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Martha F. Davis

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PREPARING FOR THE WORST: RE-ENVISIONING DISASTER LEGAL RELIEF IN THE ERA OF HOMELAND SECURITY

Martha F. Davis*

INTRODUCTION

The New York legal community's response to the September 11th disaster defies the usual stereotypes of the legal profession. Ambulance chasers and sharks were in short supply. Instead, in the weeks and months following the World Trade Center attacks, New York's bar channeled an unprecedented outpouring of support into uncompensated pro bono efforts on behalf of victims and their families. While pro bono assistance was available to all victims, special attention was given to matters facing needy individuals that would not generate fees.¹ The bar even stood behind efforts to minimize the subsequent litigation, with the American Trial Lawyers Association ("ATLA"), through its subsidiary Trial Lawyers Care, offering free counseling to family members considering pursuing monetary relief through the federal Victims' Compensation Fund.²

As described in *Public Service in a Time of Crisis: A Report and Retrospective on the Legal Community's Response to the Events of September 11, 2001* (hereinafter, the *ABCNY Fund Report*),³ there

* Associate Professor of Law, Northeastern University School of Law. The author would like to thank David Hall and George Kocur for helpful comments. Excellent research assistance was provided by Anjali Walker, Hema Sarangapani, and Sara Pic.

1. Tort claims were not handled by pro bono attorneys. In fact, the Pro Bono and Legal Services Committee of the City Bar prepared a draft engagement letter that limited firms' scope of representation by excluding representation for tort claims that might conflict with the firms' existing clients' interests. ASS'N OF THE BAR OF THE CITY OF N.Y. FUND, INC., 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 16, reprinted in 31 *Fordham Urb. L.J.* 831 (2004) [hereinafter *ABCNY FUND ET AL.*].

2. See *id.* at 842; Trial Lawyers Care, Inc., *Trial Lawyers Care: helping hundreds of victims better cope with the aftermath of that horrific day*, at <http://www.911lawhelp.org> (last visited Apr. 24, 2004) (providing general information for lawyers seeking to provide pro bono services). The ATLA estimates that the cost of this representation totaled the equivalent of \$360 million since 2001. See Leo V. Boyle, "ATLA Thanks Members Who Volunteered Through Trial Lawyers Care to Represent 9/11 Victims and Families," at www.atlanet.org/homepage/911thanks.aspx (last visited Apr. 9, 2004).

3. *ABCNY FUND ET AL.*, *supra* note 1.

is little to fault in the bar's response to the September 11th disaster. Bar leaders worked under extreme pressure—in some instances, having suffered losses themselves—to devise a sound approach to assisting with others' needs. The "facilitator" model of providing advice and representation was a sensitive and effective solution to the problem of clients facing multiple issues and multiple lawyers representing a single client. And literally thousands of lawyers donated time and resources to provide legal assistance to those in need.⁴ In short, the New York bar's disaster response deserves consideration as a national model for such efforts.

At the same time, as tremendous as the bar's response was, it is worth examining on a more systemic level the national approach to providing legal assistance in disasters. In the current global political climate, we can anticipate that there will be more disasters giving rise to legal needs, including attacks by domestic or international terrorists. Given this heightened need for disaster preparedness, efficient, non-duplicative use of legal resources is a key issue. There is much to learn from the *ABCNY Fund Report* in that regard. Nevertheless we should also consider whether there is an even more efficient and comprehensive way to administer legal assistance in the context of a disaster.

As reflected in the New York experience, disaster legal relief across the United States is typically handled by private pro bono practitioners who mobilize quickly after the disaster strikes. Considering that pro bono legal work generally serves three overlapping purposes: 1) providing legal assistance to the client(s); 2) expanding individual lawyers' visions of their role in the community and society; and 3) raising the profession's standing with the public⁵—we should at least ask whether each of these purposes are being best achieved by the current approach to disaster legal services.⁶

4. See *Trial Lawyers Care*, *supra* note 2.

5. The legal profession is consistently ranked near the bottom in polls ranking the trust accorded the professions. See, e.g., Polling Report.com, *CNN/USA Today Gallup Poll Nov. 14-16, 2003*, at <http://www.pollingreport.com/values> (last visited Apr. 24, 2004). According to the poll, of 1004 adult poll participants nationwide, only sixteen percent believed that lawyers had high or very standards of honesty and ethics. See *id.* Of twenty-three professions, lawyers were ranked eighteenth with respect to public opinion on their level of professional ethical standards with only stockbrokers, advertising practitioners, insurance salesmen, HMO managers, and car salesmen receiving lower scores. See *id.*; see also DEBORAH RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 3-8 (2000).

6. These purposes are distinct from the underlying rationales that support—or even require—that members of the legal profession undertake pro bono work. Such

First, in terms of providing actual assistance to individuals, the New York City bar had tremendous success in mobilizing a legal response to the September 11th attacks. The overall numbers are impressive. But numbers do not tell the whole story. In New York and elsewhere, pro bono lawyers providing disaster legal services often lack expertise in the relevant areas and may have little prior experience with the client community affected by the disaster. Both of these factors may affect pro bono attorneys' ability to reach and to assist clients, even if the bar's mobilization efforts are effective in enlisting volunteers.⁷ Further, New York City's experience may be *sui generis*. Collectively, the New York City bar has extraordinary resources. No other community in the United States would be able to call upon such a high level of private legal resources—both in terms of numbers and caliber—in the event of a disaster.⁸ Finally, while the New York bar apparently avoided demoralizing turf battles and the inefficiencies that accompany them, other communities—in all likelihood, those without such extensive resources to draw on—might not be so fortunate.⁹ In sum, the New York experience was extremely positive in assisting clients,

rationales for pro bono work include the idea that lawyers owe legal services to the public because of certain benefits they have received, such as exclusive access to the courts or attorney-client privileges. See Steven Lubet & Cathryn Stewart, *A "Public Assets" Theory of Lawyers' Pro Bono Obligations*, 145 U. PA. L. REV. 1245, 1246 (1997) (positing that because a portion of lawyers' income is directly attributable the "lawyer-commodities" that have been provided to them by the public, the "pro bono obligation can therefore be seen as a simple recapture of some of the profit derived from access to this asset.")

