

**NJSBA Summit on Disaster Planning
March 28, 2007
NJ Law Center
New Brunswick, NJ**

S U M M A R Y O F P R O C E E D I N G S

11:00-11:15
Opening Remarks
Wayne Positan
Kevin McCann
Brian Montag

11:15-12:15
Discussion I: First Steps: Where are we?
Facilitator: Brian Montag

Richard Canas
Director
NJ Office of Homeland Security and Preparedness

Director Canas noted that his office is engaged in working with the Office of Emergency Management to conduct vulnerability studies throughout the state. New Jersey is one of the leading states in terms of disaster preparedness. Right now, the Office acknowledges that to improve its effectiveness it needs a better marriage with the private sector in terms of its activities. He is welcome to suggestions and interested in building a closer relationship.

The NJOHSP has engaged in regionalized planning with other states. He indicated that the NJSBA should instruct county bar associations that he has developed county prosecutor offices as points of contact for the state police and his office in the event of a disaster.

In addition, training is available in disaster preparedness from his office. Law firms and bar associations should feel free to contact his office to schedule training. It was suggested that a partnership with NJICLE or other agencies of the bar might be workable.

James Murphy
Chief Deputy Clerk
US District Court for the District of NJ

Mr. Murphy stressed that the NJ federal courts have undertaken a great deal of security and disaster planning particularly since the Oklahoma bombing and preparation for the Y2K scenario. This planning was enhanced by what occurred on 9/11. Each building

and staff person is apprised of the occupant emergency plan including participation in evacuation drills. In addition, each employee's identification card includes a set of directions concerning what to do in a particular emergency.

He noted that the federal judiciary's planning includes multiple continuity of operation plans (COOPs) with alternative sites for proceedings. A recent federal statute enables the federal courts in a particular district to go beyond their geographical boundaries in terms of COOPs.

A disaster recovery plan exists for automated mail servers and file servers.

No New Jersey bar association websites have a link to the federal courts. Such a website would become essential to getting information in the event of a disaster. If any problems occurred with the website in New Jersey, the US Administrative Office of the Courts website would take over.

Gerald Williams of the NJ Judiciary.

Mr. Williams noted that the vast majority of the New Jersey judiciary's planning occurred after the 9/11 attacks. However, since that time all 21 counties have adopted emergency preparedness protocols. In the event of a disaster, the NJ courts remain confident that they could redistribute essential judicial activities from affected courthouses to other of the state courthouses located throughout New Jersey. Each has a COOP plan which is under continuous review and updating. It considers that it has 20 fall back positions in the event that one or more counties have service interrupted on a temporary or permanent basis. The primary focus was what happens if you lose buildings. The NJ Judiciary is now focusing on the issue of a pandemic which needs to address what happens if you lose people.

Robert Saltzman of the New York State Bar Association

Mr. Saltzman serves as chair of New York's Mass Disaster Response Team. In that capacity, he has been called in to assist the general public in terms of providing pro bono legal assistance. He suggested that participants should refer to the National Incident Management Plan and the Citywide Incident Management Plan as a disaster planning reference device. He noted the New York State Bar Association has entered into various Memoranda of Understanding with a number of agencies in which the Association has agreed to provide immediate legal assistance to victims of disaster in exchange for the agencies granting the Association access to the victims. Those agencies include the New York City Office of Emergency Management, the New York State Office of Emergency Management, the National Transportation Safety Bureau and the Port Authority of New York and New Jersey.

Richard Martin of the New York State Bar Association

Mr. Martin noted that the NYSBA had a COOP plan for itself. However, it did not presently include a plan for the loss of the building or the staff in the event of an epidemic.

Barry Simpson, Pennsylvania Bar Association

Mr. Simpson commented that disaster planning in Pennsylvania is especially difficult because there are many rural counties that believe neighbors just naturally help each other and that will naturally happen in the event of a disaster.

Mr. Simpson suggested that the group focus on how to answer the following: (1) how can bar associations position themselves to help each other; (2) how can bar association IT systems interact with each other – what if the internet fails; (3) how can state/local bar associations interact with each other; (4) how do we prepare as lawyers and law firms for a disaster? He noted the reality is that the process will be the few planning for the many, as most law firms don't have back-up plans for periods of sickness or vacations, so planning for a mass disaster would just be incomprehensible to most firms.

