Valley, California wildfires resulted from arson or negligence. See Hector Becerra, Cameraman Testifies in Arson Trial, L.A. TIMES, Feb. 26, 2004, at B3. Regardless of allegations of deliberate or negligent conduct, harm from wildfires was exacerbated by environmental factors: drought, forest conditions, and wind. See Andrew Blankstein
Before the New Deal, local governments and private groups dominated disaster relief programs. A complex web of federal programs proliferated until 1979 when President Carter consolidated nearly thirty entities into the Federal Emergency Management Agency ("FEMA"). Now, when the president declares an area a "federal disaster," FEMA steps in "to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the [resulting] suffering and damage . . . ." By the terms of a 1978 agreement, when FEMA activates disaster legal services, the Young Lawyers Division of the American Bar Association undertakes to organize pro bono legal assistance.

FEMA provides a range of services: emergency assistance to save lives, protect property, ameliorate threats of continuing harm, and provide temporary housing assistance and lump sum cash grants for essential needs (housing repair, personal property loss, transportation, medical, and funeral costs). The Small Business Administration and Department of Housing and Urban Development provide low-interest disaster loans and rental housing vouchers to income-eligible victims displaced by disasters.

& Wendy Thermos, Videographer Held in Leona Valley Arson, L.A. TIMES, Aug. 2, 2003, at B1 (noting that fire occurred during one of the driest years on record). Because there is no chance the individuals whose actions precipitated the fires would have assets sufficient to respond to liability claims, there is no financial incentive for parachuting practitioners, or defense response teams to descend on the disaster site. See supra note 9 and accompanying text.

26. Id.
27. Id. at 131 (quoting 42 U.S.C. § 5121 (2005)).
28. Stephanie Francis Ward, Preparing For After the Disaster, ABA Young Lawyers Division Mobilizes as California Fires Burn, ABA J. eREPORT, Oct. 31, 2003 (on file with author). This partnership was inspired by Hurricane Camille in 1969. Id. When activated, YLD works with local lawyers to staff legal hotlines, and makes referrals to pro bono lawyers. Id. Fee-generating cases are referred to lawyer referral services sponsored by the bar, but federal law prohibits volunteer FEMA attorneys from taking such cases. Id; see also JoEllen Bursinger, ABA/YLD Spells Relief: Young Lawyers Move Quickly to Assist Hurricane Victims, 78 A.B.A. J. 132, 132 (1992) (discussing disaster legal assistance following Hurricane Andrew in south Florida, and Hurricane Iniki in Hawaii); John J. Copelan, Jr. & Steven A. Lamb, Disaster Law and Hurricane Andrew—Government Lawyers Leading the Way to Recovery, 27 URB. LAW. 29, 29 (1995); Andrew Strong, Together We Stand, The Houston Legal Community Rises to the Occasion, 39 Hous. LAW. 22, 23 (2001) (describing work of disaster legal assistance committee created in response to Houston's Tropical Storm Allison).
29. Sar, supra note 25, at 131-33.
30. Id.
It appears that most of the natural disaster legal assistance relates to property damage: home and car insurance, mortgages, landlord/tenant issues, and dealing with contractors.\textsuperscript{31} Nevertheless, training programs established immediately after a disaster provide volunteer lawyers with information on a wide range of legal issues, including social services and benefits to address income interruption.\textsuperscript{32} The extent and dedication of volunteer lawyers probably corresponds directly to the enormity of the disaster. Whether they occur in metropolitan or rural areas also influences the extent of volunteer legal assistance. For example, when the May 3, 1999 tornados flattened large areas of central Oklahoma, extensive volunteer efforts—both local and nationwide—sprang into action.\textsuperscript{33} The proximity of metropolitan lawyers generated high levels of interest and empathy,\textsuperscript{34} and made it easier to respond while tending to other demands in their practice. Over 200 lawyers with the Oklahoma Bar Association provided assistance to 650 persons in ten areas of law.\textsuperscript{35} Disasters do not discriminate: they happen both in highly and sparsely populated areas, affecting those who are wealthy and purchase disaster insurance, and those who are poor and already at the margins of society.\textsuperscript{36} Smaller disasters in rural areas may evoke little systematic response; legal assistance is ad hoc, depending on whether the victims are proactive in identifying their problems and searching for a lawyer’s help.\textsuperscript{37}

\begin{footnotes}
\footnote{31. See generally Ward, supra note 28; Memorandum from Peggy Stockwell & Dave Stockwell, Disaster Response & Relief Committee 2003 Annual Report (summarizing legal assistance given to victims of May 8, 2003 tornados) (copy on file with author).}