7. To improve pro bono attorneys' effectiveness, the Legal Aid Society, Legal Services for New York, the Association of the Bar of the City of New York, and several other provider groups conducted trainings on the legal issues that pro bono attorneys might be called on to resolve. See, e.g., THE LEGAL AID SOCIETY, THE LEGAL AID SOCIETY ANNUAL REPORT, 2002, at 21-24 (2003), available at www.legal-aid.org/uploads/AR2002.pdf (last visited Apr. 24, 2004)

8. A study by the American Bar Association revealed that in 2003, New York State had 137,108 resident lawyers. This number, the highest in the country, exceeded even California, which had 134,468 resident lawyers. See Am. Bar Assoc., NATIONAL LAWYER POPULATION BY STATE 2 (2003), available at <http://www.abanet.org/marketresearch/2002nb roflawyersbystate.pdf> (last visited May 20, 2004). In terms of metropolitan areas, in 2002, New York City ranked first absolute numbers (45,400) and third in density of lawyers behind Washington D.C., and Tallahassee, Florida. Bureau of Labor Stats., U.S. Dep't of Labor, Occupational Employment and Wages, 2002, at <http://www.bls.gov/oes/2002/oes231011.htm#msa> (last visited May 20, 2004).

9. The American Bar Association has acknowledged this in its own blueprint for disaster legal services, noting that "coordinating activities . . . can be a major challenge." See ABA, *Bar Association Emergency Preparedness & Response Resources Part III: Serving the Public Following a Disaster*, at http://www.abanet.org/barserv/disaster/public_assistance.html (last visited Apr. 24, 2004).

but it is not clear if other smaller, less resource-rich communities would have similar success.

Second, in terms of expanding individual lawyers' vision of their own capacities and roles in the community, the New York Bar's mobilization efforts were clearly a short-term success. The *ABCNY Fund Report* chronicles the unprecedented level of voluntarism from the bar in the wake of the terrorist acts. Many volunteer lawyers responding to a later survey described their pro bono experiences in glowing terms.¹⁰ But now, according to the *ABCNY Fund Report*, "the rush of legal volunteers has diminished." Since the initial wave of volunteers, "it has been difficult to staff some opportunities, especially those involving a loss of income and requiring special expertise to pursue, such as workers' compensation and landlord/tenant matters."¹¹ The New York effort was a short-term reaction to an immediate disaster. It did not encompass any long-term strategy of connecting these newly motivated volunteers with organizations that provide legal services day-in and day-out. Through training, mentoring, and creating personal connections between public interest lawyers and private bar volunteers, could disaster legal relief efforts do a better job of ensuring that volunteer lawyers are not just one-time pro bono participants?

Finally, from the perspective of the profession's public standing, despite all the good the bar did after September 11th, this outpouring of pro bono assistance does not seem to have had a permanent effect on the public perception of the legal profession. The legal profession remains one of the least trusted of the professions.¹² It only takes a few counterexamples such as the tasteless ads in the wake of the Staten Island ferry disaster¹³ or the ethically challenged

10. See ABCNY FUND AT AL., *supra* note 1, at 921. Interestingly, those who were involved in ongoing legal work on behalf of victims—rather than smaller projects—were more likely to be very satisfied with their pro bono experience. See *id.*

11. *Id.* at 907.

12. See LEO J. SHAPIRO & ASSOCS., PUBLIC PERCEPTIONS OF LAWYERS CONSUMER RESEARCH FINDINGS 34 (2002) (prepared on behalf of the ABA Sec. Litigation), available at <http://www.abanet.org/litigation/lawyers/publicperceptions.pdf> (last visited May 18, 2004). According to this survey, conducted in April 2002, confidence in lawyers received a boost post-September 11th, but lawyers retained their position relative to other professions and, in fact, did not register as much gain as other professions in the wake of the disaster. Further, the report's authors speculate that any boost in lawyer's ratings is temporary, and that the lower confidence ratings will return once disaster victims begin filing lawsuits. *Id.* The survey consisted of 450 nationally representative households. *Id.* at 2.

13. See Susan Saulny, *Lawyers' Ads Seeking Clients In Ferry Crash*, N.Y. TIMES, Nov. 4, 2003, at 1.

lawyer Alan Shore on the television show *The Practice*,¹⁴ to eclipse the good work of pro bono advocates. Given the apparent intransigence of the legal profession's negative image, is improving lawyers' public image really an attainable goal of pro bono work? Or could a different system of disaster legal services delivery better contribute to a more sympathetic picture of the legal profession?

In this essay, I will explore whether, despite the New York bar's inspiring model, securing more comprehensive federal support of post-disaster legal services on the national level should be a long-term goal of the legal profession. There are many questions, not all of which can be answered here, that should be debated before such a goal is adopted. But given the heightened prospects for more disasters, we should at least start asking the questions.

