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## Hurricane Katrina: The Duties and Responsibilities of an Attorney in the Wake of a Natural Disaster The Fifth Annual Symposium on Legal Malpractice and Professional Responsibility: Comment.

Brenna G. Nava

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# COMMENT

## HURRICANE KATRINA: THE DUTIES AND RESPONSIBILITIES OF AN ATTORNEY IN THE WAKE OF A NATURAL DISASTER

BRENNNA G. NAVA

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### I. INTRODUCTION

In 2005, Hurricane Katrina and Hurricane Rita caused massive devastation along the Gulf Coast<sup>1</sup> and highlighted major weaknesses in

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1. See, e.g., Peter Applebome & Ralph Blumenthal, *Storm and Crisis: The Overview; With Storms Behind Them, Gulf Residents Begin Piecing Their Lives Together*, N.Y. TIMES, Sept. 27, 2005, at A19, available at 2005 WLNR 15200782 (recounting Hurricane Katrina's

America's disaster preparedness and recovery plans.<sup>2</sup> Catastrophes, such as Hurricane Katrina and Hurricane Rita, have occurred on American soil before,<sup>3</sup> and they will occur again.<sup>4</sup> Newspapers and television

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and Hurricane Rita's obliteration of homes, offices, buildings, and farms of both Louisiana's and Texas's Gulf Coast residents who struggled to return to their previous lives).

2. See John M. Broder, *Storm and Crisis: Planning; In Plans to Evacuate U.S. Cities, Chance for Havoc*, N.Y. TIMES, Sept. 25, 2005, § 1, available at 2005 WLNR 1511117 (commenting that due to the chaotic nature of the evacuations of New Orleans and Houston, cities have looked into response plans for natural disasters and have not found complete reassurance in their findings); see also John Pain, *Busy Storm Season Forecast for '06*, MOBILE REG. (Ala.), Nov. 30, 2005, at A2, available at 2005 WLNR 19623380 (listing the weaknesses exposed during the 2005 hurricane season). The weaknesses in the disaster preparedness and recovery plans included the federal government's slow response time to the disaster and the broken levees that caused 80% of New Orleans to be covered in water. *Id.* Furthermore, 14-hour traffic jams in Houston preceded Hurricane Rita, and power outages crippled the residents of South Florida after Hurricane Wilma. *Id.* The National Hurricane Center Director, Max Mayfield, stated that people need to establish an individual hurricane plan in order to prevent loss of life and that deaths after Hurricane Katrina resulted because people did not have a plan in place. *Id.* But see Niala Boodhoo, *Lessons Learned from the Hurricanes*, MIAMI HERALD, Dec. 12, 2005, at G16, available at 2005 WLNR 19926111 (pointing out that even those who had hurricane plans were not prepared for the long power outages and gas shortages brought on by Hurricane Wilma, which struck after Hurricane Katrina and Hurricane Rita).

3. See generally Patricia Bellis Bixel, *It Must Be Made Safe, in AMERICAN DISASTERS* 223, 223 (Steven Biel ed., 2001) (recounting the hurricane that struck Galveston island in 1900, resulting in death toll estimates ranging between 6,000 and 8,000 people and property damage approximated to be \$30 million at that time); R.A. SCOTT, *SUDDEN SEA: THE GREAT HURRICANE OF 1938* (2003) (discussing the impact of the Great Hurricane of 1938 on residents of New England); *Katrina Costliest but Not Most Powerful*, FORT WORTH STAR-TELEGRAM, Dec. 22, 2005, at A4, available at 2005 WLNR 20751177 (reporting that history books will cite Hurricane Katrina as the costliest hurricane, even though the storm's intensity falls short of previous disasters reaching Category 5 status); Ken Kaye, *2005 Storms Most Destructive in History*, FORT WORTH STAR-TELEGRAM, Nov. 30, 2005, at A12, available at 2005 WLNR 19255465 (announcing this hurricane season broke many records and that Hurricane Rita, along with Hurricane Katrina and Hurricane Wilma, attained maximum wind velocity of 175 miles per hour, earning a spot on the list of the top-five most intense hurricanes in history); Mark Schleifstein, *Katrina Weaker Than Thought*, TIMES-PICAYUNE (New Orleans), Dec. 21, 2005, at 1, available at 2005 WLNR 20670736 (announcing that although Hurricane Katrina reached landfall as only a Category 3 hurricane, the intensification to Category 5 prior to hitting Louisiana's coast produced storm surge values comparable to Hurricane Camille, which struck Mississippi's gulf coast in 1969 and achieved the ranking of Category 5); Chris Tisch, Aaron Sharockman & Graham Brink, *Eyes on New Orleans, Sprawling Katrina Threatens Disaster*, ST. PETERSBURG TIMES (Fla.), Aug. 29, 2005, at 1A, available at 2005 WLNR 13585928 (acknowledging that since records have been kept on hurricanes and prior to Hurricane Katrina's path of destruction, three major hurricanes have made American soil as Category 5, which included: an unnamed hurricane, which struck the Florida Keys in 1935; Hurricane Camille, which hit Mississippi; and Hurricane Andrew, which devastated Florida in 1992).

broadcasters bombard us daily with reports about disasters,<sup>5</sup> both man-made<sup>6</sup> and naturally occurring.<sup>7</sup> These reports include discussions of the havoc wreaked by earthquakes, terrorist attacks, floods, ice storms, fires, software viruses, riots, and hurricanes.<sup>8</sup>

Immediately following any one of these disasters, the focus is on loss of life,<sup>9</sup> and it is not until the threat of danger has passed that the focus shifts to property damage.<sup>10</sup> Furthermore, it is even later people generally be-

4. See Donald G. McNeil, Jr., *Saturation Point: Imagine 20 Years of This*, N.Y. TIMES, Sept. 25, 2005, § 4, at 1, available at 2005 WLNR 15110996 (predicting that Americans will encounter a number of massive storms in the next twenty years based on scientific data concerning the temperature of Gulf waters); see also Jia-Rui Chong & Hector Becerra, *Katrina's Aftermath; California Earthquake Could Be the Next Katrina*, L.A. TIMES, Sept. 8, 2005, at A1, available at www.latimes.com (encouraging a reassessment of California's readiness plan in the event of another earthquake). Discussions arose during an emergency training session with the Federal Emergency Management Agency (FEMA) regarding the three disasters most likely to hit the United States. *Id.* According to Lucy Jones, a U.S. Geological Survey seismologist who was present at that meeting, the list included the following: a terrorist attack directed at New York; a massive hurricane in New Orleans; and a major earthquake along the San Andreas Fault. *Id.*

5. See, e.g., *Anguish Piles on Top of Anguish*, SAN ANTONIO EXPRESS-NEWS, Jan. 1, 2006, at 3N, available at www.mysanantonio.com (summarizing the year of 2005 as one "told in the faces of human suffering"). The year began with rescue efforts after a massive tsunami and earthquake swept Southeast Asia and was followed by four hurricanes: Hurricane Katrina devastated Louisiana and Mississippi; Hurricane Rita struck the Gulf Coast again four weeks later; Hurricane Stan slammed Central America; and Hurricane Wilma left many in Florida without electricity. *Id.* In other parts of the world, an earthquake in South Asia killed 87,000, and flooding from a snowmelt killed 1,400 people in the Middle East, 535 people in southern China, and at least 1,000 people in western India. *Id.*

6. See PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 3 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (declaring that the horrific terrorist events on September 11 illustrate how vulnerable everyone is to those anticipated disasters, as well as attacks for which there is no warning because they are created by man and not by nature).

7. Laura DiBiase, *When Disaster Strikes—Strike Back!*, 22 AM. BANKR. INST. J. 14, 14 (2003); see also BILL LIEBSCH & JANET LIEBSCH, *IT'S A DISASTER! AND WHAT ARE YOU GONNA DO ABOUT IT?* 3 (2d ed. 2001) (reporting that "[e]very year hundreds of millions of people worldwide are evacuated or driven from their homes due to natural disasters"). See generally TED STEINBERG, *ACTS OF GOD: THE UNNATURAL HISTORY OF NATURAL DISASTER IN AMERICA* (2000) (proclaiming that many of the most costly catastrophes in United States history have been natural disasters, and a majority of those disasters were hurricanes).

8. See Laura DiBiase, *When Disaster Strikes—Strike Back!*, 22 AM. BANKR. INST. J. 14, 14 (2003) (exploring the types of disasters that businesses in the United States currently face).

9. See THE N.Y. TIMES, *THE SCIENCE TIMES BOOK OF NATURAL DISASTERS* 1 (Nicholas Wade ed., 2000) (indicating that natural disasters are responsible for about one million deaths around the world each decade).

10. See Laura DiBiase, *When Disaster Strikes—Strike Back!*, 22 AM. BANKR. INST. J. 14, 14 (2003) (pointing out that the initial thoughts of many are on injuries and loss of life,

gin to realize the effects that disasters have on businesses, although few can begin to comprehend the magnitude.<sup>11</sup> Unfortunately, the reality is that 50% of businesses will shut down within five years of a major disaster.<sup>12</sup> It has been estimated that only one-quarter of businesses in the United States have established a disaster recovery plan, which may be one explanation for this statistic.<sup>13</sup> Because human beings have a sense of optimism and prefer to live in the comfortable present, rather than consider the possibility of future devastation, most businesses simply fail to create disaster preparation or recovery plans.<sup>14</sup>

Hurricane Katrina ravaged the legal system as well as the corporate world<sup>15</sup> by leaving courtrooms and law firms filled with water.<sup>16</sup> According to one lawyer, prior to Hurricane Katrina, a fire in an office building

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and it is only after those thoughts fade away that people begin to consider the loss of property); *see also* THE N.Y. TIMES, THE SCIENCE TIMES BOOK OF NATURAL DISASTERS 2 (Nicholas Wade ed., 2000) (indicating that though hurricanes are one of the most devastating natural disasters, the availability of a warning system cuts down on possible loss of life; property losses, on the other hand, are another matter); Mark Grossman, *Disaster Rehearsal: Planning Protection for Computers in the Event of a Natural Disaster*, TEX. LAW., June 21, 1999, at 27, available at 6/12/1999 TEXLAW 27 (Westlaw) (recounting that the author never believed a natural disaster could have any impact on his life until Hurricane Andrew ripped through Miami and completely destroyed his home).

11. *See* Mark Grossman, *Disaster Rehearsal: Planning Protection for Computers in the Event of a Natural Disaster*, TEX. LAW., June 21, 1999, at 27, available at 6/12/1999 TEXLAW 27 (Westlaw) (stating that Burger King, American Bankers Insurance, and others learned from Hurricane Andrew that they could lose their entire corporate headquarters in mere minutes and without warning).

12. *See* Roland K. Johnson & Warren H. Gould, *Planning for Disaster Prevention and/or Recovery*, L. OFF. MGMT. INST., Mar. 26, 2003, at 1 (suggesting that 50% of all businesses will shut down within five years of a disaster).

13. *See* Laura DiBiase, *When Disaster Strikes—Strike Back!*, 22 AM. BANKR. INST. J. 14, 14 (2003) (warning that in light of the fast-paced and technology driven world of today, doing nothing may “be the greatest disaster of all”).

14. *See, e.g.*, Richard Fortey, *Blind to the End*, N.Y. TIMES, Dec. 26, 2005, at A31, available at 2005 WLNR 20942344 (emphasizing that most people have the attitude that although a natural disaster may be foreseeable, it will never happen to them).

15. *See* Patti Bond, *Katrina: The Aftermath: Legal Affairs Put in Limbo; Officials Fear Some Records Didn't Survive*, ATLANTA J.-CONST., Sept. 11, 2005, at G1, available at 2005 WLNR 14293728 (discussing Hurricane Katrina's disastrous effects on the business and legal community). “From banks to barbershops, Katrina shut down an untold number of businesses in her path. With them is the whiplashed legal community in New Orleans, now scattered like so many papers in the wind, leaving thousands of attorneys—and their clients nationwide—in the lurch.” *Id.*

16. *See* Peter Applebome & Jonathan D. Glater, *Storm and Crisis: The Lawyers; Storm Leaves Legal System a Shambles*, N.Y. TIMES, Sept. 9, 2005, at A1, available at 2005 WLNR 14201429 (reminding us that more than one-third of Louisiana's lawyers lost their offices, some for good). Records and evidence destroyed by the flooding will create phenomenal, if not insurmountable, obstacles in returning to business as usual. *Id.*

or a crash of a hard drive would have been the largest law office disaster imaginable.<sup>17</sup> The hurricanes of 2005 were “an implosion of the legal network not seen since disasters like the Chicago [F]ire of 1871<sup>18</sup> or the San Francisco [E]arthquake of 1906,<sup>19</sup> events in times so much simpler as to be useless in making much sense of this one.”<sup>20</sup> Hurricane Katrina’s impact on each individual lawyer varied from those that worked in large firms, who likely found office space and began contacting clients, to sole practitioners, who sometimes reacted more slowly and may never be able to salvage their practices.<sup>21</sup> Though each new disaster brings different consequences, those who create a disaster plan are better equipped to handle and recover from each new series of setbacks.<sup>22</sup>

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17. See Barry D. Bayer, *Co[n]templating Katrina: Law Office Disaster Recovery*, L. OFF. TECH. REV., Sept. 2, 2005, at col. 890, available at 2005 WL 2675077 (proclaiming that “the biggest law office disaster I personally contemplated was the loss of a hard disk, or maybe a fire in the office or office building”). “But the idea of a complete shutdown of a city, the mass destruction of court houses and court house records just hadn’t occurred to me.” *Id.*

18. See Carl Smith, *Faith and Doubt: The Imaginative Dimensions of the Great Chicago Fire*, in AMERICAN DISASTERS 129, 129 (Steven Biel ed., 2001) (reporting that the Chicago Fire of 1871 destroyed about one-third of the city, including the downtown district, and left approximately one-third of the city’s population homeless).

19. See generally DAN KURZMAN, DISASTER! THE GREAT SAN FRANCISCO EARTHQUAKE AND FIRE OF 1906 (2001) (detailing the lives of residents before, during, and after the largest earthquake in San Francisco’s history).

20. See Peter Applebome & Jonathan D. Glater, *Storm and Crisis: The Lawyers; Storm Leaves Legal System a Shambles*, N.Y. TIMES, Sept. 9, 2005, at A1, available at 2005 WLNR 14201429 (explaining that although courts like the Fifth Circuit had to relocate, the use of electronic technology allowed courts and lawyers to recover or save documents and files in ways unavailable in the past); John Council, *Katrina Kicks 5th Circuit out of Marble Courthouse in the Big Easy*, TEX. LAW., Sept. 5, 2005, at 5, available at 9/5/2005 TEXLAW 5 (Westlaw) (discussing the response to evacuation and possible flooding by the Fifth Circuit). *But see* Michael J. Tonsing, *Hard Lessons from the Deep South*, FED. LAW., Oct. 2005, at 10, available at 52-OCT FEDRLAW 10 (Westlaw) (asserting that technology can give businesses a false sense of security and that a broken hard drive may not be simply a data disaster, but a financial disaster as well). “Depending on how fast the information is needed, the cost of recovering data from a cranky hard drive can range from a few hundred dollars to as much as \$10,000.” *Id.* Law firms can save money and avoid the risk of losing critical information by spending a few minutes to back up data periodically. *Id.*

21. See Peter Applebome & Jonathan D. Glater, *Storm and Crisis: The Lawyers; Storm Leaves Legal System a Shambles*, N.Y. TIMES, Sept. 9, 2005, at A1, available at 2005 WLNR 14201429 (stressing that even the most prominent lawyers wonder if “they will have anything to get back to”).