Kenneth Shear, Philadelphia Bar Association

Mr. Shear noted that the Philadelphia Bar Association had formed a Special Committee on Disaster Planning chaired by Jacqueline who at the last minute could not attend the conference.

Paul Kazaras, Philadelphia Bar Association

Mr. Kazaras that an internal assessment after 9/11 occurred. Prior to that fire drills had not been paid attention to. Since then, that has changed. Staff all have water, a towel and a flashlight in the event that they need to evacuate the building because of a fire. Information technology files are backed up at least once a month. Philadelphia conducted a survey on disaster planning. Out of 5,000 surveyed, only 80 thought disaster planning was important. 60 had a plan. Only 20 knew the plan and where it was. "Not my job" was a common refrain in the survey responses. And this did not even contemplate pandemic issues. The Association knew it needed a multi-disciplinary approach, so it developed a CLE program on disaster planning, placed information and links on its website, and encouraged personal planning among its members.

While the local court in Philadelphia had a plan, it refused to share the plan with anyone because of security. The city bar was able to convince the court to provide access to the plan via its website. It plans to make a comprehensive plan for business recovery available to its membership as a manual for practitioners in and judges. The handbook for judges on disaster planning is expected to be available within a year.

Paul Carlin, Maryland State Bar Association

Mr. Carlin reported that disaster planning is a major initiative of the Maryland. Steve Nolan is heading up the Maryland task force. Communication would be the most important factor in responding to a disaster. Cell towers could go down and land lines might not be in usage.

He advised that much of their work mirrors the effort of New Jersey.

The focus of the Maryland bar's efforts is to aid its members and coordinate their efforts with the Maryland Administrative Office of the Court.

Maryland does have a Maryland Emergency Management Agency plan to address tornadoes.

Jeffrey Gamble, Delaware State Bar Association

Mr. Gamble indicated that the Delaware State Bar Association because of its having a less populous state, saw itself in a better position to provide aid and assistance to other states in the MABC in the event of a terrorist attack or other disaster.

However, if a pandemic occurred, given Delaware's poultry industry, it would be hard hit as would New Jersey and Maryland.

He noted that there is a great deal of indifference in his state with regard to the possibility of a hurricane, terrorist attack, or pandemic echoing some of the frustration expressed by other states in terms of motivating members to address these important issues. The Delaware business community has addressed these issues given the fact that many corporate headquarters have been located in the state.

Mr. Gamble also noted that prison systems would be impacted as they were in New Orleans with Hurricane Katrina.

The other positive about a pandemic is that only 30-40% of the population is likely to be affected. Once the other persons survive the initial wave of the pandemic, they will be immune from further problems with exposure.

Cynthia Kuhn, District of Columbia Bar

Ms. Kuhn reported that the DC Bar has a business continuity plan in place, as well as a plan for personnel.

12:30

Introduction: Brian Montag

Speaker: John J. Farmer, Jr.

Mr. Farmer detailed his response to the 9/11 attacks. He noted that much planning had been done for the Y2K computer threat. This preparation helped New Jersey and other states to be somewhat prepared for what occurred with September 11th.

The National Fire Plan (NFP) assists in providing for private sector preparedness. A plan is not a complete answer to a crisis. The quality of the plan, though, can be a good predictor of an agency's ability to respond.

As a result of the 9/11 attack, there was a near total information blackout. This is what has to be planned for.

There were also a number of legal issues that arose:

NJ State Police regulations provided that once a body was received it had to be handled as a New Jersey case. Thus, bodies needed to be rejected so that New York could retain jurisdiction.

The NJ State Police had to search the Newark airport, but the FAA and federal government have exclusive jurisdiction.

A question arose whether or not the State Police could search someone's garbage. The issue was resolved in favor of the expectation of privacy no longer existing when garbage is thrown away the day before a terrorist attack.

NJ feels confident that the next wave of attacks it could handle much better. It was able to mobilize a cadre of 600 state and private attorneys to assist victims and their families.

An infrastructure advisory committee has been established to weigh issues regarding hazards, who owns them, and security arrangement for private sector companies had to be diplomatically shared between government and business.

85% of the state's critical infrastructure is privately held. As a result, some cooperative effort between business and government needs to take place to secure this priority property.