For example, what would be the costs and benefits of harnessing federal resources to provide more institutionalized legal services to disaster victims on a national basis? Through existing legislation, the federal government has already acknowledged that it has the responsibility to provide legal services following a national disaster. Yet federal funding is currently extremely narrow in scope, limited to a tiny subsidy to offset the administrative costs of the American Bar Association Young Lawyer Division's post-disaster pro bono work for low income disaster victims. Given the substantial federal support for other aspects of disaster relief¹⁵—and the national impact of many disasters—the government's reliance on “a thousand points of light” to provide critical legal assistance seems risky at best. What would it cost to adopt a different model with greater government support?

If federal support for post-disaster legal services were to increase, how should those funds be administered? Rather than create a new institution, should disaster legal services be administered through the bureaucracy developed to administer federally funded legal services for the poor (“Legal Services”)? Certainly, legal as-

14. *The Practice* (ABC television series, 1997-2004).

15. See Press Release, Off. of the Press Sec'y, Dep't of Homeland Security, FY 2004 Budget Fact Sheet (Oct. 1, 2003), at http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0274.xml (last visited Apr. 21, 2004). Federal support for disaster relief assistance for FY 2004 includes \$1.8 billion for the Disaster Relief Fund, which provides federal assistance to supplement state and local governments' disaster response, recovery, preparedness and mitigation efforts, \$484 million for Public Health Programs, \$200 million for the flood map modernization activities, \$180 million for Emergency Management Performance Grants, \$153 million for the Emergency Food and Shelter Program, and \$60 million for Urban Search and Rescue Teams. See Department of Homeland Security Appropriations Act, 2004, Pub. L. No. 108-90, 117 Stat. 1137 (2003).

sistance to disaster victims is consistent with Legal Services' original mission. At the inception of federally funded legal services in the 1960s, Legal Services proponents anticipated that this new lawyer corps would be at the forefront of providing efficient, client-centered and holistic legal services to those who could not afford representation.¹⁶ Echoing this longstanding poverty law approach, leaders from the City Bar and other New York City legal organizations providing disaster legal services reached a consensus that "families should have *an individual lawyer* who would work with the family *on an ongoing basis* and provide that family with *comprehensive legal services*, either directly or by coordinating services through experts in specialty areas."¹⁷

Would greater involvement of federally funded Legal Services in post-disaster legal relief efforts serve the profession's goals for pro bono work? It certainly bears further consideration. On the one hand, greater involvement of Legal Services might improve client services, expand individual pro bono lawyers' visions by connecting them with the public interest law community, and burnish the profession's image by situating pro bono work within a more systemic effort. At the same time, it might also place federally funded Legal Services on a firmer political and financial footing. Re-envisioning (and funding) Legal Services as the entity primarily responsible for coordinating and providing legal services to victims of disaster—ranging from the disasters of poverty and unemployment to terrorist attacks¹⁸—might insulate legal services from some of the more

16. The call for national legal services arose out of, among other factors, the publication of Edgar and Jean Cahn's seminal Yale Law Journal article that advocated for establishment of "neighborhood law offices" whose purpose would, in part, be to make business and government more responsive to the needs of low-income communities. See Edgar Cahn & Jean Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1334-52 (1964).

17. ABCNY FUND AT AL., *supra* note 1, at 850.

18. Interestingly, Michele Landis argues that the origin of the American welfare state is found in contests over disaster relief in the early nineteenth century—and that definitions of "disaster" have been used to distinguish between the morally deserving needy and others. See Michele L. Landis, "Let Me Next Time Be 'Tried By Fire': Disaster Relief and the Origins of the American Welfare State 1878-1874," 92 Nw. U. L. REV. 967, 969-70 (1998). See generally David W. Sars, *Helping Hands: Aid for Natural Disaster Homeless vs. Aid for "Ordinary Homeless"*, 7 STAN. L. & POL'Y REV. 129 (1995-1996) (raising questions regarding differential treatment of disaster homeless populations versus other "ordinary" homeless).

devastating challenges to its funding and mission.¹⁹ Further, identifying federally funded Legal Services as a component of the national security infrastructure set up to deal with disasters, with strong connections to the Department of Homeland Security, would symbolically and practically underscore the importance of access to justice to our nation’s long-term well-being.²⁰ Legal Services would no longer be a besieged holdover from the War on Poverty,²¹ but an important, contemporary aspect of our nation’s response to disaster, including terrorism.²²

I. THE FEDERAL GOVERNMENT’S CURRENT ROLE IN PROVIDING POST-DISASTER LEGAL ASSISTANCE

A. A Short History of Federal Disaster Assistance

The federal government’s role in providing disaster assistance stretches back more than two centuries, with legal assistance being added to the mix much more recently. Beginning in 1794, Congress considered (and granted) requests for class-based relief from the consequences of disaster; the particular measure considered in

19. While inflation has risen, the level of federal funding for legal services since 1980 has not.

| Grant Year | Annual LSC Appropriation in Actual Dollars | Annual LSC Appropriation in 2001 | Percentage Change From 1980 Dollars (Using 2001 Dollars) |
|------------|--|----------------------------------|--|
| 1980 | 300,000,000 | 646,238,000.0% | 0.0% |
| 1981 | 321,300,000 | 627,401,000 | -2.9% |
| 1982 | 241,000,000 | 443,290,000 | -31.4% |
| 1990 | 316,525,000 | 429,864,000 | -33.5% |
| 1995 | 400,000,000 | 465,879,000 | -27.9% |
| 1996 | 278,000,000 | 314,500,000 | -51.3% |
| 2001 | 329,274,000 | 329,274,000 | -47.0% |

See ALAN W. HOUSEMAN, CENTER FOR LAW AND SOCIAL POLICY, *CIVIL LEGAL AID IN THE UNITED STATES: AN OVERVIEW OF THE PROGRAM IN 2003*, at 4-5, available at http://www.clasp.org/DMS/Documents/1064583480.94/Legal_Aid_2003.pdf (last visited Apr. 21, 2004).