22. See, e.g., Reid Trautz, *Expect the Unexpected: Five Steps to Creating a Business Continuity Plan*, TEX. LAW., Sept. 30, 2002, at 30, available at 9/30/2002 TEXLAW 30 (Westlaw) (advocating a five step plan for all lawyers to use that will “mitigate the impact of an unexpected event on their law practice”).

In Hurricane Katrina's aftermath, the "lucky ones" consisted of firms large enough to have offices in cities other than those directly affected by the hurricane.<sup>23</sup> However, even for these lawyers, life will never seem the same.<sup>24</sup> Michelle Ghetti, a law professor at Southern University Law Center in Baton Rouge, Louisiana, remarked on the speed with which courts and lawyers have been able to resume their practices and shift operations, but also noted that legal questions regarding the storm are increasing daily.<sup>25</sup> She explained, "New things come up every day. I think this storm is going to produce more legal issues and complications than anyone has ever imagined."<sup>26</sup>

The purpose of this Comment is to discuss legal issues and complications that arise from the devastation caused by natural and man-made disasters, what we can learn from those events, and how we can prepare for and respond to future disasters. Part I of this Comment addresses the specific problems that have occurred in the past and how the legal system

23. See Peter Applebome & Jonathan D. Glater, *Storm and Crisis: The Lawyers; Storm Leaves Legal System a Shambles*, N.Y. TIMES, Sept. 9, 2005, at A1, available at 2005 WLNR 14201429 (noting that employees of McGlinchey Stafford, a firm with around 200 lawyers based in New Orleans but with offices in surrounding cities, left New Orleans before the storm hit as partners in their Baton Rouge office worked diligently to locate housing and office space for them); see also Chris Gray, *New Orleans Firms Weigh Move—or Return*, PHILA. INQUIRER, Sept. 9, 2005, at C1, available at 2005 WLNR 14188646 (explaining that the McGlinchey Stafford firm implemented a plan created after September 11 and relocated to offices and apartments in Baton Rouge when Hurricane Katrina struck); Eve Tahmincioglu, *Small Business; Surviving the Worst of Times*, N.Y. TIMES, Sept. 8, 2005, at C7, available at 2005 WLNR 14119474 (contrasting the fate of one business owner who did not have a plan for disaster preparation and fled his home office without even taking his laptop, with the lawyers from McGlinchey Stafford who were able to begin work immediately using their laptops).

24. See Peter Applebome & Jonathan D. Glater, *Storm and Crisis: The Lawyers; Storm Leaves Legal System a Shambles*, N.Y. TIMES, Sept. 9, 2005, at A1, available at 2005 WLNR 14201429 (discussing the separation of a medium-sized New Orleans litigation firm where lawyers scrambled to find office space and housing in various cities and states including Baton Rouge, Lafayette, Mississippi, and Texas). One lawyer, after signing a lease for office space on the hood of a car in the parking lot of Home Depot, noted, "The Monday of the storm, I was in a state of shock, realizing the whole way of life we knew had passed away." *Id.*

25. See *id.* (recognizing that legal issues concerning ruined property, environmental issues, and a variety of other problems will flood a lawyer's office upon return); see also Patti Bond, *Katrina: The Aftermath: Legal Affairs Put in Limbo; Officials Fear Some Records Didn't Survive*, ATLANTA J.-CONST., Sept. 11, 2005, at G1, available at 2005 WLNR 14293728 (examining the need for lawyers licensed to practice in Louisiana based on the vast number of pleas and urgent messages on the Internet from residents as far as New York and Chicago for legal assistance).

26. Peter Applebome & Jonathan D. Glater, *Storm and Crisis: The Lawyers; Storm Leaves Legal System a Shambles*, N.Y. TIMES, Sept. 9, 2005, at A1, available at 2005 WLNR 14201429.

responded to those developments. Part II contains three subsections which focus on what lawyers can, and should, do in the wake of disasters such as Hurricane Katrina and Hurricane Rita. First, Part II discusses the concerns related to the standard of care required of a lawyer in dealing with clients before and after a natural disaster. Second, Part II concentrates on the problems that may arise when either a lawyer or client crosses state boundaries. Third, Part II examines the need for pro bono work and the issues that can arise when lawyers offer free legal advice. Part III recommends a plan for preparation and recovery, and advocates that all lawyers establish a disaster recovery plan. Finally, Part IV proposes that lawyers and law firms utilize a paperless system of conducting business for a more efficient and effective disaster preparation and recovery.

## II. BACKGROUND

### A. *Historical Summary*

Many recent disasters have heavily affected the legal system.<sup>27</sup> In 1989, a flooded basement created a substantial disruption in the daily operations of the U.S. District Court for the Southern District of New York.<sup>28</sup> Likewise, a tornado in the downtown business district of Jackson, Tennessee created problems for a judge in the U.S. Bankruptcy Court for the Western District of Tennessee when it ripped off the roof, allowing rain to pour into his chambers.<sup>29</sup> Furthermore, the U.S. District Court for the Middle District of Florida experienced a number of delays and hindrances in 2004 due to the large number of hurricanes and tropical storms which swept through the state.<sup>30</sup>

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27. See generally Kathleen Farrell-Willoughby, *Continuity of Operations Planning: A Necessity of Life*, 24 AM. BANKR. INST. J. 34, 34 (2005) (describing different disasters experienced by court systems in the United States throughout history).

28. See *id.* (recalling an event on Christmas Eve 1989 in the Southern District of New York in which a vandal removed a brass valve from a water main at the courthouse causing massive flooding in the basement). The flooding destroyed all electronic equipment, left the building without electricity, heat or water, and forced the occupants of the courthouse to relocate paper files and equipment to an alternate work site in order to hold court. *Id.*

29. See *id.* (quoting the clerk of the court who explained, “[T]he winds tore the roof off the courthouse and scored a direct hit on one of the judge’s chambers. . . . This water, after having done extreme damage to the judge’s furniture and his chambers, eventually settled in the clerk’s office space.”).

30. See *id.* (reporting that courthouses were closed in preparation for the storms and during the storms as well). Further complicating the process, a number of court employees experienced personal loss or could not navigate the damaged and flooded roadways, and thus could not return to work even after the storms had passed. *Id.*



Much like courthouses, law firms and solo practitioners feel the effects of unexpected disasters, especially those who do not have an existing contingency plan.<sup>31</sup> For example, Hurricane Andrew struck Miami during the 1992 hurricane season, leaving an estimated 85,000 buildings uninhabitable and at least 250,000 people homeless.<sup>32</sup> The destruction produced by Hurricane Andrew has been described by one lawyer as being worse than "the most catastrophic war."<sup>33</sup> In March 2000, tornadoes ripped through Fort Worth, Texas leaving buildings devastated and displacing approximately 325 lawyers and their staffs.<sup>34</sup> Similarly, a flood in Del Rio, Texas in the summer of 1998 destroyed the Texas Rural Legal Aid office and increased the office's workload tenfold by covering almost every inch of the office in mud, including the computers, library, and office supplies.<sup>35</sup> In another example, a fire in New York City in 2004 forced lawyers from their Park Avenue offices, but many were able to continue working from home or alternate locations because their obser-

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31. See, e.g., John Council, *Fort Worth Firms in Shock: Lawyers Stunned by Twister Search for Temporary Office Space Lost Client Files*, TEX. LAW., Apr. 3, 2000, at 1, available at 4/3/2000 TEXLAW 1 (Westlaw) (discussing the tornadoes that struck downtown Fort Worth and the subsequent effect on lawyers and their practices). One lawyer looked up and noticed papers flying out of windows, but this did not worry those lawyers that had file cabinets away from the windows or those that previously backed up their paper files on computers. *Id.*

32. Accord Mark Grossman, *Disaster Rehearsal: Planning Protection for Computers in the Event of a Natural Disaster*, TEX. LAW., June 21, 1999, at 27, available at 6/12/1999 TEXLAW 27 (Westlaw) (advocating a disaster plan to protect businesses after witnessing firsthand the destruction of buildings and homes during Hurricane Andrew); see John H. Copelan, Jr. & Steven Lamb, *Disaster Law and Hurricane Andrew—Government Lawyers Leading the Way to Recovery*, 27 URB. LAW. 29, 29 (1995) (exploring the roles that government lawyers play before, during, and after a natural disaster).

33. See Mark Grossman, *Disaster Rehearsal: Planning Protection for Computers in the Event of a Natural Disaster*, TEX. LAW., June 21, 1999 at 27, available at 6/12/1999 TEXLAW 27 (Westlaw) (stating that experiencing nature's power firsthand brings home the fact that disasters are no longer something that only happens to others, and the world looks a little different for those who have felt nature's wrath).

34. See Melissa Sherman, *Pulling Together: Tarrant County's Legal Community Cooperates in Clean-up*, TEX. LAW., Apr. 17, 2000, at S5, available at 4/17/2000 TEXLAW S5 (Westlaw) (considering the displacement of Fort Worth lawyers and how other lawyers, the post office, and telephone companies attempted to assist these firms with the retrieval of documents and the making or receiving of phone calls); see also John Council, *Fort Worth Firms in Shock: Lawyers Stunned by Twister Search for Temporary Office Space Lost Client Files*, TEX. LAW., Apr. 3, 2000, at 1, available at 4/3/2000 TEXLAW 1 (Westlaw) (announcing that some lawyers estimated the displacement would last for at least ninety days).

35. John Council, *Awash in Work: Flooded TRLA Office Braces for Spate of Victims' Legal Problems*, TEX. LAW., Aug. 31, 1998, at 1, available at 8/31/1998 TEXLAW 1 (Westlaw). The flood caused approximately \$166,000 in damage to the TRLA office and restoration of the building is vital to the thousands of poverty-level residents possibly affected by the flood. *Id.*

vations of the damage to businesses produced by the terrorist attacks on September 11, 2001 led to the creation of disaster plans.<sup>36</sup>

The 2001 terrorist attacks on the World Trade Center in New York City and on the Pentagon in Washington, D.C. illustrate that natural disasters are not the only causes of devastation and disorder in the business and legal communities.<sup>37</sup> The attacks were unprecedented in scope, and the consequential legal issues were far-reaching and varied.<sup>38</sup> Even firms in states as far away as Texas closed their doors or offered to let their employees go home.<sup>39</sup> Afterward, businesses, law firms, and courts<sup>40</sup> displaced by these “unnatural” disasters scrambled to assess their losses, bring systems current, retrieve records, and provide services to their clients.<sup>41</sup> After revising the firm’s disaster plan in light of the terrorist at-

36. *E.g.*, Thomas J. Lueck, *After Fire, Office Tenants Say Planning Pays*, N.Y. TIMES, Oct. 15, 2004, at B4, available at 2004 WLNR 5553234 (stressing that one of New York City’s largest law firms located in the Park Avenue building picked up and continued practicing in alternate work sites leased as a security measure after the attacks on September 11). Other tenants displaced by the fire smoothly transitioned to working from home, due in part to the firm’s long-standing, family-friendly policy of allowing lawyers to work at home. *Id.*

37. *See generally* Brenda Sapino Jeffreys, Cristina Smith & John Council, *Texans See the Terror First-Hand*, TEX. LAW., Sept. 17, 2001, at 1, available at 9/17/2001 TEXLAW 1 (Westlaw) (reporting that four commercial aircrafts were hijacked by terrorists who crashed one plane into the Pentagon, one into a rural area southeast of Pittsburgh, and two into the World Trade Center, causing it to collapse while rescue efforts were underway).

38. *E.g.*, ASS’N OF THE BAR OF THE CITY OF N.Y. FUND ET AL., PUBLIC SERVICE IN A TIME OF CRISIS: A REPORT AND RETROSPECTIVE ON THE LEGAL COMMUNITY’S RESPONSE TO THE EVENTS OF SEPTEMBER 11, 2001, at 7 (2004), available at <http://www.abanet.org/katrina/lawyers.html> (summarizing the response by the legal community to needs that arose after the attacks and how lawyers represented more than 4000 individuals and families on a pro bono basis).

39. Brenda Sapino Jeffreys, Cristina Smith & John Council, *Texans See the Terror First Hand*, TEX. LAW., Sept. 17, 2001, at 1, available at 9/17/2001 TEXLAW 1 (Westlaw).

40. *See* Kathleen Farrell-Willoughby, *Continuity of Operations Planning: A Necessity of Life*, 24 AM. BANKR. INST. J. 34, 34 (2005) (indicating that a bankruptcy court located in New York City just blocks from the World Trade Center closed its doors for seven days, from September 11 to September 18, in order to ensure that the building was structurally sound, the air quality had reached safe levels, and the debris had been removed before allowing employees to return to work).

41. *See* GARY A. MUNNEKE & ANTHONY E. DAVIS, ABA LAW PRACTICE MGMT. SECTION, DISASTER RECOVERY FOR LAW FIRMS 65 (2004), available at [http://www.abanet.org/lpm/katrina/disaster\\_recovery\\_formbook.pdf](http://www.abanet.org/lpm/katrina/disaster_recovery_formbook.pdf) (noting that after the urgency of the crisis caused by the terrorist attacks, law firms faced the daunting task of picking up and moving forward). Law firms that create a disaster plan in advance can speed up the recovery process and minimize the negative effects that could occur over the long term. *Id.*

tacks, one lawyer with the Houston-based firm Fulbright & Jaworski remarked, "It made everyone aware that these things do happen."<sup>42</sup>

### B. *Effect of Hurricane Katrina and Hurricane Rita on Courts*

Looking at the past can provide insight into the future.<sup>43</sup> For instance, the U.S. Court of Appeals for the Fifth Circuit in New Orleans learned from experiences like the flood in the Southern District of New York that destroyed files in the basement<sup>44</sup> and began moving files to the second floor when meteorologists initially warned about Hurricane Katrina a week before it reached the Louisiana shore.<sup>45</sup> The Fifth Circuit was later forced to relocate when the floodwaters of Hurricane Katrina "turned the New Orleans business district into a legal ghost town."<sup>46</sup> Then Chief Judge of the Fifth Circuit, Carolyn Dineen King, stated that employees wanted to remain close to New Orleans, which made Houston, the location of her chambers, the prime place for relocation.<sup>47</sup> However, soon the threat of another major storm, Hurricane Rita, forced the Fifth Cir-

42. Emily Kopp, *Preparing for the Worst: Natural Disasters, Computer Woes, Sprinkler Malfunctions: Keep Business Running Smoothly in All Circumstances*, DAILY REP. (Fulton County, Ga.), Feb. 14, 2005, at B5, available at 2/14/2005 FULTONDAILY B5 (Westlaw).