\footnote{32. See, e.g., Bursinger, supra note 28, at 132.}

\footnote{33. See Okla. Bar Ass'n, May 3, 1999–Tragedy Strikes Again (May-June, 1999) (unpublished report of Oklahoma Bar Association Disaster Response Project describing assistance given after 51 tornados killed 44 people, destroyed 2500 homes, and damaged more than 7000 buildings; legal assistance provided in areas of property, landlord/tenant, commercial and real estate, mortgage, insurance, probate, adoption and guardianship, bankruptcy, and employment law) (copy on file with author).}

\footnote{34. Cf. Deborah Rhode, Pro Bono in Times of Crisis; Looking Forward By Looking Back, 31 Fordham Urb. L.J. 1011, 1013 (2004) (identifying “capacity for empathy and sense of human or group solidarity” as most significant traits that motivate charitable activity).}


\footnote{36. See Sar, supra note 25, at 138. Sar notes that persons with greater reserve wealth and income are better able to find suitable replacement housing with aid of FEMA and HUD, while aid to lower income persons who are displaced is relatively ineffective. Id. Persons who were already homeless are excluded from disaster aid, because they cannot satisfy residency requirements. Id.}

\footnote{37. In 1995, major flooding rendered uninhabitable homes in Kingfisher, Oklahoma, a community with a significant Native American population. See gener-}
Smaller disasters in metropolitan areas present different issues about the effectiveness and future of disaster legal assistance programs. They may suffer the fate of "the little boy who cried wolf." When the organized bar mobilizes forces, it expends capital reserves of the goodwill and volunteerism of its members. Lawyers spend time in training and staffing tables at FEMA sites. If their time is not well spent, they have not obtained the intrinsic satisfaction that comes from providing helpful and needed legal assistance. They may be less willing to volunteer in the future, doubt the existence of unmet legal needs, and feel that they have satisfied their ethical responsibility to provide pro bono assistance. Meanwhile, many persons suffering their own, quiet disasters must do without legal assistance.

I formed these impressions after participating in the Oklahoma Bar Association disaster legal assistance after tornados in May 2003 caused moderate damage to the same area devastated in 1999. The bar quickly mobilized its forces, training volunteer attorneys and enlisting forty lawyers to assist about thirty victims who visited the FEMA emergency assistance centers. I staffed the table on a cold and overcast afternoon over a week after the tornados hit. Six attorneys showed up that afternoon, three of whom left when they saw their services were not needed. The remaining three chatted for two and a half hours. Only one woman approached our table to seek assistance in dealing with her land-

ally Darrell Morrow, Change Set for Disaster Aid Office, J. Rec. (Okla. City), June 30, 1995. The tribal connections may have complicated jurisdictional questions between FEMA and the Bureau of Indian Affairs, frustrating victims' efforts to obtain relocation assistance. Id. The author, who rendered legal assistance to one family, recalls no organized program of disaster legal assistance. Id. Rather, access to counsel was happenstance, depending on whether individual families were acquainted with persons who could help them connect with counsel. Id.; see also Judith L. Maute, Changing Conceptions of Lawyers' Pro Bono Responsibilities: From Chance Noblesse Oblige to Stated Expectations, 77 Tul. L. Rev. 91, 95 (2002) (traditional paradigm reactive and passive; lawyers waited until prospective clients realized they had a legal problem and sought help from a specific lawyer, rather than actively seeking out persons who needed legal assistance; pro bono services largely ad hoc and happenstance) [hereinafter Maute, Changing Conceptions].