20. This was the original rationale for Legal Aid put forward by Reginald Heber Smith. See REGINALD HEBER SMITH, *JUSTICE AND THE POOR* 5 (Arno Press & N.Y. Times 1971) (1919).

21. See *infra* note 69 and accompanying text.

22. In this article, I address only funding directed to low income victims of disasters. Funding from the Federal Emergency Management Agency, as little as it is, is currently limited to assisting low income people, as is the federal funding provided to Legal Services. Arguably, the federal support for disaster legal services should be extended to all victims, at least in the initial stages following a disaster. This broader provision of legal services could also be administered through Legal Services. But because such a broad disaster legal services program serving all income groups could dilute Legal Services’ mission of serving the poor, it would have to be carefully crafted.

that year sought indemnification from the United States "to all such citizens . . . whose property may have been captured, and confiscated under the authority of Great Britain."²³ One of the earliest federal responses to a *natural* disaster was the Congressional Act of 1803, which provided financial assistance to a New Hampshire town following an extensive fire.²⁴

For many years, the federal government continued responding to disasters, whether natural or man-made, on a piecemeal basis. In the nineteenth century, Congress enacted hundreds of pieces of ad hoc legislation in response to hurricanes, floods, and other disasters. Though disasters were dealt with on a case-by-case basis, the aggregate amounts involved were significant: for example, in 1817, when Congress was still dealing with the aftermath of the War of 1812, relief appropriations constituted more than ten percent of the federal budget.²⁵

The federal government developed a bureaucracy to serve as a clearinghouse for these funds.²⁶ It was not until the 1930s, however, that the federal response to natural disasters was finally institutionalized through a permanent, though still somewhat fragmented, approach of assigning responsibility for particular types of disasters to appropriate agencies. For example, the Bureau of Public Roads provided funding when highways and bridges were damaged by natural disasters.²⁷ The Flood Control Act of 1936²⁸ addressed the impact of floods.²⁹ The Reconstruction Finance Corporation was given authority to make disaster loans for repair and reconstruction of certain public facilities following an earthquake, and later, other types of disasters.³⁰

23. Landis, *supra* note 18, at 982.

24. See Victoria Sutton, *Biodefense: Who's In Charge?*, HEALTH MATRIX: J. OF L.-MED., Winter 2003, at 117, 135. About ten years earlier, the federal government had provided relief when drought destroyed Native American crops, an act cited by some as the first instance of federal disaster relief. See GAINES M. FOSTER, THE DEMANDS OF HUMANITY: ARMY MEDICAL DISASTER RELIEF 8 (1983).

25. Landis, *supra* note 18, at 982.

26. *Id.* at 983.

27. See Fed. Emergency Mgmt. Agency, *FEMA History* (2003), at <http://www.fema.gov/about/history.shtm> (last visited Apr. 27, 2004) ("In 1934, the Bureau of Public Roads was given authority to provide funding for highways and bridges damaged by natural disasters.") .

28. 33 U.S.C. §§ 701a-709b (2004).

29. See Daniel D. Barnhizer, *Givings Recapture: Funding Public Acquisition of Private Property Interests on the Coasts*, 27 HARV. ENVTL. L. REV. 295, 325 (2003).

30. The Reconstruction Finance Corporation ("RFC") was a U.S. government agency, created in 1932 by the administration of Herbert Hoover. Its purpose was to facilitate economic activity by lending money during the Great Depression. After its

The Robert T. Stafford Disaster Relief and Emergency Act of 1974³¹ further spells out the federal role for disaster relief in those instances in which the President has declared a national disaster or emergency. Among other things, the Stafford Act provides for federal grants to states toward certain emergency costs, cash and housing assistance, and emergency preparedness planning.

These functions and the myriad agencies engaged in disaster relief were finally consolidated on the federal level in 1979 when President Carter issued an Executive Order establishing the Federal Emergency Management Agency (“FEMA”).³² FEMA coordinates all assistance provided directly by the federal government in response to declared disasters and emergencies. Though often identified in the public’s mind with natural disasters, FEMA’s responsibilities have always included civil defense.³³ Indeed, the first director of FEMA, John Macy, frequently emphasized the similarities between natural hazards preparedness and civil defense activities—a parallel harkening back to the origins of disaster relief in the late eighteenth century.³⁴ Under Macy’s direction, FEMA began development of an Integrated Emergency Management System with an all-hazards approach that included “direction, control and warning systems which are common to the full range of emergencies from small, isolated events to the ultimate emergency—war.”³⁵

The World Trade Center attacks of September 11th further focused the agency on issues of national preparedness and homeland security. In March 2003, FEMA joined twenty-two other federal agencies, programs and offices to constitute the Department of Homeland Security (“DHS”).³⁶ FEMA is now one of four major branches of DHS, with about 2,500 full-time employees in the

scope was greatly widened by the New Deal administration, it financed the construction and operation of war plants, made loans to foreign governments, provided protection against war and disaster damages, and engaged in numerous other activities. By the time it was totally disbanded in 1957, the RFC had made loans of approximately \$50 billion since its creation in 1932. See JESSE H. JONES, *FIFTY BILLION DOLLARS* 3-12 (1951).