If you do not have the legal tools to address a particular issue in a disaster, you need to improvise. Mutual aid agreements are necessary to overcome jurisdictional issues.

He also reported that NFPA 1600 at www.nfpa.org was a valuable device for instructing businesses how to prepare for a disaster. The regulations are adaptable to different size businesses and bar associations were encouraged to review the proposal.

First responders will be those who have the most influence on the outcome and much of the time these are not professionals trained to handle these circumstances. Thus, the more training that employees have regarding what to expect, the better.

1:30 PM

“Next Steps: Where are we going?”

Facilitator: Wayne J. Positan

Including the Judiciary in Preparedness Exercises

Mr. Balint, of the New Jersey Attorney General’s office talked about practice exercises held around the state and ensuring that everyone who needs to be is as prepared for an emergency as they can be, including judges, who were invited to observe the various practice exercise so they could understand and appreciate more fully what would happen in the event of an emergency. Mr. Balint explained that there are certain judges designated as “security” judges throughout the state, to whom legal issues in the midst of an emergency would be brought.

Personal Preparedness

Discussion turned to personal preparedness when Mr. McKenna from the U.S. Department of Justice noted that, regardless of how elaborate an organization’s planning process is, successful implementation of the plan relies on the appropriate people being ready and able to implement it. For that reason, the Department of Justice emphasizes educating its employees about planning for a disaster at home. Some examples Mr. McKenna gave included advising employees to always keep the gas tanks of their cars half full incase they have to leave in an emergency and the gas stations are either too crowded or shut down; always keep a certain amount of cash on hand in case banks are closed or ATMs are not working; know your children’s school evacuation plans.

Mr. Shear of the Philadelphia Bar Association agreed that employees need to know that employers understand they have needs at home that need to be addressed in an emergency situation, and they need to know that employers want them to take care of home first. Otherwise, key employees will be torn between responsibilities at work and at home.

Mr. Murphy of the District Court of New Jersey noted that employees also need to be reassured about their working conditions. He indicated they have found employees want to know if they will be paid and will their benefits continue in the wake of a disaster. If they have to work at an alternative site, how will they get there and will they be reimbursed for extra mileage. He said the District Court has actually taken employees to alternative work sites so they know where they are and become familiar with them. The Court lets employees work from home periodically so they know how to access computer records and other documents from home should they need to do so in an emergency.

Adequate Contact Information for Employees

Many agreed that having basic contact information for employees in an emergency situation, and a plan for how calls will be made, was critical. Home and cell phone numbers are important, as well as home e-mail addresses. Mr. Murphy noted that their managers are all given a flash drive to carry with them containing all employees' information that they can plug into any computer at any time. He also noted that, in testing, while cell phones may go down, text messaging still works. He noted that he and others in the federal courts have satellite phones, which proved useful in Hurricane Katrina. Finally, he noted that the government has a special system, government Emergency Telephone System (GETS), in which government officials are given special codes to enter when making phone calls that signal the telephone companies to prioritize the call.

Maintaining Contact With Bar Association Members

Discussion then turned to contacting bar association members in the wake of an emergency. The most reliable, preferred method appeared to be through either e-mail or the bar association's website. Mr. Shear noted the importance of housing computer servers off-site, and choosing the location carefully. The Philadelphia Bar Association, for example, originally housed their server near New Orleans, but following hurricane Katrina, moved it to the vicinity of Langley, where government operations are located.

Ms. Karbasian of the Camden County Bar Association noted not all bar associations have the resources to follow the suggested advice, and she asked about reaching members who are not computer literate. The consensus of the group seemed to be that an association cannot be everything to everybody, and at some point, members have to take some of the responsibility themselves to keep up with technology.

Mr. Gamble of the Delaware State Bar Association explained it established a reverse mentoring program to "bridge the generation gap" in computer literacy, whereby younger lawyers teach older lawyers about e-mail, websites, etc.

Mr. Simpson of the Pennsylvania State Bar Association suggested that perhaps the time is coming to require the submission of e-mail addresses, and asked if the courts could help with increasing reliance on computerization.

A quick survey of where the states in attendance stood with respect to requiring electronic court filings revealed the following:

In Delaware, e-filing is a "desired option."

In Pennsylvania and Maryland, the state courts are "not there yet."

In Washington, D.C., there is some use of e-filing, but not widespread yet.

In New York, there are some ongoing pilot projects.