38. See also Elizabeth Olson, Testing the Idea That Helping Out is Healthy, N.Y. Times, Apr. 13, 2004, at G10. Olson reports on a new study published in The Journal of Urban Health, which found that volunteering by older adults "can lead to meaningful short-term health improvement in health behaviors for older adults while they, at the same time, offer social capital that is highly valued." The study found "significant improvement in physical activity, social interaction and cognitive stimulation."


lord. While we collaborated to give her sound advice, I regret this poor use of our time. Thereafter, I agreed to represent another person with an insurance problem related to damage of a car subject to an outstanding security interest. Although the insurance carrier was cooperative, the creditor resisted a collateral swap. My efforts to negotiate a satisfactory resolution were unsuccessful. As I prepared to teach summer school out of state, I sought to obtain a “real lawyer”—someone engaged in private practice with a law firm’s support machinery to threaten legal action. Quickly I learned that the outpouring of volunteer attorneys to staff on-site disaster relief tables for limited advice was not backed up by a cadre of lawyers willing to actually represent victims. Whether this was caused by conflicts of interest or a pressing workload, the outcome was the same: individuals who really needed legal help had a hard time getting it. My personal observations were substantiated by others who agreed that it was a lot easier to get lawyers to staff the tables for limited legal advice than to provide follow-up legal representation. Showy but light-weight face time, as opposed to real lawyering, was the order of the day.

This experience caused me to question the long-term utility of waging a “one-size fits all” disaster legal assistance program. Relatively minor “disasters” are common in some areas of the country. In Oklahoma, tornados are a fact of life in spring. California has fires, mudslides, and earthquakes. Not all of these events cause widespread harm justifying expenditure of limited capital in full scale disaster legal assistance programs. Such efforts should be scaled to the enormity of the harm, preserving precious volunteer resources for ongoing pro bono legal assistance that is badly needed to address the everyday demands of unmet legal needs. When lawyers volunteer to work, their time and resources should be put to good use, providing meaningful and effective legal services. They should not be squandered in activities that have little more than public relations value.

C. The Oklahoma City Murrah Bombing Disaster Legal Assistance

By contrast to the concerns raised above, public-spirited volunteer resources have enormous value following truly calamitous events. Until the signal events of September 11, 2001, the April 19, 2001, Oklahoma City bombing.

41. See also Public Service in a Time of Crisis, supra note 4, at 53 (noting that survey respondents identified impediments to pro bono service; sixty-six percent of law firm lawyers reported that they were too busy).
The bombing of the Alfred P. Murrah Federal Building was the largest terrorist attack on American soil. One hundred sixty-eight people were killed, hundreds injured, and both residential and business properties within a three block radius were destroyed. The resulting losses and dislocation were extensive. Within two days, lawyers working under the auspices of the Oklahoma Bar Association began providing pro bono legal services to the victims. Inside of one week, an organized disaster legal relief effort was underway. The Oklahoma bombing disaster assistance and recovery efforts served as a model for New York as it was called to action six years later. Ongoing, heartfelt connections were forged between the two communities devastated by terrorist attacks. While the report, *Public Service in a Time of Crisis*, does not explicitly reference the Oklahoma Bombing Disaster Legal Assistance as a predecessor, the Oklahoma experience presaged the enormous legal issues raised in the aftermath of September 11, 2001.

43. Memorandum from M. Courtney Briggs, The Oklahoma Bombing Disaster Legal Assistance 1 (on file with author).
44. Id.
45. Id. (noting that legal relief was organized cooperatively by the Oklahoma Bar Association and its Young Lawyers Division, the Oklahoma County Bar Association, with guidance and assistance provided by the ABA Young Lawyers Division and FEMA).
II. THE NEW YORK LEGAL COMMUNITY'S RESPONSE TO THE EVENTS OF SEPTEMBER 11, 2001 AND LESSONS LEARNED TO IMPROVE ACCESS TO JUSTICE

Large scale disasters tend to be transformative events for the affected community. Everyday, commonplace activities come to a halt, changing behavior patterns for those even remotely connected to the harm. September 11, 2001 fundamentally altered "life as we knew it."\(^{48}\) Disasters provide an opportunity for individuals to put aside their selfish ways, and to come together as a community acting for the common good, with all contributing as they are able.

The timing of New York’s first Access to Justice Conference, scheduled to begin on that fateful day, was truly fortuitous. Because many leaders of the bar, judiciary, academy, and legal services community were already gathered, they could immediately focus on creating a structure to address the victims’ probable legal needs. Without doubt, their presence enabled a prompt, coordinated, and collaborative response that worked well under difficult circumstances. Already focused on systems for delivering legal services to those in need, they were well-situated to move quickly into action. Had the conference occurred at a more ordinary time, thoughtful deliberation about possible approaches, strategic planning, and funding could have gone on indefinitely. Without the luxury of protracted deliberation, action took precedence. The terrorist attacks energized the legal community to act cooperatively on an unprecedented scale. As noted in the report, "[s]wift action... was vital to maximizing volunteerism and cooperation."\(^{49}\)