43. See, e.g., John Council, *Katrina Kicks the 5th Circuit out of Marble Courthouse in the Big Easy*, TEX. LAW., Sept. 5, 2005, at 5, available at 9/5/2005 TEXLAW 5 (Westlaw) (describing setbacks to the Fifth Circuit occurring prior to Hurricane Katrina, including Hurricane Betsy, which struck New Orleans in 1965 and destroyed a school that was then relocated to the courthouse for five years, and Hurricane Ivan, which occurred in 2004, stranding a number of the judges who were in town for an en banc argument).

44. See Kathleen Farrell-Willoughby, *Continuity of Operations Planning: A Necessity of Life*, 24 AM. BANKR. INST. J. 34, 34 (2005) (emphasizing that throughout history, courts like the Southern District of New York have been able to carry on because they created continuity of operations plans and continued to improve on them after each new disaster).

45. See, e.g., John Council, *Katrina Kicks the 5th Circuit out of Marble Courthouse in the Big Easy*, TEX. LAW., Sept. 5, 2005, at 5, available at 9/5/2005 TEXLAW 5 (Westlaw) (noting that some of the success of continuing operations can be attributed to the fact that Fifth Circuit judges had already planned for a disaster similar to Hurricane Katrina).

46. See *id.* (recounting that the breaks in the levees surrounding the city caused water to flood the John Minor Wisdom U.S. Court of Appeals Building where the Fifth Circuit is located). Because electricity was out in the city and officials could not predict when the floodwaters might be drained, court officials decided to look for an alternate site to continue operations. *Id.*

47. See *id.* (declaring that the chief judge's office served as the initial unofficial clerk's office for emergency matters such as death penalty stays). The Fifth Circuit, uncertain whether its return to its official building would be allowed, extended filing deadlines and placed instructions concerning emergency matters on the Fifth Circuit website located at [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov). *Id.*

cuit to temporarily close the doors on its Houston location and hold arguments in Austin and Plano for an entire week.<sup>48</sup>

Like the Fifth Circuit, the Louisiana Supreme Court, along with all its evidence and appellate court files, was under water.<sup>49</sup> Louisiana federal district courts were flooded as well and preparations were made for around sixty district court judges and employees to relocate to Lafayette, Louisiana where the federal judiciary had leased space.<sup>50</sup> Orleans Parish Criminal District Court Judge Benedict Willard began proceedings with a plea for patience in an alternate location two months after Hurricane Katrina struck the criminal courthouse.<sup>51</sup> Even today, many lawyers continue to struggle with locating crucial information in swampy evidence rooms within the criminal courthouse.<sup>52</sup> In some cases, lawyers struggled to find their clients because they did not know which jails held those who were evacuated.<sup>53</sup> Furthermore, “pulling together juries in the new locations that accurately represent the peers of a given defendant[,] a constitutional right of anyone facing trial,” presents another large problem for judges in those areas affected by the hurricanes.<sup>54</sup>

48. See Miriam Rozen, *Hurricane Rita Sends Texas Legal Community Packing*, NAT'L L.J., Sept. 23, 2005, [http://www.law.com/jsp/newswire\\_article.jsp?id=1127379914680](http://www.law.com/jsp/newswire_article.jsp?id=1127379914680) (discussing meteorologists' predictions of where the crux of the force would hit, which sent many in the legal community heading north). Law offices shut down, federal prisoners were sent north, and federal, state, and local courts across South Texas closed their doors. *Id.*

49. Patti Bond, *Katrina: The Aftermath: Legal Affairs Put in Limbo; Officials Fear Some Records Didn't Survive*, ATLANTA J.-CONST., Sept. 11, 2005, at G1, available at 2005 WLNR 14293728.

50. See Guy Taylor, *Federal Courts Eye New Venues: Cases Shifted After Katrina*, WASH. TIMES, Sept. 11, 2005, at A05, available at 2005 WLNR 14357790 (pointing to the emergency legislation signed by President Bush that allowed federal courts to continue operations outside their territorial jurisdiction). The Special Master of the Multidistrict Litigation Settlement Program was also forced to relocate to an office in Lafayette, Louisiana, where he successfully made a smooth and quick transition following Hurricane Katrina. *In re Propulsid*, No. MDL 1355, 2005 WL 2787634, at \*1 (E.D. La. Oct. 18, 2005).

51. See Matt Sedensky & Russ Bynum, *Courts Crippled by Katrina*, MOBILE REG. (Ala.), Oct. 30, 2005, at A13, available at 2005 WLNR 18190338 (explaining that the criminal district court's proceedings had to be held in a parish jail room that was once used for witnesses in identifying criminal suspects in lineups because of the mud and muck in the courthouse).

52. See *id.* (discussing how evidence such as guns and drugs soaked for weeks in the flooded basement of the criminal courthouse and are most likely ruined).

53. *Id.*

54. Guy Taylor, *Federal Courts Eye New Venues: Cases Shifted After Katrina*, WASH. TIMES, Sept. 11, 2005, at A05, available at 2005 WLNR 14357790. The problem with finding jury pools has continued, even as residents return to New Orleans. See Matt Sedensky & Russ Bynum, *Courts Crippled by Katrina*, MOBILE REG. (Ala.), Oct. 30, 2005, at A13, available at 2005 WLNR 18190338 (suggesting that “[t]he fraction of New Orleans’ 475,000 residents who returned” will not be enough to fill jury pools).

C. *How Lawyers and Law Students Coped with Hurricane Katrina and Hurricane Rita*

In the same way that courts were faced with the problems arising from Hurricane Katrina and Hurricane Rita, lawyers and law students struggled with resolving the vast number of issues and setbacks brought on by the hurricanes. Once meteorologists warned that a tropical storm was brewing, many law firms sought to mitigate the damage by using high-tech communications, data storage, and emergency planning to “reduce the disruption that the storm [could] cause[ ] to their practices.”<sup>55</sup> One lawyer from Fisher & Phillips in New Orleans discovered on August 30, 2005 that the firm’s office building would be closed for at least fifteen more days.<sup>56</sup> He and the other lawyers at Fisher & Phillips relocated to the firm’s offices in other cities, obtained access to the firm’s electronic files from their remote locations, contacted clients, and organized informal donation drives.<sup>57</sup> Many firms, including Fisher & Phillips, backed up electronic versions of a number of files which allowed displaced lawyers to continue working in their new alternative locations.<sup>58</sup>

Having a disaster plan would not have resolved all of the issues created by the storms, because the hurricanes forced many lawyers out of both their homes and offices. To assist with this problem, some lawyers in Texas graciously opened their own office doors and personal work space to lawyers affected by the hurricanes.<sup>59</sup> In other cases, many out-of-state legal recruiters, otherwise known as headhunters, began calling lawyers shortly after the hurricanes struck and seized the opportunity to help the displaced lawyers find temporary, and in some cases, permanent places to work.<sup>60</sup> The headhunters contacted young associates so quickly that it

55. Scott Simonson, *Firms’ New Orleans Posts Are Picking Up the Pieces: Lawyers Temporarily Relocating to Other Cities*, DAILY REP. (Fulton County, Ga.), Aug. 31, 2005, at 1, available at 8/31/2005 FULTONDAILY 1 (Westlaw).

56. *See id.* (stating that the main goal of the labor and employment department of Fisher & Price consisted of ensuring that the employees could find locations to “live and work as best they can” considering that all have been forced from their homes).

57. *See id.* (adding that the internal website at another firm proved indispensable in aiding employees who were trying to contact one another in order to ensure the safety of their friends and coworkers).

58. *Id.*

59. *See* Mark Donald, *An Imperfect Storm: Lawyers Help Lawyers Deal with Ravages of Rita*, TEX. LAW., Oct. 3, 2005, at 1, available at 10/3/2005 TEXLAW 1 (Westlaw) (referring to the managing shareholder from Fort Worth’s Harris Finley & Vogel, who offered office space to those forced to move out of their own offices by Hurricane Rita: “Five-and-a-half years ago, we got help from other lawyers when our building was hit by a tornado. We are lucky to be able to give back.”).

60. *See* Brenda Sapino Jeffreys, *14 Days Later: Katrina’s Impact on the Texas Legal Community; Headhunters and Job Seekers*, TEX. LAW., Sept. 12, 2005, at 5, available at 9/12/

almost appeared as if they were trying to take advantage of a tragic situation by merely looking for a commission.<sup>61</sup> “There’s a fine line between wanting to help and appearing like you are a scavenger. People need to understand [New Orleans] is suffering right now, and it’s very emotional.”<sup>62</sup>

On the other hand, some lawyers from smaller firms feared that their firms would not survive and began contacting larger law firms, both within Louisiana and in other locations outside the state, with hopes of securing permanent jobs.<sup>63</sup> However, lawyers from Louisiana seeking jobs in neighboring states, such as Texas, encountered a variety of difficulties, in part because Louisiana follows a civil code.<sup>64</sup> Though some attorneys found it difficult to cope with the differences in the law of their new locations, many firms opened their doors, offering temporary and permanent positions.<sup>65</sup> For example, one lawyer from New Orleans started making calls days after fleeing with his family in his SUV and managed to secure a job with a firm in Dallas, Texas.<sup>66</sup> His relationship with the new Dallas firm is “open-ended” and depends on the condition of his home as well as his small firm in Louisiana.<sup>67</sup>

Lawyers were not the only ones forced to place their lives and future plans on hold. Following Hurricane Katrina, many law students who were forced from Tulane Law School and Loyola University New Orleans School of Law began looking for alternate schools to attend.<sup>68</sup> The Uni-

2005 TEXLAW 5 (Westlaw) (indicating that headhunters contacted one lawyer five times within the forty-eight hours following Hurricane Katrina’s arrival).

61. *Id.*

62. *Id.* (quoting Darnell Stuart of Stuart & Associates Inc.).

63. *See id.* (referring to the managing partner of a 300-lawyer firm in New Orleans who explained that his firm had received numerous calls from job-seeking lawyers).

64. Brenda Sapino Jeffreys, *14 Days Later: Katrina’s Impact on the Texas Legal Community; Headhunters and Job Seekers*, TEX. LAW., Sept. 12, 2005, at 5-6, available at 9/12/2005 TEXLAW 5 (Westlaw) (expressing that even though the market has improved over the last few years, litigators from Louisiana that only have civil code experience will have to compete with lawyers who have practiced for years in other states such as Texas).

65. *See* John Council, *14 Days Later: Katrina’s Impact on the Texas Legal Community; Cold-Call Jackpot*, TEX. LAW., Sept. 12, 2005, at 5, available at 9/12/2005 TEXLAW 5 (Westlaw) (providing examples of lawyers who managed to secure jobs outside Louisiana).

66. *See id.* (explaining to a Dallas firm that he would do anything because it would be better than watching the news all day).

67. *Id.* (quoting a partner at his new firm as having said that “[w]e’re prepared to keep him here for as long as he needs to be here, and if he decides to reside in Dallas, obviously we’ll decide that at that time”).

68. *See* Joy Dickinson Tipping, *14 Days Later: Katrina’s Impact on the Texas Legal Community; Back to School*, TEX. LAW., Sept. 12, 2005, at 5, available at 9/12/2005 TEXLAW 5 (Westlaw) (adding that nine Texas law schools already admitted a number of students from the law schools in New Orleans).

versity of Houston Law Center was slated to host the entire Loyola program beginning in October 2005.<sup>69</sup> However, Loyola requested that schools not accept first-year students because Loyola planned for its students to catch up in the spring with extra hours and possible summer work.<sup>70</sup> Additionally, many law schools in Texas assisted displaced students by waiving tuition, locating housing, supplying meals, and providing counseling.<sup>71</sup> Though most law students were able to continue learning in their new locations, it is important to note that the hurricanes interrupted the personal and professional lives of both lawyers and law students.

In the future, disasters will continue to occur when least expected and bring new problems affecting individuals, courts, and lawyers in a variety of ways.<sup>72</sup> "With 9/11, and recent natural disasters like tornados and hurricanes, we see more lawyers focused on what they need to protect."<sup>73</sup> Preparation is essential given the scope of legal issues that arise and the potential impact natural disasters and terrorist attacks can have on the legal system.<sup>74</sup> Devoting time now to prevention and maintenance may be the key to saving a practice in the little time available before and after a disaster strikes.<sup>75</sup> Legal organizations in various states such as Georgia feel that "lack of time is no excuse. The [Georgia] State Bar's guidelines recommend setting aside just an hour periodically to plan for everything from leaky roofs to natural disasters."<sup>76</sup>

69. *See id.* (explaining that the University of Houston Law Center expected between 100 and 300 Loyola law students).

70. *Id.*

71. *See id.* (indicating that most private law schools in Texas waived tuition and fees for the incoming law students from New Orleans). In addition, many bookstores and publishers also donated books to the displaced students. *Id.*

72. *See, e.g.,* Emily Kopp, *Preparing for the Worst: Natural Disasters, Computer Woes, Sprinkler Malfunctions: Keep Business Running Smoothly in All Circumstances*, DAILY REP. (Fulton County, Ga.), Feb. 14, 2005, at B5, available at 2/14/2005 FULTONDAILY B5 (Westlaw) (stating that catastrophes strike at any time and can be as trivial as a sprinkler system flooding an office).

73. *Id.* (quoting Director Natalie Thornwell of the State Bar of Georgia's Law Practice Management Section).

74. *See* Ernest B. Abbott & Otto J. Hetzel, *A Checklist for State and Local Government Attorneys to Prepare for Possible Disasters*, 37 URB. LAW. 489, 491-92 (2005) (stressing that lawyers may be working in difficult conditions, such as disruptions in the infrastructure due to power outages which limit their ability to make phone calls, access computer files, and use the Internet for research).

75. *See* Diane M. Ellis, *What to Do When Disaster Strikes*, TEX. LAW., Mar. 25, 2002, at 20, available at 3/25/2002 TEXLAW 20 (Westlaw) (proposing that when a disruption is encountered, businesses should use their experience to review and revise the plan based on their knowledge of what has succeeded and what has failed).

76. Emily Kopp, *Preparing for the Worst: Natural Disasters, Computer Woes, Sprinkler Malfunctions: Keep Business Running Smoothly in All Circumstances*, DAILY REP. (Fulton County, Ga.), Feb. 14, 2005, at B5, available at 2/14/2005 FULTONDAILY B5 (Westlaw).

## III. ANALYSIS

A. *Malpractice Concerns*

Along with worries regarding the ability to locate housing, office space, clients, and files, a lawyer may be burdened with malpractice claims occurring in the aftermath of a natural disaster.<sup>77</sup> When a natural disaster or terrorist attack occurs, questions surface over who should bear the financial loss or who is liable for damages suffered by clients that could have been avoided or mitigated, and lawyers should be aware of the possibility that malpractice claims may follow.<sup>78</sup> Thus, while it is appropriate to keep in mind that the lawyer's business and family life have been disrupted by the disaster, the client's needs and interests do not subside or disappear.<sup>79</sup>

History has proven that natural disasters can, and do, occur without warning, and most lawyers know that having a contingency plan in place prior to a disaster can help save their practice.<sup>80</sup> Moreover, there is a duty to act reasonably even in an emergency,<sup>81</sup> though the emergency

77. See Task Force on Law Office Disaster Planning, The Lawyers' Club of San Francisco, *When Disaster Strikes: How to Handle Law Office Emergencies*, 1988 A.B.A. SEC. ECON. L. PRAC. 1, 1 (discussing the professional responsibilities that lawyers have to their clients and how they are affected by a catastrophe).