31. 42 U.S.C. § 5121 (2003).

32. Exec. Order No. 12148 (1979), available at <http://www.fema.gov/v/library/eo12148.shtm> (last visited Apr. 24, 2004).

33. See *id.*

34. See *supra* notes 23-25 and accompanying text.

35. See Fed. Emergency Mgmt. Agency, *supra* 27.

36. See 6 U.S.C. § 111 (2003).

Emergency Preparedness and Response Directorate, supplemented by more than 5,000 stand-by disaster reservists.³⁷

B. Federal Disaster Legal Services

The Stafford Act governs the scope of federal governmental assistance to be made available to states in the event of a disaster. In general, the federal government shall assist states and local governments by “providing federal assistance programs for both public and private losses sustained in disasters.”³⁸

The Stafford Act also codifies legal services’ place in the federal disaster relief scheme. According to the Act:

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this Chapter, the President *shall assure that such programs are conducted* with the advice and assistance of appropriate Federal agencies and State and local bar associations.³⁹

Unfortunately, the legislative history of the Stafford Act reveals little about Congress’s vision of how this provision might be implemented.

The federal regulations, however, provide some specificity—though the regulatory language stands in tension with the plain statutory language. According to 44 CFR § 206.164(a), “[l]egal services, including legal advice, counseling, and representation in non fee-generating cases . . . may be provided to low-income individuals who require them as a result of a major disaster.”⁴⁰ Fee-generating cases are defined as those cases that would attract a private lawyer.⁴¹ The regulations also contemplate that legal services may be provided by “volunteer lawyers,” “Federal lawyers,” or “private lawyers who may be paid by the Federal Emergency Management Agency.”⁴²

To date, FEMA has implemented this provision using volunteer lawyers, recruited through a contract entered into with the American Bar Association’s Young Lawyer’s Division (“YLD”). The al-

37. See Fed. Emergency Mgmt. Agency, *Who We Are* (2004), at <http://www.fema.gov/about/who.shtm> (last visited Apr. 24, 2004).

38. 42 U.S.C. § 5121(b)(6) (2003).

39. 42 U.S.C. § 5182 (2003) (emphasis added).

40. 44 C.F.R. § 206.164(a) (2003) (emphasis added).

41. 44 C.F.R. § 206.164(b).

42. 44 C.F.R. § 206.164(c).

liance between FEMA and YLD was inspired by the organized bar's response to the devastation wrought by Hurricane Camille in 1969.⁴³ The original agreement between the two entities was signed in 1978.⁴⁴ Under the most recent iteration of this contract, signed in 1993, the YLD undertakes to "activate State and local attorneys to provide free legal services to disaster victims."⁴⁵ This is FEMA's only involvement in providing disaster legal services, raising some question as to whether such a purely volunteer-driven program meets the Stafford Act's requirement that the President "*shall assure* that such programs are conducted" whenever low income individuals cannot otherwise obtain adequate assistance in meeting their post-disaster legal needs.⁴⁶

According to the FEMA-YLD contract, "[s]hould FEMA request the assistance of the YLD, the YLD shall, with the assistance and oversight of FEMA, have sole and complete responsibility for coordinating legal efforts with all other State and local bar associations, affiliates and legal services organizations."⁴⁷ Consistent with the restrictions found in the Stafford Act regulations, volunteer lawyers acting under the FEMA-YLD agreement are prohibited from handling any "fee-generating" cases that arise from the disaster. The volunteer lawyers are generally called on to provide assistance in areas such as insurance claims, repair contracts, the replacement of lost documents, mortgage foreclosures, and landlord-tenant problems. Under the federal statute and regulations, as well as the terms of the FEMA-YLD contract, representation is limited to low income individuals.⁴⁸

In exchange for the YLD's enlistment of pro bono lawyers to provide free disaster legal services, FEMA covers the administrative costs of coordinating the pro bono legal assistance.⁴⁹ These

43. Stephanie Francis Ward, *Preparing for After the Disaster*, ABA J. E-REPORT (Oct. 31, 2003), available at WL 2 No. 43 ABAJEREP 4.

44. *Id.*

45. Agreement Between the American Bar Association on Behalf of its Young Lawyers Division and Office of Disaster Assistance Programs Federal Emergency Management Agency Concerning Disaster Legal Services 2 (July 13, 1993) [hereinafter FEMA-YLD Agreement].

46. 42 U.S.C. § 5121 (2003)

47. FEMA-YLD Agreement, *supra* note 45, at 2.

48. As set out in the YLD's Disaster Legal Services Hotline Manual developed for staffing the Disaster Legal Services Hotline for FEMA Major Declared Disaster No. 1498 (California wildfires): "[f]or purposes of DLS, a victim is a low-income individual if the victim has insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or results from the disaster." ABA YOUNG LAWYERS DIV., DISASTER LEGAL SERVICES HOTLINE MANUAL 1 (2003) [hereinafter MANUAL].