The report identifies eighteen separate lessons learned from this experience that can be applied to ordinary circumstances and improve access to justice.\(^{50}\) This Essay addresses three central themes: first, the need for comprehensive collaboration among stakeholders and localized control over programmatic details; second, the importance of training, coordination, and efficient communications systems; and third, the importance of flexibility,

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48. See, e.g., Bill Pennington, Mountain Resorts Foster Togetherness in Families, N.Y. Times, Mar. 11, 2004, at D5 (reporting increased purchases of recreational homes in family clusters since 9/11, reflecting higher priority on family connections; "[t]he reality of 9/11 is that life is short"). It brought atomistic, individualistic pursuit of gain to an abrupt halt. See generally Ginia Bellafante, Some Who Needed Holding After 9/11 Are Holding Off, N.Y. Times, Mar. 10, 2002, at A1. Since then, many articles in The New York Times have discussed a renewed focus on interpersonal connections with family, friends, and lovers. See, e.g., id.

49. Public Service in a Time of Crisis, supra note 4, at 57.

50. Id. at 55-60.
adaptation, and innovation. These themes are being developed as part of a nationwide movement, as individual states create partnerships to expand Access to Justice.\textsuperscript{51} In 1999, only a handful of states had established statewide bodies combining representatives of the judiciary, legal service providers, the organized bar, and other stakeholders.\textsuperscript{52} Since then, the Access to Justice movement has taken hold. Now, most states have or are in the process of creating standing entities dedicated to creating workable solutions for delivery of legal services to those in need.\textsuperscript{53}

\textbf{A. Comprehensive Coordination Among Stakeholders}

The report describes remarkable collaboration between the judiciary, bar leaders, the legal services community, private firms, individual lawyers, corporations, and the philanthropic community.\textsuperscript{54} The trial bar's unprecedented moratorium on civil suits enabled a "quiet period where people were not running to the courthouse door or jockeying for position."\textsuperscript{55} Each component became invested in creating a workable system. No one group acting alone could have achieved comparable results.

Creative solutions become possible when there is a community of stakeholders who understand the problems and are willing to commit the resources needed to make a difference. Not all disas-


\textsuperscript{52} \textit{Id.} (noting that five states had standing entities in 1999).


\textsuperscript{54} \textit{Id.} at 10-12.

\textsuperscript{55} \textit{Id.} at 40.
ters can or should command such attention. Statewide efforts to improve access to justice must identify key actors in the relevant constituent communities and enlist their active participation in collaborative efforts. Leadership by the judiciary, from the highest appellate courts through the lowest level trial and administrative tribunals, can impress on lawyers the importance of procedural fairness and access to counsel. Legislative support is needed for program funding and enactment of statutory changes that reduce unnecessary barriers to public rights or benefits. Commitment from private firms, individual lawyers, and the organized bar is absolutely essential to developing a professional culture in which all lawyers are willing to contribute a fair share of their services or resources to the public good. The legal services community has vast expertise in the substantive legal problems encountered by low-income persons, and in creating efficient systems for economical delivery of legal services. Its experience with legal hotlines, self help programs, and potential ethical pitfalls adds immeasurably to local efforts to make legal services more widely available. Additionally, private philanthropy can provide the seed money needed to start viable, innovative programs. Because they do not tend to fund operational expenses, these programs need ongoing support from the legislature, judiciary, and private bar.

While organizational infrastructure may best be achieved through statewide collaboration, significant localized control over program design and implementation is desirable. Lawyers and judges within a community, and within practice areas, are better situated to understand local needs and legal culture, as well as how volunteers should be recruited and recognized for their pro bono work. Whether control over program design and implementation is pursued within counties or within larger judicial districts is a matter for further consideration. The pragmatic point is that individual lawyers are more likely to volunteer if they are asked by someone


59. See id. at iv.
with whom they have a personal connection. Edicts or exhortations from a statewide entity may be met with resistance or more easily ignored. Requests by lawyers and judges who regularly interact with one another are more likely to prove persuasive and reflect the camaraderie and norms of the local legal community. Pro bono projects focusing on specific legal problems or subsets of the community make effective use of volunteer labor by creating a knowledge base on the relevant law and an understanding about the social context from which the legal issues arise.\textsuperscript{60}

**B. Teamwork, Training, and Efficient Communications**

The large number of volunteers, willing to act in many different capacities, enabled a teamwork approach that served the interests of lawyers and clients alike. Legitimate concerns about competence often deter lawyers from volunteering in areas outside their normal practice areas and expertise.\textsuperscript{61} In short order, a coordinated effort created materials on frequently asked questions, handbooks, and specialized training materials that quickly oriented volunteers about the law in fifteen discrete specialty areas.\textsuperscript{62} These materials drew upon existing resources from prior disasters.\textsuperscript{63} Available both in printed form and electronically, they were easily accessible, particularly for lawyers who could not attend live training sessions.