78. See *id.* (likening the duties of a lawyer to his client to that of an agent to his principal). A duty to protect the client's property from harm arises when it is within the lawyer's control. *Id.*

For example, a client refers a matter to a lawyer for collection and all of the documents necessary for proof of the claim are destroyed, as a result of the negligence of the lawyer. Does the client have a cause of action against the lawyer? Does it really matter that the loss resulted from a disaster if the client cannot collect because the records are destroyed? Even if the lawyer cannot be held liable, doesn't the lawyer have an occasion for extraordinary effort where the cost of that effort cannot be charged against the client?

*Id.*

79. See TEX. DISCIPLINARY R. PROF'L. CONDUCT preamble ¶ 3, reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (Vernon 2005) (requiring that lawyers "zealously pursue clients' interests within the bounds of the law. In doing so, a lawyer should be competent, prompt[,] and diligent.").

80. See Barry D. Bayer, *Co[n]templating Katrina: Law Office Disaster Recovery*, L. OFF. TECH. REV., Sept. 2, 2005, at col. 890, available at 2005 WL 2675077 (stating that "disaster planning isn't something just for FEMA or DHS, but a project that every law firm and court house must consider"). But see Emily Kopp, *Preparing for the Worst: Natural Disasters, Computer Woes, Sprinkler Malfunctions: Keep Business Running Smoothly in All Circumstances*, DAILY REP. (Fulton County, Ga.), Feb. 14, 2005, at B5, available at 2/14/2005 FULTONDAILY B5 (Westlaw) (recognizing that because of a lawyer's busy schedule, it is difficult for some sole practitioners to find time to make disaster planning a priority).

81. RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL HARM § 9 (Proposed Final Draft No. 1, 2001). "Reasonable care in conduct and not the actor's mere good faith



nature of the circumstances may be taken into account in determining whether a lawyer exercised due care.<sup>82</sup> Arguably, any allowance for the existence of emergency conditions extends only to the assessment of whether actions taken during the emergency are negligent, and not to whether failure to prepare for the emergency before it arose was negligent. "There are no rules exonerating lawyers because a disaster occurs, and no reason why the rules normally applicable to an attorney's conduct should not apply because disaster strikes."<sup>83</sup>

With respect to preparing for or responding to a disaster, a lawyer has many important obligations, including those which relate to: (1) safeguarding the client's property; (2) preserving confidences; (3) communicating with the client; and (4) responding to deadlines.<sup>84</sup> The Restatement (Third) of the Law Governing Lawyers states that "[a] lawyer holding funds or other property of a client in connection with a representation, or such funds or other property in which a client claims an interest, must take reasonable steps to safeguard the funds or property."<sup>85</sup> After Hurricane Katrina, locating clients proved to be one of the largest obstacles faced by lawyers striving to maintain communication with their clients.<sup>86</sup> Displaced clients want constant updates on the pro-

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remains the ultimate criterion for non-negligence, but the inquiry into reasonableness acknowledges the reality of the emergency situation." *Id.* at cmt. a.

82. *Compare* 3M Co. v. Glass, 917 So. 2d 90, 95 (Miss. 2005) (stating that, "[t]he immense devastation visited upon the Gulf Coast by Hurricane Katrina requires that this Court be sensitive to the possibility of extreme hardship in cases including lawyers and parties from the affected area"), *with* Rudder v. Wash. Mutual Bank, No. 2-04-360-CV, 2005 WL 3008424, at \*1 (Tex. App.—Fort Worth 2005, no pet.) (mem. op.) (dismissing an appeal for want of prosecution and holding that the appellant failed to articulate a valid reason for her failure to timely file a brief after she filed a fourth motion for a continuance citing the "unexpected emergencies and interruptions (including the uncertainties which existed for everyone during the recent hurricanes)").

83. Task Force on Law Office Disaster Planning, The Lawyers' Club of San Francisco, *When Disaster Strikes: How to Handle Law Office Emergencies*, 1988 A.B.A. SEC. ECON. L. PRAC. 1, 2; *see also* Barbara A. Glesner, *The Ethics of Emergency Lawyering*, GEO. J. LEGAL ETHICS, 317, 322 (1991) (proposing that "sound law firms" will prepare for an unavoidable crisis such as a hurricane, flood, or earthquake).

84. *See* Roland K. Johnson & Warren H. Gould, *Planning for Disaster Prevention and/or Recovery*, L. OFF. MGMT. INST., Mar. 26, 2003, at 2 (proposing a plan for firms to utilize which reduces the amount of loss incurred subsequent to a natural disaster) (on file with the *St. Mary's Law Journal*).

85. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 44 (2000).

86. *See* Terry Carter, *Riding out the Storm: Even the Best Disaster Plans Can't Help New Orleans Lawyers Account for Lost Clients, Disruption and Uncertainty*, A.B.A. J., Feb. 2006, at 33, 37 (quoting an associate from a nine-lawyer firm who stated, "I've been hearing from clients who've ended up all over the country").

gress of their cases, and many will want to settle their cases quickly because they are in need of money.<sup>87</sup>

Importantly, courts will often consider the various setbacks experienced due to the emergency nature of the catastrophe when making decisions following a natural disaster.<sup>88</sup> However, lawyers continue to be held to the standard of care exercised by a reasonably prudent lawyer.<sup>89</sup> For example, in *Matajek v. Skowronska*,<sup>90</sup> a Florida district court of appeal held that although delays caused by office closures due to hurricane threats are justifiable, they only include the amount of time the office is closed and do not justify a deadline missed when the lawyer files a questionnaire two months later.<sup>91</sup> Courts may take the emergency nature of the catastrophe into account when determining whether a lawyer acted

87. See *id.* (remarking that Hurricane Katrina also complicated the process of serving opposing parties because these lawyers were also displaced by the hurricane).

88. Compare *Davidson v. Moncla Marine Operations*, No. Civ.A. G-05-379, 2005 WL 3058170, at \*4 (S.D. Tex. Nov. 10, 2005) (refusing to grant a motion to transfer venue based on the alleged backlog of cases in the Western District of Louisiana due to Hurricane Katrina and Hurricane Rita because Louisiana courts were running at a normal pace and schedule), with *United States v. Shugart*, No. CRIM. 505CR6DCBJCS, 2005 WL 3263367, at \*1 (S.D. Miss. Nov. 22, 2005) (considering different venues as possible locations for trial due to the overcrowding of some courthouses and the closure of others due to Hurricane Katrina); *Valdez v. Int'l Boat Rentals*, No. G-05-238, 2005 WL 2488432, at \*2 (S.D. Tex. Oct. 6, 2005) (holding that although the effects of Hurricane Katrina may not fit into the previously established factors considered in motions to transfer venue, they cannot be ignored and those delays and hardships on a sister court weigh heavily against granting transfer to the overburdened Louisiana court system), and *Campbell v. Dynamic Cranes, LLC.*, No. Civ.A. G-05-241, 2005 WL 2562091, at \*3 (S.D. Tex. Oct. 6, 2005) (denying the defendant's motion to transfer venue, stating that "[t]ransferring this case to the Western District of Louisiana would be to disregard the impact of recent catastrophic events on the great State of Louisiana").

89. See *Patterson v. Frazer*, 79 S.W. 1077, 1079 (Tex. Civ. App. 1904, no writ) (maintaining that lawyers are required to use reasonable care and skill, and to possess the knowledge required for a proper performance of duties). "[A] failure on the part of an attorney at law to exercise the degree of said skill and knowledge in behalf of his client . . . would be negligence, and, if injury resulted to his client by reason of such failure, he would be liable." *Id.*

90. 893 So. 2d 700, 701 (Fla. Dist. Ct. App. 2005).

91. *Matajek v. Skowronska*, 893 So. 2d 700, 701 (Fla. Dist. Ct. App. 2005) (considering whether a lawyer had shown excusable neglect for the late filing of an appellate mediation questionnaire); see also *In re Acker*, 417 S.E.2d 862, 864 (S.C. 1992) (holding that the lawyer's phone calls and letters in response to a subpoena *duces tecum* were insufficient and the subsequent destruction of the documents by Hurricane Hugo did not excuse his violation of the professional rules of conduct). But see John Council, *Fort Worth Firms in Shock: Lawyers Stunned by Twister Search for Temporary Office Space Lost Client Files*, TEX. LAW., Apr. 3, 2000, at 1, available at 4/3/2000 TEXLAW 1 (Westlaw) (implying that judges will be quite lenient with Fort Worth lawyers who miss deadlines or are unable to file motions because their offices are in disarray). "It's going to be one of the better 'the dog ate my homework' excuses for quite a while," noted one judge. *Id.*

reasonably during and after a disaster, but this does not relieve lawyers of the responsibility of planning and taking the necessary precautions before a disaster strikes. "The lesson lawyers should take from Katrina is that disaster recovery and computer backup shouldn't be left to chance."<sup>92</sup>

In Texas, a malpractice action against a lawyer is based on negligence.<sup>93</sup> The four elements for a legal malpractice claim are as follows: (1) a duty; (2) a breach of that duty; (3) which proximately caused the injury; and (4) subsequent damages.<sup>94</sup> A lawyer in Texas is held to the same standard of care exercised by a reasonably prudent lawyer,<sup>95</sup> and "[t]here is no subjective good faith excuse for attorney negligence."<sup>96</sup> The inquiry into whether a lawyer has breached the standard of care will determine whether the lawyer has taken the necessary precautions.<sup>97</sup> According to the well respected theory of negligence, a breach occurs where a lawyer's level of precaution (or preparation) falls below that level which would minimize societal costs.<sup>98</sup> Judge Learned Hand, in the seminal case of *United States v. Carroll Towing Co.*,<sup>99</sup> defined duty "in algebraic terms: if the probability be called P; the injury, L; and the burden, B; liability depends upon whether B is less than L multiplied by P: i.e., whether  $B < PL$ ."<sup>100</sup> Applying Judge Learned Hand's analysis, it can be argued that because the probability of a loss in the event of a natural disaster is great, a lawyer that fails to create a simple disaster plan should be found liable.<sup>101</sup>

A lawyer might attempt to argue that the failure to craft a disaster preparedness plan is not negligent because that type of precaution is not

92. Jason Krause, *Katrina's Tech Lesson: Don't Wait, Think Outside the Office*, A.B.A. J., Feb. 2006, at 38.

93. *Cosgrove v. Grimes*, 774 S.W.2d 662, 664 (Tex. 1989).

94. *Hall v. Rutherford*, 911 S.W.2d 422, 424 (Tex. App.—San Antonio 1995, writ denied); *accord Zenith Star Ins. Co. v. Wilkerson*, 150 S.W.3d 525, 530 (Tex. App.—Austin 2004, no pet.) (adding that the fact-finder must evaluate the lawyer's conduct based on the information the lawyer had at the time of the alleged act of negligence).

95. *Hall*, 911 S.W.2d at 424.

96. *Cosgrove*, 774 S.W.2d at 664.

97. *Cf.* Mark F. Grady, *A New Positive Economic Theory of Negligence*, 92 YALE L.J. 799, 801 (1983) (illuminating how the conventional positive theory of negligence performs two tasks). First, the negligence rule performs the task of establishing breach of duty. *Id.* Second, the negligence rule "decides when an injurer's insufficient precaution makes him liable for the victim's loss." *Id.*

98. *Id.*

99. 159 F.2d 169 (2d Cir. 1947).

100. *United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947) (describing, in algebraic terms, the extent of a barge owner's duty to prevent injury to other barges if his barge becomes detached from its moorings).

101. *Cf. id.* (broadening the barge owner's duty to include keeping a bargee, an able-bodied seaman, onboard during working hours).

common in the legal profession. However, doing what is customary (i.e., not preparing a disaster plan) does not preclude a finding of liability based on a cost-benefit analysis.<sup>102</sup> For example, in *The T.J. Hooper*,<sup>103</sup> the Second Circuit Court of Appeals held a tugboat owner liable for failing to possess a radio receiver which would have warned the boat's operators of the impending storm that ultimately destroyed the boat's cargo.<sup>104</sup>

Is it then a final answer that the business had not yet generally adopted receiving sets? There are, no doubt, cases where courts seem to make the general practice of the calling the standard of proper diligence . . . . Indeed in most cases reasonable prudence is in fact common prudence; but strictly it is never its measure; a whole calling may have unduly lagged in the adoption of new and available devices. It never may set its own tests, however persuasive be its usages. Courts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission.<sup>105</sup>

Likewise, in *Gleason v. Title Guarantee Co.*,<sup>106</sup> the Fifth Circuit held a lawyer liable for malpractice when he relied on information given over the phone by an abstract company in preparing a title examination, even though it was customary for lawyers to do so at that time.<sup>107</sup> Similarly, in *Helling v. Carey*,<sup>108</sup> despite uncontroverted expert testimony that ophthalmologists did not typically administer a simple pressure test for glaucoma to patients under the age of forty because of the low incidence of occurrence, the Supreme Court of Washington held an ophthalmologist liable for failing to perform this test on a woman under forty who

102. See, e.g., Mark F. Grady, *A New Positive Economic Theory of Negligence*, 92 YALE L.J. 799, 823 (1983) (arguing that allowing evidence of custom to be determinative of a finding of no liability contradicts the cost-benefit analysis when the benefits of an uncus-tomary practice exceed the burden of taking such a precaution).

103. 60 F.2d 737 (2d Cir. 1932).

104. *The T.J. Hooper*, 60 F.2d 737, 740 (2d Cir. 1932) (holding the tugboat owner liable for failure to equip his tugs with receiver radios that transmit weather forecasts, despite the absence of custom among the tug boat community of equipping tug boats with such radios).

105. *Id.*

106. 300 F.2d 813 (5th Cir. 1962).

107. *Gleason v. Title Guarantee Co.*, 300 F.2d 813, 814-15 (5th Cir. 1962) (upholding the trial court's decision to hold liable a lawyer who fulfilled his client's request for a title examination by acquiring this information over the telephone from an abstract company, despite being in accordance with industry custom).

108. 519 P.2d 981 (Wash. 1974).

ultimately went blind.<sup>109</sup> These cases illustrate that courts often hold that compliance with custom will not prevent a finding of liability where the risk of loss is great and the burden of employing a precautionary measure is slight.

Applying the conventional principles of negligence to disaster planning indicates that even though it may not yet be customary in the legal profession to establish a contingency plan, a lawyer may be liable for failing to take inexpensive precautions which would avoid great harm in the event of a disaster. "Lawyers should be pretty good in disaster planning. After all, every contract that we write or litigate attempts to anticipate all of the things that could but shouldn't happen."<sup>110</sup> Due to the drastic effects that Hurricane Katrina had on the legal community, courts should recognize that lawyers have a duty to construct and implement some kind of disaster recovery plan.