49. See FEMA-YLD Agreement, *supra* note 45, at 3.

costs are minimal. For example, the FEMA contract with YLD to provide post-September 11th services in the New York City metropolitan area cost \$2,010, in part because many of the costs were absorbed by the volunteering lawyers and their firms.⁵⁰ Generally, FEMA allocates a capped amount of \$5,000 in administrative costs to each disaster.⁵¹ According to Rani Newman Mathura, the Connecticut attorney who coordinated the post-September 11th New York program and now chairs YLD's disaster relief efforts nationwide, most of the money for the post-September 11th effort was spent setting up phone lines for a hot line.⁵² Because of the extensive damage to the communications systems in New York City, the actual hotline was set up in Connecticut. With FEMA covering these minimal start-up costs, the YLD mobilized 150 private attorneys, paralegals, and law students to staff the hot line for nine hours a day for five months following the disaster, with voicemail service available at other times. A total of 1,017 individuals received services over the hotline, with hundreds more who did not qualify for FEMA-YLD assistance referred to various bar associations.⁵³

There is no doubt that, like other forms of pro bono work, disaster relief assistance is tremendously rewarding on a personal level.⁵⁴ Further, it is clear that the YLD strives to provide high quality legal services. In the twenty-five years since the original contract was signed with FEMA, many members of the YLD have gained expertise in providing disaster legal services. Materials and procedures developed by individual chapters are often shared with

50. Telephone Interview with Ken Curtin, FEMA Voluntary Agency Liaison (Oct. 7, 2003).

51. Telephone Interview with Rani Newman Mathura, ABA Young Lawyers Div. Coordinator of Disaster Legal Services (Oct. 23, 2003).

52. *Id.*

53. Memorandum from Susan M. Winick & Fennemore Craig, to Gloria Rodriguez, FEMA, et al. (Mar. 13, 2002) (regarding Final Disaster Legal Services Report for 9/11 Hotline) (on file with author).

54. For example, Tracy Giles, former chair of the ABA/YLD Disaster Legal Services Committee (also known as the "Master of Disaster"), volunteered to provide disaster legal services because his own family's history. His grandfather, a poor sharecropper in Virginia, suffered through a series of devastating tornadoes shortly after he scraped up enough money to finally purchase his own land. Without any legal assistance to handle insurance claims and other matters, the family lost everything and Giles's father was forced to forego college. Giles derived great satisfaction from providing legal help that, had his own family received it, might have changed their destiny. See Monique Branscombe, *Good Samaritans: Lawyers Who Give Lawyers a Good Name*, AFFILIATE (Jan. 29, 1997), at <http://www.abanet.org/yld/affiliate/jan97/22-3branscomb.html> (last visited May 3, 2004).

others facing new disasters.⁵⁵ The internet greatly facilitates such sharing of expertise.⁵⁶ Despite these strengths, however, there are some significant drawbacks inherent in the system that FEMA and YLD have put into place for delivering disaster legal services to low income people.

First, providing continuity and retaining expertise are significant issues for the YLD. The YLD includes lawyers only up to age thirty-six or who have practiced five years or less;⁵⁷ lawyers who “age out” are no longer on YLD’s roster of potential volunteers, though they may be targeted as ABA members. Further, YLD’s volunteer lawyers are typically drawn from a wide range of specialties and often do not have any background in the areas of law pertinent to disaster legal services.⁵⁸ As the YLD Disaster Legal Services Hotline Manual states, “[i]t is not unusual for participating attorneys not to be experts in the particular areas on which they are being consulted.”⁵⁹ In New York, the hotline volunteers received manuals and information sheets on how to deal with various legal matters, but as the *ABCNY Fund Report* intimates, there is no substitute for real in-depth expertise in the particular area.

Second, as a voluntary organization, YLD cannot promise full coverage around the country.⁶⁰ To date, YLD coordinators have

55. For instance, after September 11th, the State Bar of California “provided its Disaster Legal Services expertise to New York law offices.” See ABA Div. For Bar Servs., *Bar Association Activities*, at <http://www.abanet.org/barserv/disaster/bar-responses.html> (last visited Apr. 24). Similarly, the Florida Bar provided “advice and counsel based on Florida’s experience after Hurricane Andrew.” *Id.* The President of the Oklahoma Bar Association (“OBA”) wrote to members of the New York Bar that:

[I]f you would like, I will be very happy to provide information regarding our experience and our successful OBA Disaster Relief plan. Moreover, we extend an offer to have experienced members of our committee communicate directly with your bar association’s representatives on what we faced and what seemed to work for us.

Id.

56. The New York bar also used this resource. As the *ABCNY Fund Report* describes, the ProBono.net website was a source of critical information for New York City volunteers seeking resources that would assist them in providing representation to victims. See *ABCNY FUND AT AL.*, *supra* note 1, at 861-63.

57. ABA Young Lawyers Div., *Membership*, at <http://www.abanet.org/yld/about.html> (last visited May 3, 2004).

58. See ABA Young Lawyers Div., *Service to the Public*, available at <http://www.abanet.org/yld/publicservice.html> (last visited May 3, 2004).

59. *MANUAL*, *supra* note 48, at 4.