Direct service teams, utilizing facilitators, mentors, and lawyers with responsibility for discrete problems, enabled a holistic and coordinated approach for addressing the multiple problems encountered by victims and their families.\textsuperscript{64} With the facilitator serving as the single point of contact, information could be disseminated and job assignments dispatched to team lawyers efficiently, without bothering clients with frequent communications from different lawyers.\textsuperscript{65} This model was humane, respecting the clients' grief and need for comprehensive assistance. Because the lawyers providing

\textsuperscript{60} See generally Public Service in a Time of Crisis, supra note 4, at 24-42.


\textsuperscript{62} Public Service in a Time of Crisis, supra note 4, at 16-17.

\textsuperscript{63} Id. at 17 (drawing from materials created in California after a 1989 San Francisco earthquake).

\textsuperscript{64} Interdisciplinary team efforts between lawyers and social workers had been used with success before, with collaborative focus on problem resolution. See, e.g., Carroll Seron, Managing Entrepreneurial Legal Services: The Transformation of Small-Firm Practice, in Lawyer's Ideals/Lawyer's Practices: Transformations in the American Legal Profession 63, 66-68 (Robert L. Nelson et al. eds., 1992).

\textsuperscript{65} See Public Service in a Time of Crisis, supra note 4, at 34.
direct service on discrete issues often ventured into unfamiliar fields of law, availability of mentors in specialty areas provided important back-up support, enhancing efficiency and effectiveness of service.\textsuperscript{66}

Internet technology played an essential role, providing information resources, matching clients with volunteer lawyers, case management, document storage and distribution, and interactive messaging.\textsuperscript{67} Existing software databases maintained by ProBono.net, LawHelp, and iLawyer avoided the need to develop entirely new systems in response to the "unexpected and unprecedented need for immediate legal services for thousands."\textsuperscript{68} Their technology made "it possible to coordinate the broad and varied responses."\textsuperscript{69} Extraordinary resources available on the Internet have made possible nationwide sharing of information about innovations in delivery of legal services, spurring development of hotlines, lawyer referral, and self-help programs.\textsuperscript{70} These programs share generously with others, and have stimulated development of many projects nationwide that are designed to serve local communities or consumers with specific legal problems.\textsuperscript{71}

\section*{C. Flexibility, Adaptation, and Innovation}

In reflecting upon lessons learned in responding to a disaster, the report states as Lesson Nine: "[f]lexibility, adaptation, and innovation were critical aspects to the 9/11 legal relief effort."\textsuperscript{72} Immediately after the disaster, legal relief efforts were reactive—

seeking to address needs as they became evident and were brought to their attention. Later, organizations became more proactive, seeking to identify legal needs that might not be fully recognized or appreciated and seeking to reach out to those

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.} at 20.
\item \textit{Id.} at 19-23.
\item \textit{Id.} at 20 (quoting Michael Hertz, President of ProBono.net).
\item \textit{Id.}
\item Julia Gordon, Nat'l Legal Aid & Defender Ass'n, \textit{Equal Justice and the Digital Revolution: Using Technology to Meet the Legal Needs of Low-Income People}, at 3 (2002), \textit{at http://www.nlada.org/DMS/Documents/1037065130.38/gordon.pdf} (last visited Feb. 9, 2005) (discussing technological advances that have, inter alia, greatly expanded access to legal information, case management, volunteer recruitment, training opportunities; recommending eight objectives for improving use of technology to provide equal justice for all).
\item \textit{Public Service in a Time of Crisis, supra} note 4, at 58.
\end{enumerate}
\end{footnotesize}
This approach parallels historical development of American lawyers’ pro bono tradition. Legal assistance in response to a disaster must begin as triage, tending to the most urgent needs that present themselves. Just as emergency room medicine is a recognized practice specialty, the legal profession is also developing recognized formats for times of crisis. Improvements become possible when programs periodically step back, evaluate the quality of services delivered under the current system, and make appropriate adjustments. The facilitator model arose within a few weeks of 9/11 in recognition that “preexisting service delivery models” were inadequate, and that there was a lack of volunteer lawyers with needed specialized skills. When crisis prompts lawyers as “relentless problem solvers” to act collectively, they can accomplish much in a relatively short period of time. Anticipating future programs, the report suggests it would have been valuable to have a feedback system to assess whether clients perceived that they had received effective, satisfactory representation. In times of crisis, the organized bar rallies in direct proportion to the enormity of harm. Over time, however, conditions stabilize and attention shifts elsewhere, with most volunteers returning to business as usual. Although the ensuing legal problems persist, the availability of volunteer lawyers diminishes. Meanwhile, the less dramatic, ordinary legal problems of many Americans remain unmet.