In New Jersey, there are some ongoing pilot programs.

Mr. Murphy indicated that Mississippi has entered into a contract with the federal courts to use the federal courts system for state filings. He suggested this might be something for other states to consider since the federal e-filing system is well-established, is working well, has been tested and is already familiar to at least those working in the federal courts.

Interaction With the Public

Discussion then turned to interaction with the public in the event of a disaster. Mr. Saltzman talked about the extensive New York State Bar Association program. He noted the overlap of services available from the ABA, the state bar and the local bars, which are always resolved on a case by case basis. He also noted addressing the real legal needs of victims of a disaster doesn't begin until 4 or 5 days following the event; the important issue in the immediate aftermath is to protect the victims from unscrupulous professionals seeking to take advantage of the situation. Another challenge for associations is to channel all of the good will and energy of lawyers looking to help into avenues that are useful and productive. Sometimes, for example, there may be a lot of insurance issues with which the public needs assistance, but you have attorneys with lots of other areas of expertise looking to help. Sharon Balsamo of the New Jersey State Bar Association suggested using substantive section leaders to provide training in the necessary subject areas so, regardless of expertise, everyone could assist. This worked well following 9-11.

Harold Rubenstein of the New Jersey State Bar Association talked about its Mass Disaster Response Program with a core group of volunteer attorneys willing to provide disaster assistance, which is permanently in place and has a dedicated 800 number that can be activated at any time for any reason. Mr. Carlin of the Maryland State Bar Association noted an 800 number for public inquiries worked well for his association also. He indicated it is inexpensive and can be quickly established at any time.

Charitable Contributions

Collecting charitable contributions was the next topic of discussion. The consensus of the group was that every state bar association's affiliated foundation would be able to organize a dedicated fund for charitable contributions on the wake of a disaster, so no further planning was necessary on the issue.

The Bar Association's Role as a Clearinghouse for Displaced Attorneys

The group discussed whether bar associations could/should act as a clearinghouse for displaced attorneys in the wake of a disaster. Mr. Murphy explained that, in Louisiana, a communication center for displaced attorneys was established. He suggested that perhaps a website could be created in advance to be used in the event of a disaster for attorneys to send and receive e-mail, post messages, etc. There was also some discussion about maintaining lists of available space to meet temporary office space needs in the event of a disaster. The consensus seemed to be that meeting staffing or

office space needs would have to be dealt with on a case by case basis depending on the nature of the disaster, the amount of attorneys affected and the particular needs of the specific offices that need assistance.

Working Together in the Future

Mr. Leyden of the New Jersey Defense Association indicated his organization's willingness to cooperate with state bars on a regional basis and offered to involve his national chapter. He also suggested reaching out to the Corporate Counsel Association to obtain support from the private sector.

Mr. Positan concluded the second session.

3:00 PM

How do we get there?

Facilitator: Kevin P. McCann

Mr. McCann posed the question about whether or not the MABC members were disposed toward adopting the ABA Model Court Rule on the Provision of Legal Services following determination of a major disaster?

Participants discussed the genesis of the ABA Model Rule, noting that it would ease the tensions that develop as a result of having to act hastily in the event of a disaster. The question came up regarding reciprocity. Is it practical for a state to urge its court administrative authority to adopt the rule allowing other states to practice law within its borders, if other states on its borders have not reciprocated?

What if border states adopt a non-uniform rule which limits the ability of out-of-state attorneys to practice in the disaster hit state?

Is the adoption of such a rule necessary before other shared services can be provided by other states?

How long would the duration be of the out-of-state assistance? Until the disaster dissipates? Until the legal issue is resolved? Must the services provided be pro bono?

A dialogue needs to be had between licensing authorities over this issue.

32 states have adopted some form of ABA Rule 5.5 with registration.

Delaware noted that it jealousy guarded access to its citizens given that it did not have a similarly large metropolitan area like other MCBA members. For this reason, it looked on the rule with some skepticism.

Participants agreed that discussion about the ABA Rule and disaster planning generally should continue under the auspices of a MABC Regional Task Force on Emergency

Preparedness and Disaster Planning which would incorporate major city bar associations into the process. The New Jersey State Bar Association agreed to circulate a summary of these proceedings, and arrange for a follow-up meeting in the coming months.

The meeting was adjourned.