60. The YLD boasts more than 140,000 members. ABA, *Profile Of The American Bar Association* (August 2003), at <http://www.abanews.org/profile.html> (last visited May 5, 2004), but membership is automatic when a lawyer under age 36 or practicing less than five years joins the ABA. See ABA Young Lawyers Div., *supra* note 57. A

provided disaster relief services even in those jurisdictions without active YLD chapters, relying on ABA members for assistance. For example, in 1995, when Hurricane Marilyn struck the Virgin Islands, the YLD affiliate had not yet set up any emergency relief programs. Instead, the YLD Disaster Committee chair flew to St. Thomas and, "by going door to door and running advertisements in the local paper," was able to recruit volunteer attorneys to assist residents with legal problems in the wake of the disaster.⁶¹ But in rural areas or other sites without active ABA chapters, relying on YLD's contacts may not yield adequate assistance. A recent effort to mobilize lawyers to respond to California's wildfire disasters, for instance, initially yielded only twelve lawyers to handle hotline calls.⁶²

Finally, and perhaps most significantly, YLD attorneys acting under the FEMA contract cannot provide full, unfettered representation or even advice. FEMA purports to contractually limit the legal advice that YLD attorneys can provide. In addition to restrictions on income and limitations on accepting fee-generating cases, the FEMA-YLD contract states that "[w]hile operating under this Agreement, participating attorneys may not initiate, or counsel a disaster victim to initiate litigation against the Federal, State, or local Governments, with respect to obtaining disaster assistance."⁶³ The Disaster Legal Services Hotline Manual expands on this prohibition, stating that "[b]ecause DLS [Disaster Legal Services] is a FEMA-sponsored program, attorneys cannot advise disaster survivors about how to bring lawsuits against the government or initiate a lawsuit against the government to obtain disaster assistance."⁶⁴ Indeed, the restriction extends even further, barring YLD lawyers from providing pro bono representation in an administrative appeal of a FEMA claims decision.⁶⁵ Notably, not only are YLD lawyers forbidden from providing representation against the government, they are forbidden from even giving a hotline caller preliminary guidance on the issue. In particular, the Hotline Manual instructs lawyers that if a caller seeks information on suing

much smaller number of YLD members are actively involved in the division. See Am. Bar Assoc., *Profile of the American Bar Association* (Jan. 2004), at <http://abanews.org/profile.html> (last visited May 19, 2004).

61. See Susan Fahey Desmond, *Are You Prepared for Disaster?*, AFFILIATE (Nov. 1995), at <http://www.abanet.org/yld/desmond.html> (last visited May 10, 2004).

62. Ward, *supra* note 43.

63. FEMA-YLD Agreement, *supra* note 45.

64. MANUAL, *supra* note 48, at 4.

65. *Id.* at 8.

the government, “you must immediately disclose that you cannot provide assistance or advice on this subject. You should then immediately provide the caller with the State Bar Lawyer Referral Service phone number . . . and terminate the call.”⁶⁶

In New York City, these drawbacks to the FEMA-YLD arrangement did not have a significant impact since nearly 4,000 attorneys volunteered outside of the FEMA-YLD framework to provide assistance through City Bar channels alone.⁶⁷ Further, New York City has two substantial legal organizations devoted to providing direct civil legal services to the poor, the Legal Aid Society and Legal Services for New York (“LSNY”), along with many smaller, more specialized legal organizations, such as inMotion and the New York Legal Assistance Group (“NYLAG”), that provide services to low income clients.⁶⁸ Compared to these resources and expertise, the FEMA hotline was a drop in the bucket. Moreover, in New York City, private, unrestricted funds, either from the volunteer lawyers’ own firms or from outside philanthropic sources, were available to support pro bono lawyers in bringing a full range of claims on behalf of victims. The FEMA restrictions, while perhaps frustrating for clients who initiated calls to the FEMA-YLD hotline, would not likely have prevented an individual claimant in New York City from challenging a government decision.

In settings with fewer legal resources than New York, however, YLD lawyers play a much more central role in providing disaster legal advice to low income people. Given the limitations of the FEMA-YLD arrangement outlined above, and the central importance of legal assistance to full recovery from disaster, another approach might be more effective. While it presents drawbacks of its own, funding existing Legal Services offices to coordinate disaster

66. *Id.* at 4. This contractual restriction is of doubtful constitutionality in the wake of *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533 (2001). That case successfully challenged restrictions on federally-funded legal services that barred legal services lawyers from advising clients concerning legal issues arising from welfare reform. See *Legal Servs. Corp.*, 531 U.S. at 561. Like the law challenged in *Legal Servs. Corp.*, the restriction imposed by FEMA significantly restricts free speech by attempting to insulate the government’s own laws from challenge.

67. See E. Leo Milonas, *Holistic Approach Makes Experience Complete*, N.Y. L.J., May 1, 2003, at 8. Milonas is the president of the Association of the Bar of the City of New York. See *id.*

68. InMotion specializes in representing low income battered women. See InMotion, *Our Mission*, at <http://www.inmotion.org> (last visited Apr. 26, 2004). NYLAG provides a broader range of legal services including representation on Medicaid, Medicare, and Social Security issues. New York Legal Assistance Group, *About the New York Legal Assistance Group*, at <http://nylag.org/profile/about-nylag.htm> (last visited Apr. 26, 2004).

legal relief efforts for low income people might be one such approach.

II. FEDERALLY FUNDED LEGAL SERVICES

Predating disaster legal services by a decade, the federal government has provided financial support for Legal Services to the poor since 1966.⁶⁹ The Legal Services initiative was conceived as part of the larger federal War on Poverty that included community social service centers, Head Start and many other social service programs.⁷⁰ Legal Services, however, is built on a long history of legal aid to the poor dating back to the turn of the century and, in some communities, even earlier. Those legal aid programs were typically funded through private channels, supported through organized bar contributions and pro bono efforts of elite lawyers.⁷¹

In the 1960s, proponents of a new federally-funded Legal Services program successfully argued that privately-funded legal aid efforts were circumscribed by the bar's own interests—and thus could not engage in the aggressive litigation to achieve social change that the War on Poverty demanded. As they posited, federal funding was necessary to provide Legal Services lawyers with the freedom and neutrality necessary to really resolve their clients' problems, and indeed, to challenge poverty itself.⁷² The effect of this new freedom was dramatic. For the first time, poor people's lawyers began taking cases to higher courts and bringing class actions intended to create systemic changes to benefit their clients.⁷³ At the same time, storefront Legal Services offices provided direct