### B. *Crossing State Lines*

Keeping in mind a lawyer's responsibilities to current and former clients in the wake of a natural disaster, while at the same time acknowledging an obvious social need, lawyers should also consider their actions regarding those they assist through pro bono efforts and possible future clients they attempt to assist.<sup>111</sup> For example, lawyers from different states hoping to help victims of the affected region should be aware of the differences and limitations of practicing law in another jurisdiction.<sup>112</sup> The relocation of lawyers, as well as nonlawyers, creates a separate set of issues with regard to the multijurisdictional practice of law.<sup>113</sup>

109. *Helling v. Carey*, 519 P.2d 981, 983 (Wash. 1974) (declaring an ophthalmologist liable to his patient, who was in her mid-thirties, for failing to test her for glaucoma, despite an industry standard that required testing only upon a patient's reaching forty years of age). Although the probability of loss was low, the burden on the doctor was so slight as to merit a precaution in order to avoid or mitigate the patient's damages. *Id.*

110. Barry D. Bayer, *Co[n]templating Katrina: Law Office Disaster Recovery*, L. OFF. TECH. REV., Sept. 2, 2005, at col. 890, available at 2005 WL 2675077.

111. See TEX. DISCIPLINARY R. PROF'L CONDUCT 5.05, reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (Vernon 2005) (declaring that lawyers "shall not" engage in the practice of law in a jurisdiction where doing so is a violation of the legal profession).

112. See, e.g., Letter from Michael S. Greco, President, A.B.A., to Randall T. Shepard, Chief Justice, Indiana Supreme Court (Sept. 9, 2005), [http://www.abanet.org/cpr/Chief\\_Justice\\_Letter.pdf](http://www.abanet.org/cpr/Chief_Justice_Letter.pdf) (arguing that because of the need to provide assistance to clients from states affected by Hurricane Katrina, courts should adopt "admission to practice rules that would allow licensed out-of-state lawyers to practice law in those jurisdictions on a *pro bono* and temporary basis") (on file with the *St. Mary's Law Journal*). Greco urged courts to consider the exigent circumstances created by this natural disaster when evaluating claims of unauthorized practice of law. *Id.*

113. See TEX. DISCIPLINARY R. PROF'L CONDUCT 5.05, reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (Vernon 2005) (prohibiting a lawyer from "practic[ing] law in

Recently, President George W. Bush signed legislation to expand the authority of federal district and appellate courts regarding cases during emergency situations, allowing judges to hold court in areas outside their normal jurisdiction.<sup>114</sup> A number of courts, including the Supreme Court of Texas, quickly responded to the dilemma of lawyers displaced by Hurricane Katrina by permitting the displaced lawyers to continue to represent clients and practice law as if they had stayed in their home state.<sup>115</sup> Furthermore, many states incorporated a variety of specific provisions, including limiting the representation of displaced lawyers to existing or new clients who have also been displaced,<sup>116</sup> and requiring the displaced lawyers to practice in association with a lawyer in good standing who is licensed to practice in that state.<sup>117</sup> One state waived the requirement that an application for admission *pro hac vice* (for this occasion or particular purpose) be submitted for each matter and allowed affected

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a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction”).

114. See generally Brenda Sapino Jeffreys, *14 Days Later: Katrina's Impact on the Texas Legal Community; Headhunters and Job Seekers*, TEX. LAW., Sept. 12, 2005, at 5, available at 9/12/2005 TEXLAW 5 (Westlaw) (explaining that the legislation was drafted and based on H.R. 3650, which was carved out of the more detailed Federal Courts Improvement Act of 2005, after witnessing Hurricane Katrina's devastating effects on the legal system).

115. See Emergency Order Permitting Lawyers Displaced by Hurricane Katrina to Continue Representing Clients from Temporary Offices in Texas, Misc. Docket No. 05-9153, Sept. 2, 2005, available at <http://www.supreme.courts.state.tx.us/MiscDocket/05/05915300.pdf> (allowing lawyers with a law license issued by one of the states affected by Hurricane Katrina to practice law in Texas for thirty days from the date of the order); see also Amended Emergency Order Permitting Lawyers Displaced by Hurricane Katrina or Hurricane Rita to Continue Representing Clients from Temporary Offices in Texas, Misc. Docket No. 05-9171, Oct. 11, 2005, available at <http://www.supreme.courts.state.tx.us/MiscDocket/05/05917100.pdf> (extending the period that allows out-of-state lawyers to practice in Texas as long as they meet the following: have a valid law license from one of the affected states, complete a Registration for Temporary Practice from Texas form, and return the form to the State Bar of Texas by November 7, 2005); Emergency Order Permitting Lawyers Displaced by Hurricane Katrina to Continue Representing Clients From Temporary Offices in Arkansas, No. 05-973, Sept. 9, 2005, available at <http://courts.state.ar.us/opinions/2005b/20050909/05-973.html> (containing a general statement granting displaced lawyers the right to practice law in Arkansas on a temporary basis).

116. In the Matter of Practice of Law by Attorneys Displaced by Hurricane Katrina, Admin. Order No. 2005-63, Sept. 12, 2005, available at <http://www.supreme.state.az.us/orders/admorder/orders05/2005-63corr.pdf>.

117. Emergency Order Regarding the Practice of Law from Ohio by Lawyers Displaced Due to Hurricane Katrina, Sept. 15, 2005, available at <http://www.sconet.state.oh.us/rod/newpdf/0/2005/2005-ohio-4803.pdf>.

lawyers to file an application admitting them *pro hac vice* to practice in that state for a period of time not to exceed nine months.<sup>118</sup>

### C. *Pro Bono Efforts*

Although there is an everyday need for pro bono legal work, the devastation caused by a natural disaster drastically increases the legal needs of the affected region.<sup>119</sup> Following the September 11 attacks, the New York Times Company Foundation issued grants aimed at helping thousands of small business owners and urged the Legal Aid Society and Legal Services New York to establish a civil law firm to handle the unusual mix of legal issues.<sup>120</sup> The response by the legal community to September 11 was “coordinated and collaborative,” and those heeding the call to aid included judges, bar associations, private organizations, government lawyers, law students, in-house counsel, and private law firms.<sup>121</sup>

“When a tornado or flood effects [sic] a region . . . destroying homes and lives, volunteer [lawyers] go into action, providing counsel and advice to victims.”<sup>122</sup> Following Hurricane Katrina, states such as Mississippi, through the Mississippi Bar Young Lawyers Division Disaster Legal Assistance Program, granted some degree of authority to lawyers not licensed in Mississippi for the purpose of rendering legal assistance to

118. Relaxation of Rules for Admission Pro Hac Vice and for Admission to Practice of Law for Lawyers Displaced by Hurricane Katrina, Sept. 13, 2005, *available at* <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=286>.

119. See Press Release, Nancy J. Diehl, President, State Bar of Mich., SBM President Urges Lawyers to Help Victims of Hurricane Katrina (Sept. 2, 2005) <http://www.michbar.org/news/releases/archives05/messagefrompresident.cfm> (encouraging Michigan lawyers to join together in the effort to help those affected by Hurricane Katrina) (on file with the *St. Mary's Law Journal*); see also ASS'N OF THE BAR OF THE CITY OF N.Y. FUND ET AL., PUBLIC SERVICE IN A TIME OF CRISIS: A REPORT AND RETROSPECTIVE ON THE LEGAL COMMUNITY'S RESPONSE TO THE EVENTS OF SEPTEMBER 11, 2001, at 7 (2004), *available at* <http://www.abanet.org/katrina/lawyers.html> (following the attacks on the World Trade Center, over 4,000 individuals and families received assistance and were represented on a pro bono basis by volunteer lawyers).

120. Andrea Kannapell, *Aftermaths: From One Disaster Response, Lessons for Another*, N.Y. TIMES, Nov. 14, 2005, at F31, *available at* 2005 WLNR 18365816. After realizing the state's Medicaid records were kept in the World Trade Center, this legal alliance assisted in creating a disaster relief Medicare program, which simplified the application process. *Id.*

121. ASS'N OF THE BAR OF THE CITY OF N.Y. FUND ET AL., PUBLIC SERVICE IN A TIME OF CRISIS: A REPORT AND RETROSPECTIVE ON THE LEGAL COMMUNITY'S RESPONSE TO THE EVENTS OF SEPTEMBER 11, 2001, at 9 (2004), *available at* <http://www.abanet.org/katrina/lawyers.html>.

122. *Pro Bono in Alabama*, 63 ALA. LAW. 357, 358 (2002); see also TEX. DISCIPLINARY R. PROF'L CONDUCT 6.01 cmt. 3, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (Vernon 2005) (indicating that one of the most rewarding aspects of being a lawyer can be the personal involvement in assisting the disadvantaged with legal issues).

victims.<sup>123</sup> The order issued by the Supreme Court of Mississippi allowed lawyers from sister states to offer temporary emergency pro bono services to persons residing in Mississippi for legal issues “arising out of or related to” the hurricane.<sup>124</sup> Other states, such as Texas, posted resource materials on their state bar’s website to assist the pro bono efforts of those lawyers helping hurricane victims.<sup>125</sup>

Once courts have opened the door for lawyers to provide pro bono assistance, large numbers of victims are likely to seek legal advice with both questions that have been presented to lawyers in the past and new questions specific to the disaster.<sup>126</sup> For example, Hurricane Katrina brought to light a problem that arises when children and families in state child welfare systems are displaced by a disaster.<sup>127</sup> Howard A. Davis, Director of the Center on Children and the Law, recognized that there “will be other disasters where abused and neglected children will have to relocate.”<sup>128</sup> This prompted the organization to participate in a project designed to develop material to assist children affected by disasters in the future.<sup>129</sup>

The project has a three-pronged approach: It seeks to locate any children who were separated from their foster families during the turmoil after Katrina, identify lawyers with expertise in child welfare who will be available to volunteer their services following disasters,

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123. See Rules of Professional Conduct, 89-R-99018-SCT (Miss. 2005), available at <http://www.mssc.state.ms.us/news/126579.pdf> (authorizing lawyers who do not possess a license to practice law in Mississippi to provide emergency pro bono legal assistance due to the extraordinary circumstances caused by Hurricane Katrina).

124. *Id.*

125. HURRICANE KATRINA TASK FORCE, STATE BAR OF TEXAS, RESOURCE MATERIALS FOR RESPONDING TO LEGAL QUESTIONS FROM THOSE DISPLACED BY HURRICANE KATRINA 1 (2005), available at [http://www.texasbar.com/Content/ContentGroups/Homepage\\_Features/200511/SBOT\\_Katrina\\_Disaster\\_Resource\\_Guide\\_September\\_9,\\_2005.pdf](http://www.texasbar.com/Content/ContentGroups/Homepage_Features/200511/SBOT_Katrina_Disaster_Resource_Guide_September_9,_2005.pdf) (providing a starting point for lawyers when assisting victims of the hurricane with matters pertaining to Louisiana law).

126. See John Council, *Awash in Work: Flooded TRLA Office Braces for Spate of Victims' Legal Problems*, TEX. LAW., Aug. 31, 1998, at 1, available at 8/31/1998 TEXLAW 1 (Westlaw) (arguing that most of the legal questions presented by disaster victims can be classified in the following five categories: housing issues, consumer issues, insurance questions, lost documents, and public benefits).

127. See Siobhan Morrissey, *ABA Answers the Call: YLD and Other Association Entities Address Legal Needs of Katrina Victims*, A.B.A. J., Feb. 2006, at 66, 66 (noting that the ABA Center on Children and the Law joined with the National Center for State Courts and the National Council of Juvenile and Family Court Judges for a project that hopes to address some of these issues).

128. *Id.* at 66–67.

129. *Id.* at 66.



and assess the legal issues that arise in the wake of widespread disasters.<sup>130</sup>

Though not every aspect of Hurricane Katrina's impact on the legal community was foreseeable, judges, legislators, and lawyers in future disasters can learn from the mistakes and successes that occurred during the recovery period. Because the courts in Louisiana's Jefferson Parish had begun scanning records and creating electronic databases more than ten years ago, most of the clerk's operations were online with "virtually no interruption" once the electricity was restored.<sup>131</sup> Despite this success, Jefferson Parish did not anticipate the financial hardship caused by a storm of Hurricane Katrina's magnitude.<sup>132</sup> Also learning from their mistakes and successes, the firm McGlinchey Stafford, who relocated its lawyers to one of its eight other offices in states such as Texas and Mississippi, will for future emergencies "maintain excess capacity in each location and develop a plan whereby lawyers know which office to head for when evacuating."<sup>133</sup> With each new disaster comes an additional opportunity to review and make necessary changes to an existing disaster plan<sup>134</sup> or to appreciate the need to construct and execute a plan for the first time.<sup>135</sup>

#### IV. CREATING A PLAN FOR RECOVERY

In response to these obligations and responsibilities, a number of individuals and institutions have issued various suggestions and guidelines for

130. *Id.* at 67.

131. Molly McDonough, *Picking Up the Pieces: Gulf Coast Courts Rode out the Storm—Now They're Struggling to Come Back*, A.B.A. J., Feb. 2006, at 39, 44.

132. *See id.* at 44 (reporting a substantial decrease in the number of filing fees as well as the parish budget during September and October).

133. Terry Carter, *Riding out the Storm: Even the Best Disaster Plans Can't Help New Orleans Lawyers Account for Lost Clients, Disruption and Uncertainty*, A.B.A. J., Feb. 2006, at 33, 35.

134. *See id.* at 34 (stating that out of the numerous New Orleans firms that had emergency plans in place, only parts of these plans actually worked). "And most of those plans are being rewritten in light of the disruption and upheaval with a scale and duration that you just wouldn't plan for, till now." *Id.*

135. *See* Ernest B. Abbott & Otto J. Hetzel, *A Checklist for State and Local Government Attorneys to Prepare for Possible Disasters*, 37 URB. LAW. 489, 491 (2005) (declaring that legal counsel should prepare for the types of issues that may arise and the types of roles they will be asked to play before a disaster strikes); *see also* Emily Kopp, *Preparing for the Worst: Natural Disasters, Computer Woes, Sprinkler Malfunctions: Keep Business Running Smoothly in All Circumstances*, DAILY REP. (Fulton County, Ga.), Feb. 14, 2005, at B5, available at 2/14/2005 FULTONDAILY B5 (Westlaw) (contending that consequences could be severe if lawyers do not consider these issues in advance and that "preparing for these disasters doesn't have to take a lot of time or money").

developing disaster recovery and prevention plans.<sup>136</sup> After all, “[t]he better prepared you are to respond to an event that disrupts your practice, the faster you will have your firm back up and running, with minimal financial loss or service interruption.”<sup>137</sup> Depending on the size of the firm and the complexity of operations, the disaster plan may need to be extensive, but most plans include the four following areas: (1) preparation and prevention; (2) response; (3) resumption; and (4) recovery.<sup>138</sup>

#### A. *Preparation and Prevention*

“It is important for every office to develop an emergency plan to protect the safety of personnel, safeguard vital business and client records, protect property and ensure continuity of the practice.”<sup>139</sup> Before considering the needs of the firm and creating a plan for recovery, each individual staff member should evaluate how they would personally respond

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136. See, e.g., LEGAL TECH. RES. CTR., A.B.A., AFTER DISASTER STRIKES: A CHECKLIST 1-4 (2003), <http://www.abanet.org/tech/ltrc/publications/checklist.pdf> (listing twenty-four steps to getting back to business after a natural disaster) (on file with the *St. Mary's Law Journal*). The steps include: assessing the damage, contacting employees, establishing an emergency communication system, relocating if necessary, finding clients, recovering files, and filing insurance claims. *Id.*; see also PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 6-7 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (stating that the size of the firm will determine the complexity of the disaster preparation and recovery plan, but that every firm, including sole practitioners, should establish some kind of plan). “That plan starts with a thorough assessment of your exposure, details how you will minimize the impact of each exposure on your practice, and provides a roadmap for how you will deal with all stages of an emergency or practice interruption.” *Id.* at 6.

137. PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 6 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp).

138. See Reid Trautz, *Expect the Unexpected: Five Steps to Creating a Business Continuity Plan*, TEX. LAW., Sept. 30, 2002, at 30, available at 9/30/2002 TEXLAW 30 (Westlaw) (suggesting the following five steps for solo practitioners when creating a disaster plan: (1) backup all computer data daily; (2) maintain contact information; (3) maintain a list of vendors (4) assign staff members to oversee different aspects of recovery; and (5) create a “When I Die” letter containing information not obvious to others); see also PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 7 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (offering a minimal plan which includes only three steps: (1) backup files and information; (2) create an emergency contact list; and (3) secure and maintain adequate insurance coverage).

139. Task Force on Law Office Disaster Planning, The Lawyers' Club of San Francisco, *When Disaster Strikes: How to Handle Law Office Emergencies*, 1988 A.B.A. SEC. ECON. L. PRAC. 1, 5.

to a disaster.<sup>140</sup> The firm's ability to pick up the pieces and continue business depends on the well-being of all employees.<sup>141</sup>

Firms should implement an emergency evacuation procedure to ensure the safety of personnel in the event a disaster strikes during office hours.<sup>142</sup> In creating an evacuation plan, perceptive lawyers will have some employees trained in first aid measures.<sup>143</sup> The evacuation plan should identify all escape routes, determine which employees need assistance, designate "marshals" to be responsible for ensuring that everyone escapes safely, and should be posted to guarantee that everyone understands the procedures.<sup>144</sup>

After establishing a plan for the security of all personnel, the next step in preparing a disaster plan is to assess the risk of possible loss from business interruptions.<sup>145</sup> In weighing the costs of implementing a disaster

140. See PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 8 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (advocating that each staff member prepare a list with critical information regarding important addresses and phone numbers, including insurance policy information, legal contact information, and financial information).

141. See GARY A. MUNNEKE & ANTHONY E. DAVIS, ABA LAW PRACTICE MGMT. SECTION, DISASTER RECOVERY FOR LAW FIRMS 65 (2004), available at [http://www.abanet.org/lpm/katrina/disaster\\_recovery\\_formbook.pdf](http://www.abanet.org/lpm/katrina/disaster_recovery_formbook.pdf) (stating that once the immediate threat to life and limb subsides, psychological damage may pose the greatest risk to an emerging firm). Following such a disaster, clients and employees need to see an organization's leadership take control and work toward re-instilling confidence in the security of the firm. *Id.*; see also J.R. Phelps, *What Lawyers Should Do After a Hurricane*, FLA. B. NEWS, Sept. 1, 2004, <http://www.floridabar.org/tfb/TFBMember.nsf/basic+view/6826367C472F264585256EF20051ADFB?OpenDocument> (commenting that for those employees whose homes are also destroyed, "returning to normal in the office begins with making contact") (on file with the *St. Mary's Law Journal*). It does not matter which method those in management positions choose, but the firm should establish a way for clients, the court, and other lawyers to make contact. *Id.*

142. See PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 11 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (promoting the development of an evacuation plan when the building or premises does not have one).

143. See *id.* (suggesting that employees trained in emergency medical care could prove useful in the event of a disaster).

144. See *id.* at 11 (endorsing regular emergency evacuation procedures that begin with announced drills and are followed with spontaneous tests).

145. See Roland K. Johnson & Warren H. Gould, *Planning for Disaster Prevention and/or Recovery*, L. OFF. MGMT. INST., Mar. 26, 2003, at 3 (suggesting that a committee of reliable personnel be approved to serve as the recovery team) (on file with the *St. Mary's Law Journal*). Possible ramifications of not implementing a disaster recovery plan include the loss of the following: revenue, clients, business, competitive edge, and negative publicity. *Id.* at 2; see also GARY A. MUNNEKE & ANTHONY E. DAVIS, ABA LAW PRACTICE MGMT. SECTION, DISASTER RECOVERY FOR LAW FIRMS 66 (2004), available at [http://www.abanet.org/lpm/katrina/disaster\\_recovery\\_formbook.pdf](http://www.abanet.org/lpm/katrina/disaster_recovery_formbook.pdf) (urging that firms should also as-

recovery plan, consider the following: more than 40% of those businesses struck by a natural disaster close their doors forever; companies that experience a complete computer outage for more than ten days are unlikely to fully recover financially; and, as mentioned previously, 50% of businesses affected by a disaster will close within five years.<sup>146</sup> To avoid such drastic results, law firms and lawyers should spend time preparing for the “predictable perils” as well as keeping up-to-date plans to protect their businesses and lives if the unthinkable becomes a reality.<sup>147</sup> When conducting a risk analysis, the office’s location should be considered, noting if it is in a flood zone or near a rail line.<sup>148</sup> Spending a few minutes on planning today can save hours of work on recovery in the future.

### B. Response

The first step in preparing an effective response to any disaster is to establish an emergency response person or team.<sup>149</sup> The team or person

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sess how quickly they need to reopen their doors, while taking into consideration all available resources, whether the client’s needs are immediate or long-term, whether the firm can financially support staff when income will be limited, and whether the firm should consider restructuring).

146. See Roland K. Johnson & Warren H. Gould, *Planning for Disaster Prevention and/or Recovery*, L. OFF. MGMT. INST., Mar. 26, 2003, at 1 (urging a disaster plan for any business that wishes to survive long term, because an emergency plan helps a business to continue uninterrupted in the face of unforeseeable as well as foreseeable disasters) (on file with the *St. Mary’s Law Journal*).

147. See, e.g., Reid Trautz, *Expect the Unexpected: Five Steps to Creating a Business Continuity Plan*, TEX. LAW., Sept. 30, 2002, at 30, available at 9/30/2002 TEXLAW 30 (Westlaw) (declaring that planning for unexpected events is “not an admission against interest” but an investment in the future of the firm). “A flood, fire, sudden disability, terrorist attack or vandalism can have a catastrophic impact on your firm or practice—all without warning.” *Id.* At least a quarter of businesses that close during a natural disaster are unable to recover sufficient data to enable them to reopen. Michael J. Tonsing, *Hard Lessons from the Deep South*, FED. LAW., Oct. 2005 at 10, available at 52-OCT FEDRLAW 10 (Westlaw).

148. Emily Kopp, *Preparing for the Worst: Natural Disasters, Computer Woes, Sprinkler Malfunctions: Keep Business Running Smoothly in All Circumstances*, DAILY REP. (Fulton County, Ga.), Feb. 14, 2005, at B5, available at 2/14/2005 FULTONDAILY B5 (Westlaw).

149. See, e.g., PRACTICEPRO, LAWYERS’ PROF’L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 9 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (providing that the emergency person or team will serve as the point person and make all final decisions with regard to preparations and responses to natural disasters); see also GARY A. MUNNEKE & ANTHONY E. DAVIS, ABA LAW PRACTICE MGMT. SECTION, DISASTER RECOVERY FOR LAW FIRMS 60 (2004), available at [http://www.abanet.org/lpm/katrina/disaster\\_recovery\\_formbook.pdf](http://www.abanet.org/lpm/katrina/disaster_recovery_formbook.pdf) (encouraging the appointment of an emergency response team). Firms should also assign at least one person to assist the disabled or others that need help evacuating the building in the event of an emergency. *Id.*

leading “the business recovery effort [must possess] the power to lead, influence, support, prioritize, and organize the project.”<sup>150</sup> After appointing an emergency response team, a damage appraisal and reporting team should be created.<sup>151</sup> Its responsibilities should include assessing the damage after the disaster and reporting it to the emergency response team quickly. This will save time and allow documents to be salvaged before the damage to them becomes irreparable.<sup>152</sup>

Before a prediction of a natural disaster occurs, and especially once the prediction has been made, firms should ensure that all information is backed up and held in a secure location.<sup>153</sup> One lawyer with Gordon Arata McCollam Duplantis & Eagan noted that they had a great plan that just did not work when New Orleans flooded.<sup>154</sup> The plan included a backup computer system that was located in a climate-controlled room on the third story of a building a few miles away. The problem was that the building had four feet of water blocking its entrance.<sup>155</sup> Because of examples such as this, it is important to consider the possibility that an entire area may be affected when determining where to store the firm’s backup information. Many firms now keep their backup information in locations outside the city using “mirrored servers.”<sup>156</sup>

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150. Roland K. Johnson & Warren H. Gould, *Planning for Disaster Prevention and/or Recovery*, L. OFF. MGMT. INST., Mar. 26, 2003, at 2 (on file with the *St. Mary's Law Journal*); see also PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 9 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (noting that the emergency team needs to be periodically reviewed and that new members should be appointed in the event of turnover).

151. See PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 10 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (suggesting that the damage appraisal team work alongside the emergency response team to restore the firm’s operations in a timely manner).

152. *Id.*

153. See John Council & Joy Dickinson Tipping, *Lawyer-Refugees Set Up Shop in Texas*, TEX. LAW., Sept. 5, 2005, at 6, available at 9/5/2005 TEXLAW 6 (Westlaw) (noting that after the attacks on September 11, many firms constructed an emergency disaster plan which established a strategy for backing up all files and computer data). *But cf.* Michael J. Tonsing, *Hard Lessons from the Deep South*, FED. LAW., Oct. 2005, at 10, available at 52-OCT FEDRLAW 10 (Westlaw) (according to one survey, three out of five small business in the United States still have not begun to back up the information stored on computers). “It only takes one equipment melt-down, computer theft, hurricane, landslide or fire to immediately see the value of data protection.” *Id.*

154. Terry Carter, *Riding out the Storm: Even the Best Disaster Plans Can't Help New Orleans Lawyers Account for Lost Clients, Disruption and Uncertainty*, A.B.A. J., Feb. 2006, at 33, 36.

155. *Id.* at 36.

156. See *id.* (explaining that lawyers at one New Orleans firm, Adams and Reese, LLP, also utilized an e-mail system and provided toll-free 866 phone numbers for management team members “to call in and report”). “Mirrored servers are what the term indi-

The firm's calendar and master docket will prove critical in continuing service to clients and recovering quickly after a disaster; a complete disaster recovery plan will include a way to restore this crucial information promptly.<sup>157</sup> In creating a data backup plan, firms should do the following: acquire an off-site storage location, identify sources of rental computer equipment for temporary use, discover employees' home computer resources, and store a hard copy of all documentation offsite.<sup>158</sup> Likewise, updating and keeping backup files of anti-virus software, firewalls, and Internet security protects and ensures the future safety of computer systems from devastating security breaches and viruses that could cripple a business in mere seconds.<sup>159</sup> If a firm uses a proper backup system, the firm can repair or replace the damaged system as well as restore information to the time of the most current backup, thus, downgrading a computer nightmare to a "computer headache."<sup>160</sup>

### C. *Resumption of Service*

Oftentimes, finding a location to resume the providing of services to clients poses the greatest obstacle for businesses after a natural disaster.<sup>161</sup> Lawyers displaced by Hurricane Katrina had to prepare for a pro-

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cates: Two computer servers remote from each other are linked and constantly contain the same data and software. If one goes down, the other is the backup." *Id.*

157. See J.R. Phelps, *Would You Be Prepared in the Event of a Disaster?*, FLA. B. NEWS, Sept. 1, 2004, <http://www.floridabar.org/tfb/TFBMember.nsf/basic+view/0F3E4F9E29EF6EF985256EF2006A9234?OpenDocument> (suggesting that available technology offers a number of ways to restore this vital information, including digital personal assistants, computer backups, and off-site data storage) (on file with the *St. Mary's Law Journal*); see also Duane A. Daiker, *Computer-Related Legal Malpractice: An Overview of the Practitioner's Potential Liability*, 69 FLA. B.J. 12, 12 (1995) (opining that a calendaring system can be more efficient than a written "date book" if used properly, "because it provides reminders, search features, and time conflict checking").

158. See, e.g., PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 17-21 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (urging lawyers to rotate and keep more than one generation of tapes as well). It is crucial that lawyers do not repeatedly use the same tape, because if it is determined that the database is corrupted the tape can be used to restore at least some of the lost information. *Id.*

159. See *id.* at 21 ("It is important to document all new programs, updates, patches, modifications and customizations to computer systems, and to store a hard copy of this documentation off site, along with software license numbers, activation codes and copies of original CD's.").

160. Duane A. Daiker, *Computer-Related Legal Malpractice: An Overview of the Practitioner's Potential Liability*, 69 FLA. B.J. 12, 17 (1995).

161. See John Council & Joy Dickinson Tipping, *Lawyer-Refugees Set Up Shop in Texas*, TEX. LAW., Sept. 5, 2005, at 6, available at 9/5/2005 TEXLAW 6 (Westlaw) (noting that after Hurricane Katrina, most of the lawyers from New Orleans set up shop in Baton Rouge, but many were forced to hunt for office space in Texas).

longed absence from their offices as well as their homes.<sup>162</sup> Then, four weeks later, Hurricane Rita forced lawyers along the Gulf Coast of Texas to evacuate and close their office doors; however, many were able to continue to work and prepare for upcoming trials in nearby cities.<sup>163</sup> Furthermore, Hurricane Katrina and Hurricane Rita sent a large number of judges looking for alternative places to hold court.<sup>164</sup>

In the preparation phase of the disaster recovery plan, the emergency response team should create a list of possible alternative work locations.<sup>165</sup> The emergency response team might enlist the assistance of a real estate agent who can help locate space that would be available for temporary use should the need ever arise.<sup>166</sup> Alternative work locations are often referred to as "hot sites."<sup>167</sup> Firms in major urban areas should bear in mind that the entire area may be affected and should consider choosing a location outside the immediate area.<sup>168</sup> Possibilities for alter-

162. See Scott Simonson, *Firms' New Orleans Posts Are Picking Up the Pieces: Lawyers Temporarily Relocating to Other Cities*, DAILY REP. (Fulton County, Ga.), Aug. 31, 2005, at 1, available at 8/31/2005 FULTONDAILY 1 (Westlaw) (discussing the plight of lawyers from New Orleans who were forced to relocate due to the massive flooding and destruction of homes as well as office buildings).

163. See Miriam Rozen, *Hurricane Rita Sends Texas Legal Community Packing*, NAT'L L.J., Sept. 23, 2005, [http://www.law.com/jsp/newswire\\_article.jsp?id=1127379914680](http://www.law.com/jsp/newswire_article.jsp?id=1127379914680) (referring to the Watts firm, which relocated staff members and client files from its Corpus Christi and Houston offices to Edinburg and San Antonio offices to continue working on a complex products liability trial scheduled to begin the following week) (on file with the *St. Mary's Law Journal*).