After studying current innovations in delivering pro bono services, I would place “flexibility, adaptation and innovation” high on the list of guiding principles. Only recently has the legal profession begun in earnest to create viable structures for the delivery of pro bono services. Serious reflection about what kinds of programs work effectively, and identification of strategies or techniques to

73. Id. at 43.
74. See Maute, Changing Conceptions, supra note 37, at 98-102 (discussing the American pro bono tradition of service to those who could not afford representation).
76. Public Service in a Time of Crisis, supra note 4, at 60.
77. Id. at 58-59.
78. Id.
79. Id. at 60.
80. See id. at 43; see also Maute & Hill, supra note 70, at 391 (stating that the initial rush of volunteers has diminished and that there are now staffing difficulties).
address shortcomings is essential. I am optimistic that the report and recommendations from the New York state pro bono convocations will make immense contributions to the field, both for dealing with sudden, unanticipated disasters, and the much larger challenge of dealing with unmet legal needs in ordinary time. The recommendations of the pro bono convocations hold great promise for the future: to develop local pro bono action plans, to emphasize the judiciary's leadership role, to implement court-based initiatives facilitating litigants' access to pro bono counsel, to foster a pro bono culture among students and new lawyers, to develop methods for data collection on the extent of pro bono services, and to explore the use of unbundling, or discrete task representation through pilot projects. A few states—New York, Florida, Maryland, Indiana—are providing important leadership for creating pro bono systems that work.

**Conclusion**

Crisis forces community response. New York drew upon lessons learned elsewhere, to create the most comprehensive disaster legal assistance program anywhere. Hopefully there will be no future need for a response of that scale. This is now a period of rebuilding—buildings, communities, and lives. Any large scale construction project begins with discussion of project objectives, moves to concept design, then detailed drawings that form the basis of architectural blueprints. No building project is completed without modification. The construction must be structurally sound, aesthetically pleasing, and adapted to special needs and available resources. Form follows function. New York City is proceeding with its plans to construct a suitable memorial for the victims of 9/11, drawing upon the experience of Oklahoma City in creating its extraordinary memorial to the Murrah Building bombing victims. A memorial serves as a place for reflection about the past, and an inspiration for determining the future. No matter how horrible the disaster, a community must move forward.

81. See, e.g., Maute & Hill, supra note 70, at 394-407, 395 n.115 (discussing Oklahoma City Volunteer Legal Center, but conceding that we had not comprehensively evaluated the Center, and acknowledging questions about "whether it made good use of lawyers' time in delivering effective legal services to clients.").
82. See Future of Pro Bono in New York, supra note 58, at 23-29.
83. Id.
84. See Eric Herman, Oklahoma City Memorial in Focus, N.Y. DAILY NEWS, Jan. 25, 2002, at 38.
As New York and the nation come to terms with what happened on 9/11, much attention is paid to the shortcomings that permitted the terrorist attacks to occur. In contrast, this Volume focuses on how the legal community came together to construct a complex web of programs designed to meet the legal needs of disaster victims and how we can better prepare for the future. The comprehensive coordination among stakeholders, teamwork, training, efficient communications, and a commitment to flexibility, adaptation, and innovation made exceptional results possible. Let this serve as a memorial and rededication for the legal community. Rather than becoming an emblem of horrible events, let it serve as a preliminary blueprint for how the stakeholders can come together and create workable systems for delivery of legal services in response to the quiet, ordinary disasters that devastate millions of Americans who must go without needed legal assistance.