164. See John Council, *Katrina Kicks the 5th Circuit out of Marble Courthouse in the Big Easy*, TEX. LAW., Sept. 5, 2005, at 5, available at 9/5/2005 TEXLAW 5 (Westlaw) (noting that a three-judge panel of the Fifth Circuit held a few arguments in Austin's federal courthouse because all of them lived nearby); see also Miriam Rozen, *Hurricane Rita Sends Texas Legal Community Packing*, NAT'L L.J., Sept. 23, 2005, [http://www.law.com/jsp/news\\_wire\\_article.jsp?id=1127379914680](http://www.law.com/jsp/news_wire_article.jsp?id=1127379914680) (referring to the closure of state and county courthouses in Houston when an evacuation was ordered based on the hurricane's predicted path) (on file with the *St. Mary's Law Journal*).

165. See SUZANNE ROSE, AVOIDING ETHICAL DISASTERS WHEN NATURAL DISASTERS STRIKE: STEPS TO TAKE IN THE RECOVERY EFFORT; FROM PLANNING TO LIVING THE REALITY 5 (2005) (ABA 2005 Annual Convention) (listing a number of methods to locate alternate work sites including calling a realtor to find space or sharing space with another lawyer or business temporarily) (on file with the *St. Mary's Law Journal*); see also Laura DiBiase, *When Disaster Strikes—Strike Back!*, 22 AM. BANKR. INST. J. 14, 14 (2003) (arguing that alternate work sites are vital to the continuity of any business).

166. See Laura DiBiase, *When Disaster Strikes—Strike Back!*, 22 AM. BANKR. INST. J. 14, 14 (2003) (pointing out that the space only needs to be large enough to temporarily house the disaster recovery team).

167. PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 17 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp).

168. See *id.* (stressing that larger firms may need to choose a satellite office to serve as a central hub in the event of a catastrophe).

nate locations include: sharing an office with another law firm, space in a satellite office, space in an employee's home, hotels, motels, recreational vehicles, and trailers.<sup>169</sup> After locating a space, consider alerting everyone of the temporary office space by placing a notice on the firm's website, leaving a message at the previous phone number, or sending out a letter to clients.<sup>170</sup> The disaster response team should also arrange for mail to be redirected to the new office and contact vendors regarding the temporary change of address.<sup>171</sup>

In addition to a new workspace, firms need to evaluate what office supplies (from the larger items such as computers, copiers, fax machines, and telephones; to the smaller items such as paper, pens, staplers, highlighters, and folders) will be necessary.<sup>172</sup> Today, computers play an essential role in the recovery of business operations after a disaster.<sup>173</sup> Therefore, the disaster response team should ensure that employees either have home computers<sup>174</sup> or make plans for obtaining computers to be used at

169. LEGAL TECH. RES. CTR., A.B.A., AFTER DISASTER STRIKES: A CHECKLIST 1 (2003), <http://www.abanet.org/tech/ltrc/publications/checklist.pdf> (advocating that firms should post a sign at the old office directing interested parties to the new temporary location) (on file with the *St. Mary's Law Journal*).

170. See GARY A. MUNNEKE & ANTHONY E. DAVIS, ABA LAW PRACTICE MGMT. SECTION, DISASTER RECOVERY FOR LAW FIRMS 163 (2004), available at [http://www.abanet.org/lpm/katrina/disaster\\_recovery\\_formbook.pdf](http://www.abanet.org/lpm/katrina/disaster_recovery_formbook.pdf) (indicating that if the duration of time warrants, announcements should be sent to clients, vendors, and interested parties regarding the location of the temporary office); see also PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 26 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (recommending that displaced lawyers use the firm's website or an alternate website to relate pertinent information, such as the new work site, to interested parties).

171. See SUZANNE ROSE, AVOIDING ETHICAL DISASTERS WHEN NATURAL DISASTERS STRIKE: STEPS TO TAKE IN THE RECOVERY EFFORT; FROM PLANNING TO LIVING THE REALITY 6 (2005) (ABA 2005 Annual Convention) (advising law firms to contact courier services and post offices to inform them of their new temporary addresses) (on file with the *St. Mary's Law Journal*).

172. See GARY A. MUNNEKE & ANTHONY E. DAVIS, ABA LAW PRACTICE MGMT. SECTION, DISASTER RECOVERY FOR LAW FIRMS 163 (2004), available at [http://www.abanet.org/lpm/katrina/disaster\\_recovery\\_formbook.pdf](http://www.abanet.org/lpm/katrina/disaster_recovery_formbook.pdf) (adding that furniture should also be acquired in order to continue operations in the temporary office).

173. See Scott Simonson, *Firms' New Orleans Posts Are Picking Up the Pieces: Lawyers Temporarily Relocating to Other Cities*, DAILY REP. (Fulton County, Ga.), Aug. 31, 2005, at 1, available at 8/31/2005 FULTONDAILY 1 (Westlaw) (illustrating that employees can return to work expeditiously if they can obtain remote access to their firm's electronic files).

174. See Laura Dibiase, *When Disaster Strikes—Strike Back!*, AM. BANKR INST. J. 14, 14 (2003) (discussing that the Internet and software programs have advanced technology and allowed displaced employees to work from home).



the alternative location.<sup>175</sup> One lawyer displaced by Hurricane Katrina commented, "We've got computer redundancy and back-ups such [that] I'm working here as I would in New Orleans . . . . It's been great. I plugged in a computer, and we're on."<sup>176</sup>

#### D. Recovery

Since the computer has become a crucial part of practicing law when away from the office,<sup>177</sup> the disaster response team needs to create a plan for managing the immediate recovery of those files not backed up and stored in an alternate location.<sup>178</sup> While it is true that the technology available today allows some information that has not been backed up to be retrieved, the process is costly and more than some small firms can afford.<sup>179</sup> After a hurricane or flooding, contaminants such as salt, sand, and mud pose large problems for magnetic media, but may be cleaned by

175. See Scott Simonson, *Firms' New Orleans Posts Are Picking Up the Pieces: Lawyers Temporarily Relocating to Other Cities*, DAILY REP. (Fulton County, Ga.), Aug. 31, 2005, at 1, available at 8/31/2005 FULTONDAILY 1 (Westlaw) (noting that displaced lawyers with computers were able to maintain contact with clients and other employees through the use of the firm's internal website); see also John Council & Joy Dickinson Tipping, *Lawyer-Refugees Set Up Shop in Texas*, TEX. LAW., Sept. 5, 2005, at 6, available at 9/5/2005 TEXLAW 6 (Westlaw) (noting that the Tarrant County Bar Association placed a request on the website for donations of laptop computers to give to lawyers displaced by Hurricane Katrina).

176. John Council & Joy Dickinson Tipping, *Lawyer-Refugees Set Up Shop in Texas*, TEX. LAW., Sept. 5, 2005, at 6, available at 9/5/2005 TEXLAW 6 (Westlaw).

177. See PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 17-18 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (noting that computers have become critical to the practice of law, and that if lawyers' home computers have adequate software, firms should consider allowing them to work from home); see also J.R. Phelps, *What Lawyers Should Do After a Hurricane*, FLA. B. NEWS, Sept. 1, 2004, <http://www.floridabar.org/tfb/TFBMember.nsf/basic+view/0F3E4F9E29EF6EF985256EF2006A9234?OpenDocument> (stating that "[a]s more and more law firms have come to depend on computers, the loss of the data, which in most firms contains work-in-progress, accounts receivable, payroll, and past histories of cases, can be crippling") (on file with the *St. Mary's Law Journal*).

178. See Roland K. Johnson & Warren H. Gould, *Planning for Disaster Prevention and/or Recovery*, L. OFF. MGMT. INST., Mar. 26, 2003, at 4 (stressing that the best protection for electronic records is to back them up and store the backup in an alternate location) (on file with the *St. Mary's Law Journal*); see also J.R. Phelps, *What Lawyers Should Do After a Hurricane*, FLA. B. NEWS, Sept. 1, 2004, <http://www.floridabar.org/tfb/TFBMember.nsf/basic+view/6826367C472F264585256EF20051ADFB?OpenDocument> (noting that although analysts have been stressing that firms should back up their files for years, most do not) (on file with the *St. Mary's Law Journal*).

179. See Michael J. Tonsing, *Hard Lessons from the Deep South*, FED. LAW., Oct. 2005 at 10, available at 52-OCT FEDRLAW 10 (Westlaw) (urging small business owners to visit [www.microsoft.com/smallbusinesses](http://www.microsoft.com/smallbusinesses) and click on "computer security" to obtain helpful advice regarding backup alternatives).

removing the cover and cleaning with a Freon-alcohol or Freon solvent.<sup>180</sup> However, those not technically adept should consider leaving the cleaning and salvaging process to the experts.<sup>181</sup> When floppy disks have been contaminated, they should be immersed in distilled water until they can be taken to a professional for cleaning.<sup>182</sup> Also, remember that electronic equipment must be fully dry before plugging it in to an electrical outlet, and the system and power should be reconnected piece by piece, testing each part of the computer system individually.<sup>183</sup>

“In order to further avoid problems caused by computer failure, important documents should be kept in written form.”<sup>184</sup> Similar to creating a backup for electronic files, paper documents can be copied or scanned and stored in an alternate location.<sup>185</sup> When a computer malfunctions or when information cannot be accessed in its electronic form, paper documents function as a critical factor in the ability to continue operations.<sup>186</sup> Paper documents may still be salvageable after a natural disaster, but the process is difficult and time-consuming.<sup>187</sup>

Mold poses one of the greatest obstacles to successful paper document recovery.<sup>188</sup> Increasing air circulation will eliminate the stagnant air

180. J.R. Phelps, *What Lawyers Should Do After a Hurricane*, FLA. B. NEWS, Sept. 1, 2004, <http://www.floridabar.org/tfb/TFBMember.nsf/basic+view/0F3E4F9E29EF6EF985256EF2006A9234?OpenDocument> (on file with the *St. Mary's Law Journal*).

181. *See id.* (indicating that professional companies such as On-Track Data International specialize in hard and floppy disk recovery). Professional companies often have facilities called a “clean room” where support personnel inspect computers for damage and recover information contained on hard drives. *Id.*

182. *Id.*

183. *Id.*

184. Duane A. Daiker, *Computer-Related Legal Malpractice: An Overview of the Practitioner's Potential Liability*, 69 FLA. B.J. 12, 17 (2005).

185. *See id.* (stating that all database software provides the capability to print out copies of the information placed on the database, which can then be stored in a safe place).

186. *Id.*

187. *See* J.R. Phelps, *What Lawyers Should Do After a Hurricane*, FLA. B. NEWS, Sept. 1, 2004, <http://www.floridabar.org/tfb/TFBMember.nsf/basic+view/0F3E4F9E29EF6EF985256EF2006A9234?OpenDocument> (explaining that the effectiveness of the document recovery depends on drying them as quickly as possible) (on file with the *St. Mary's Law Journal*). First, remove anything that could damage the paper, such as paper clips or metal fasteners, and take the papers out of binders. *Id.* Then, dry the documents by applying low heat from an iron or hair dryer. *Id.* Alternatively, a microwave may be used, but be cautious not to remove too much moisture or the paper will become brittle. *Id.*

188. *See id.* (according to experts, mold appears within forty-eight hours, and dehumidification, rain, lack of air circulation and the aggravating effects of light encourage mold growth).

which is vital for successful recovery of the damaged documents.<sup>189</sup> In order to combat the effects of humidity and high temperatures which accelerate mold growth, the air conditioner should be ran all day or additional fans, dehumidifiers or dryers should be utilized.<sup>190</sup> “The most effective way to restore water damaged documents is through ‘true’ freeze-drying utilizing sublimation. Sublimation changes the frozen water in the documents (ice) to a vapor, bypassing the liquid state. The vapor is removed by vacuum pressure in the freeze-drying chamber.”<sup>191</sup> Freeze-drying can be costly, but it provides the disaster response team with extra time to finalize arrangements to properly dry the documents.<sup>192</sup>

Lawyers from one large firm in New Orleans planned to send rental trucks after the water receded to retrieve whatever paper files could be recovered.<sup>193</sup> When information on documents is trying to be recaptured in a situation like this, lawyers should consider asking clients, opposing counsel, the Secretary of State’s Office, or the Registrar’s Office to assist by making copies or reconstructing events, dates, or deadlines.<sup>194</sup> Furthermore, landlords, leasing companies, and insurance carriers can be contacted for documents concerning leases, subleases, insurance agreements, or broker information.<sup>195</sup>

During the recovery process, an insurance claim detailing the damages sustained by the office should be submitted.<sup>196</sup> Since insurance policies sometimes carry special provisions for salvaging records, lawyers should check with the insurance carrier before throwing out any paper documents that are deemed irreparable.<sup>197</sup> When creating the disaster recov-

189. J.R. Phelps, *What Lawyers Should Do After a Hurricane*, FLA. B. NEWS, Sept. 1, 2004, <http://www.floridabar.org/tfb/TFBMember.nsf/basic+view/0F3E4F9E29EF6EF985256EF2006A9234?OpenDocument> (on file with the *St. Mary's Law Journal*).

190. *Id.*

191. *Id.*

192. *Id.*

193. Eve Tahmincioglu, *Small Business: Surviving the Worst of Times*, N.Y. TIMES, Sept. 8, 2005, at C7, available at 2005 WLNR 14119474.

194. SUZANNE ROSE, AVOIDING ETHICAL DISASTERS WHEN NATURAL DISASTERS STRIKE: STEPS TO TAKE IN THE RECOVERY EFFORT; FROM PLANNING TO LIVING THE REALITY 7 (2005) (ABA 2005 Annual Convention) (on file with the *St. Mary's Law Journal*).

195. *Id.*

196. LEGAL TECH. RES. CTR., A.B.A., AFTER DISASTER STRIKES: A CHECKLIST 4 (2003), <http://www.abanet.org/tech/ltrc/publications/checklist.pdf> (on file with the *St. Mary's Law Journal*).

197. J.R. Phelps, *What Lawyers Should Do After a Hurricane*, FLA. B. NEWS, Sept. 1, 2004, <http://www.floridabar.org/tfb/TFBMember.nsf/basic+view/0F3E4F9E29EF6EF985256EF2006A9234?OpenDocument> (encouraging employees to document and create a list of all destroyed records) (on file with the *St. Mary's Law Journal*); see also Duane A. Daiker, *Computer-Related Legal Malpractice: An Overview of the Practitioner's Potential Liability*, 69 FLA. B.J. 12, 17 (2005) (noting that some insurance companies require insureds to have

ery plan, the planning team should conduct a complete analysis of the insurance policy and what type of disasters the policy covers.<sup>198</sup> In addition, the planning team should discuss business interruption coverage, the procedure for recording and submitting expense information for reimbursement, and how “loss of income” coverage will be calculated.<sup>199</sup> Many policies cover not only buildings, but also personal property and electronic data processing equipment.<sup>200</sup> The level and scope of insurance coverage needed depends on the size of the firm, the perceived risk of a natural disaster, and the partners’ ability to tolerate loss.<sup>201</sup>

### E. *Getting Back to Business*

When the emergency subsides and recovery is well underway, a debriefing for the staff should be conducted in order to thank everyone for their hard work, to discuss the state of the situation, and to go over any future plans.<sup>202</sup> Input from employees will contribute to the recovery process, allow management to respond to new issues that are raised, and acquire any additional resources recommended during the debriefing.<sup>203</sup>

When services resume, the disaster recovery plan should be revisited, and the knowledge garnered from the experience should be utilized to modify, add, or delete any portions of the plan.<sup>204</sup> “History repeats itself,

important documents, including the lawyer’s calendar, backed up on paper). Some lawyers do not realize that document insurance exists, but many find it very valuable in protecting some of their clients’ most important files including estate planning documents. Emily Kopp, *Preparing for the Worst: Natural Disasters, Computer Woes, Sprinkler Malfunctions: Keep Business Running Smoothly in All Circumstances*, DAILY REP. (Fulton County, Ga.), Feb. 14, 2005, at B5, available at 2/14/2005 FULTONDAILY B5 (Westlaw).

198. See Laura DiBiase, *When Disaster Strikes—Strike Back!*, 22 AM. BANKR. INST. J. 14, 14 (2003) (urging lawyers to include their insurance agent during the analysis to ensure that everyone understands the natural disasters that are possible, the natural disasters that are included in the policy, and those that still need to be covered).

199. SUZANNE ROSE, AVOIDING ETHICAL DISASTERS WHEN NATURAL DISASTERS STRIKE: STEPS TO TAKE IN THE RECOVERY EFFORT; FROM PLANNING TO LIVING THE REALITY 5 (2005) (ABA 2005 Annual Convention) (on file with the *St. Mary’s Law Journal*).

200. Curtis Porterfield et al., *Safe & Sound, L.L.P.: Insurance Coverage Can Protect Law Firms Against Disaster*, TEX. LAW., July 16, 2001, at S7, available at 7/16/2001 TEXLAW S7 (Westlaw).

201. See *id.* (categorizing most natural disaster insurance claims as filed under first-party insurance, which provides protection against losses incurred directly by the insured).

202. See PRACTICEPRO, LAWYERS’ PROF’L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 27 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (encouraging firms to request insight from all employees about what was successful and what should be improved).

203. See *id.* (promoting a “post-emergency debriefing” in which the entire staff gathers to voice concerns about the status of the situation, as well as future plans).

204. See *id.* (reiterating that the ultimate test of a disaster preparation and recovery plan is whether it works when needed); see also Diane M. Ellis, *What to Do When Disaster*

and that's one of the things that's wrong with history."<sup>205</sup> A natural disaster presents lawyers with an opportunity to correct any problems in the plan and generate new ideas in the event that a disaster strikes again. A firm could use the disaster response as a marketing tool, emphasizing the firm's flexibility, dependability, and strength in continuing communications with clients.<sup>206</sup>

## V. A PROPOSAL

Today, computers pervade almost every aspect of the practice of law.<sup>207</sup> Because computers are so prevalent, they provide an excellent solution and important element in creating a disaster recovery plan.<sup>208</sup> For years, people have been arguing that the "paperless office" will be the law office of the future.<sup>209</sup> Though this Comment does not propose that paper be eliminated entirely, lawyers should attempt to fully utilize available technology in creating a disaster plan. Every document created on computer

*Strikes*, TEX. LAW., Mar. 25, 2002, at 20, available at 3/25/2002 TEXLAW 20 (Westlaw) (encouraging lawyers to thank employees for their hard work and understanding after things have returned to normal).

205. THE NEW LEXICON WEBSTER'S DICTIONARY OF THE ENGLISH LANGUAGE QD-50 (1988 ed.) (quoting Clarence Darrow).

206. Diane M. Ellis, *What to Do When Disaster Strikes*, TEX. LAW., Mar. 25, 2002, at 20, available at 3/25/2002 TEXLAW 20 (Westlaw) (indicating that the lawyer's thoroughness in preparing for a disaster not only helps the business survive, but also shows clients that the firm exhibits foresight and caring during challenging circumstances, which "translates to confidence"); see also PRACTICEPRO, LAWYERS' PROF'L INDEM. CO., MANAGING PRACTICE INTERRUPTIONS 28 (2002), available at [http://www.practicepro.ca/practice/Practice\\_Interruptions.asp](http://www.practicepro.ca/practice/Practice_Interruptions.asp) (recommending that firms tell their clients of their preparation after the emergency subsides because many clients will be impressed by a firm that creates a strong disaster recovery and prevention plan).

207. See, e.g., Thomas Baird, *Paperless and Loving It: Technology and the Small Firm*, 68 TEX. B.J. 591, 591 (2005), available at [www.texasbarjournal.com](http://www.texasbarjournal.com) (exploring the rate at which technology is changing the way lawyers practice law). "Technology is overwhelming today's modern law firms and, in particular, individual attorneys. The demands for a greater range of services, quicker responses, flexible working arrangements, cost savings, and revenue increases . . . has caused many law firms and attorneys to sink into a quagmire of new technology." *Id.* Computers can streamline office procedures and could reduce the possibility of malpractice risks. Duane A. Daiker, *Computer-Related Legal Malpractice: An Overview of the Practitioner's Potential Liability*, 69 FLA. B.J. 12, 13-14 (1995).

208. See Duane A. Daiker, *Computer-Related Legal Malpractice: An Overview of the Practitioner's Potential Liability*, 69 FLA. B.J. 12, 14 (1995) (claiming that computers are prevalent in the practice of law because of their efficiency and speed). "The practice of law is ideal for computer technology because of its dependence on managing vast amounts of information. Computers give attorneys an edge in a competitive profession in which information is power." *Id.*

209. Barry D. Bayer, *Co[n]templating Katrina: Law Office Disaster Recovery*, L. OFF. TECH. REV., Sept. 2, 2005, at col. 890, available at 2005 WL 2675077.

need only be backed up to prevent loss, and incoming documents can be scanned and converted to an image that can then be backed up and stored in a safe location.<sup>210</sup> The key to effective document retrieval is backing up the information periodically, preferably daily, and then storing the tapes in an off-site location such as the firm's "hot site" or a satellite office.<sup>211</sup>

Moving toward the paperless office is not only helpful when creating a disaster recovery plan, but may improve the firm's services to clients. One lawyer noted that after switching to the "paperless" option for six years, productivity increased and the firm saved \$100,000 a year.<sup>212</sup> "Eventually, a time will come when attorneys must automate. This requirement will be driven both by economics and malpractice concerns."<sup>213</sup> One of the most important by-products of the paperless office is the ability to maintain constant contact with clients through email and the firm's website.<sup>214</sup> Staying in contact with displaced clients via the Internet is a valuable component for lawyers to include in their disaster recovery plan.<sup>215</sup>

Some firms decide to go "paperless" to save on money spent on off-site storage, which can grow so large that it makes locating files difficult and time-consuming.<sup>216</sup> The first step in creating a paperless office is to install network copier/scanners.<sup>217</sup> Second, create file handling procedures

210. *Id.* Lawyers can employ either the digital copier, which connects to the network, or the less expensive scanner with Automatic Document Feed for scanning documents. *Id.*

211. *See id.* (warning that small office lawyers do not create backup files as often as they should). Even if the firm does not have a drive for backup tapes, CD and DVD burners can store a lot of data, and copies can be sent through the mail to friends or associates for safekeeping. *Id.*

212. Thomas Baird, *Paperless and Loving It: Technology and the Small Firm*, 68 TEX. B.J. 591, 591 (2005), available at [www.texasbarjournal.com](http://www.texasbarjournal.com).

The most important benefit, however, has been the change in attitude of the attorneys and staff and the positive response from the community, clients, and other professionals who recognize how much easier and more efficient it is to do business with our firm. Our electronic office lets our clients know that we care about them.

*Id.*

213. Duane A. Daiker, *Computer-Related Legal Malpractice: An Overview of the Practitioner's Potential Liability*, 69 FLA. B.J. 12, 18 (1995).

214. Thomas Baird, *Paperless and Loving It: Technology and the Small Firm*, 68 TEX. B.J. 591, 591 (2005), available at [www.texasbarjournal.com](http://www.texasbarjournal.com).

215. *See id.* (explaining that clients can access background information on the firm's website regarding their case before their initial appointment). After educating the clients on how to use the technology, clients find they are better able to communicate with their lawyers and appreciate the quick responses to their inquiries. *Id.*

216. *Id.*

217. *Id.* at 592.

that provide quick access to all documents filed electronically.<sup>218</sup> Even word processing documents or those sent by fax, voicemail, or email can be scanned and stored electronically.<sup>219</sup> In establishing a “paperless office,” encourage opposing counsel and clients to send documents by email or fax.<sup>220</sup> The third step is to create a firm-wide contact database containing information such as cell phone numbers, email addresses, fax numbers, and personal information for employees as well as clients.<sup>221</sup> After creating a “paperless office,” back up the information and store it offsite.

The paperless office permits lawyers to work from their homes or other remote locations.<sup>222</sup> Available technology, such as laptops equipped with wireless capability and hand-held devices, makes it even easier for lawyers to practice law from any location.<sup>223</sup> “If there is access to the Internet, a law office can be located anywhere in the world. The Internet allows any member of the firm through virtual private networking to have access to all of the firm’s files on the firm’s file servers . . . .”<sup>224</sup>

Conversely, computers can create business disruptions when attacked by a computer virus, when the computer crashes, or during power outages.<sup>225</sup> Computers and the accessibility of the Internet create concerns regarding the security of information stored electronically.<sup>226</sup> Many lawyers worry about placing confidential information in the hands of a third party.<sup>227</sup> The high costs of law office automation and employee training

218. Thomas Baird, *Paperless and Loving It: Technology and the Small Firm*, 68 TEX. B.J. 591, 592 (2005), available at [www.texasbarjournal.com](http://www.texasbarjournal.com). Storing all documents electronically allows everyone in the firm to distribute documents to those that can receive documents electronically, which is almost everyone. *Id.*

219. *Id.* The contact database allows firms to develop fax distribution and email groups for newsletters and mass mailings. *Id.*

220. *Id.* at 592.

221. Thomas Baird, *Paperless and Loving It: Technology and the Small Firm*, 68 TEX. B.J. 591, 592 (2005), available at [www.texasbarjournal.com](http://www.texasbarjournal.com).

222. *Id.*

223. *Id.* at 592–93.

224. *Id.* at 593.

225. See, e.g., Emily Kopp, *Preparing for the Worst: Natural Disasters, Computer Woes, Sprinkler Malfunctions: Keep Business Running Smoothly in All Circumstances*, DAILY REP. (Fulton County, Ga.), Feb. 14, 2005, at B5, available at 2/14/2005 FULTONDAILY B5 (Westlaw) (noting that business at one firm came to a halt when a construction company mistakenly cut the telephone lines).

226. Thomas Baird, *Paperless and Loving It: Technology and the Small Firm*, 68 TEX. B.J. 591, 593 (2005), available at [www.texasbarjournal.com](http://www.texasbarjournal.com); see also Duane A. Daiker, *Computer-Related Legal Malpractice: An Overview of the Practitioner’s Potential Liability*, 69 FLA. B.J. 12, 14 (1995) (warning that lawyers should be cognizant of the possibility that outsiders can gain access to information stored on the firm’s computer database).

227. Jason Krause, *Katrina’s Tech Lesson: Don’t Wait, Think Outside the Office*, A.B.A. J., Feb. 2006, at 38; see Vincent R. Johnson, *Cybersecurity, Identity Theft, and the Limits of Tort Liability*, 57 S.C. L. REV. 255, 255–63 (2005) (discussing whether database

present one of the largest barriers to creating a “paperless office.”<sup>228</sup> Despite all the complications that accompany technology, “[t]he lesson lawyers should take from Hurricane Katrina is that disaster recovery and computer backup shouldn’t be left to chance.”<sup>229</sup> Even if a firm does not implement a disaster recovery plan using computers, smart lawyers should have some type of arrangements ready when disaster strikes.<sup>230</sup>

## VI. CONCLUSION

In the past few years, computers have enhanced the practice of law and enabled lawyers to provide faster and more efficient services. Hurricane Katrina and Hurricane Rita provide examples of how the legal profession can be severely disrupted. Each new natural disaster reminds businesses of the need to back up files and create a recovery plan; however, for some, it is too little too late. Computers and the latest technology offer lawyers the ability to address problems that may arise in the wake of a natural disaster or terrorist attack.

After conducting a risk analysis and weighing the costs of creating a disaster plan against the numerous benefits of an expeditious return to business with little inconvenience to clients, it is apparent that the better choice is to create a disaster plan. Lawyers that do not include a plan for handling difficult situations that arise because of natural disasters should be held accountable if the fact-finder concludes that a reasonable lawyer would have utilized available technology to implement a disaster preparation and recovery plan. After all, as the Director of the Florida Bar’s Law Office Management Assistance Service noted:

When it comes to disaster, reaction after the fact is never an adequate substitute for planning beforehand. I am constantly amazed at

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possessors have a duty to safeguard personal information listed on computers from unauthorized access by third parties or hackers, and if so, how far the liability should extend). “Modern society is built on fragile foundations of computerized personal data. If this society is to endure and prosper, then it must vigilantly safeguard those foundations.” *Id.* at 311.

228. Thomas Baird, *Paperless and Loving It: Technology and the Small Firm*, 68 TEX. B.J. 591, 593 (2005), available at [www.texasbarjournal.com](http://www.texasbarjournal.com).

229. See Jason Krause, *Katrina’s Tech Lesson: Don’t Wait, Think Outside the Office*, A.B.A. J., Feb. 2006, at 38 (arguing that even though backing up computers can be “tedious and unglamorous,” those lawyers that fail to take the proper precautions will regret their decision).

230. See Task Force on Law Office Disaster Planning, The Lawyers’ Club of San Francisco, *When Disaster Strikes: How to Handle Law Office Emergencies*, 1988 A.B.A. SEC. ECON. L. PRAC. 1, 2 (stating that “[t]he question hanging over the entire situation is whether the lawyer acts competently before and after the disaster, because rules of professional conduct contain no exceptions for performance during or after a disaster”).



the number of firms lacking even the most elementary form of disaster prevention—backing up critical information on their computer system daily and taking the backup off-site every night. Once again, a disaster of this magnitude reminds all of us of the opportunity to prevent the “would’ve, could’ve, should’ve” recriminations of our failure to plan.<sup>231</sup>

The difference between the law firm that survives a natural disaster and the firm that folds depends on whether the lawyers had the foresight to create and implement a disaster plan. Disasters can strike without notice at any time and any place. If a disaster struck tomorrow, would you be prepared?

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231. J.R. Phelps, *Would You Be Prepared in the Event of a Disaster?*, FLA. B. NEWS, Sept. 1, 2004, <http://www.floridabar.org/tfb/TFBMember.nsf/basic+view/0F3E4F9E29EF6EF985256EF2006A9234?OpenDocument> (on file with the *St. Mary's Law Journal*).