69. See EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM* 88 (2d. ed. 1978).

70. See *id.* at 39-43.

71. MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973*, at 11-19 (1993).

72. Federally funded legal services began in 1966 as a program of the newly created Office of Economic Opportunity ("OEO"). As Johnson recounts in *Justice and Reform*, OEO's Legal Services Program adopted "law reform" as its primary goal and endeavored to use the law to achieve social change. JOHNSON, *supra* note 69, at 132. Some advocates anticipated that the advent of Legal Services would serve to educate and involve the rest of the profession in addressing poverty issues. See Russell G. Pearce, *Lawyers as America's Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer's Role*, 8 U. CHI. L. SCH. ROUND-TABLE 381, 417-19 (2001). Professor Pearce, however, argues that the development of the public interest bar, based in the newly created Legal Services offices of the 1960s, undermined the previous view that the elite lawyers were the "governing class," charged with responsibility for the public good. See *id.* at 418.

73. SUSAN E. LAWRENCE, *THE POOR IN COURT: THE LEGAL SERVICES PROGRAM AND SUPREME COURT DECISION MAKING* 8-11 (1990).

services to individuals seeking assistance with matters ranging from housing to child custody.⁷⁴ Though never supported at a level that would permit a comprehensive effort, federally funded Legal Services has made a significant impact on the legal rights of poor people in America.

Since 1974, federally funded Legal Services has been administered through the Legal Services Corporation (“LSC”), an independent federal agency.⁷⁵ The LSC’s ostensible independence, however, has not resolved the longstanding controversy surrounding federal Legal Services. In recent years, governmental restrictions on the use of Legal Services funds and significant cuts to basic funding have hobbled efforts to freely and aggressively represent clients.⁷⁶ Funding for national back-up centers that facilitated coordination among legal services offices pursuing strategic litigation and advocacy has been eliminated.⁷⁷ Federal regulations bar federally funded legal services organizations from bringing class actions, lobbying on behalf of client interests, participating in administrative rulemaking or litigating on behalf of prisoners, even if the organizations use funds from other sources to support these initiatives.⁷⁸ Legal services organizations are barred from collecting attorneys’ fees for successful representation.⁷⁹ As a result, a number of poor people’s lawyers have “spun off” in the past decade to create small, but independent, legal organizations that raise funds from unrestricted sources and have the freedom to bring cases that are forbidden to grantees of Legal Services Corporation funds.⁸⁰

74. See JOHNSON, *supra* note 69, at 100.

75. Legal Services Corporation Act of 1974, 42 U.S.C. § 2996 (2004); Douglas S. Eakeley, *Role of the Legal Services Corporation in Preserving our National Commitment to Equal Access to Justice*, 1997 ANN. SURV. AM. L. 741, 742 (1997) (purpose of Legal Services Corporation was to insulate civil legal assistance from political pressures).

76. See Nina Bernstein, *Under Siege, Lawyers Seek New Tactics to Help Poor*, N.Y. TIMES, Jan. 21, 1996, § 1, at 13.

77. See ALAN W. HOUSEMAN, CIVIL LEGAL ASSISTANCE FOR THE 21ST CENTURY: ACHIEVING EQUAL JUSTICE FOR ALL 11 n.22 (1998), available at <http://www.clasp.org/DMS/Documents/999903354.829/civil%20legal%20assistance%20for%20the%2021st%20century.pdf> (last visited Apr. 27, 2004).

78. See *id.* at 11.

79. 45 C.F.R. § 1609.3 (2003) (restricting representation on fee-generating cases); 45 C.F.R. § 1612.3 (2003) (restricting lobbying); 45 C.F.R. § 1617.3 (2003) (restricting representation in class actions).

80. See, e.g., Alan Houseman, *Advocacy Responses to State Budget Cuts and Reform Proposals*, 26 CLEARINGHOUSE REV. 731, 740 (1992) (describing the use of private funds to lobby against changes in state and national welfare policies).

In New York, two large organizations, LSNY and the Legal Aid Society, specialize in providing assistance with civil matters such as housing, government benefits and low-wage work issues, as well as other issues commonly facing the poor.⁸¹ Despite their considerable expertise on issues pertinent to low income disaster victims, neither LSNY nor Legal Aid received any money from the federal government to support expansion of their work to low income World Trade Center victims.

LSNY is currently the only New York City recipient of LSC funding.⁸² With no FEMA or other disaster relief support forthcoming in light of the disaster, LSNY's funding to provide legal assistance to disaster victims was provided through several private sources such as the September 11th Fund.⁸³

While the Legal Aid Society also specializes in representation of the indigent, it has refused federal funding since the restrictions on class actions and fee-generating cases were imposed on LSC grantees.⁸⁴ Like LSNY, the Legal Aid Society received no FEMA money to provide representation to the indigent victimized by the terrorist attacks; the Legal Aid Society mobilized other sources of funds to support its disaster legal relief work.⁸⁵ The Legal Aid Society, however, did receive some FEMA funds directed to repairs of the Legal Aid building, which stands in the vicinity of the World Trade Center site.⁸⁶

Because the Legal Aid Society secured significant private funding to allow it to respond to the events of September 11th, it was in a position to provide some direct services to the economic victims of the disaster. As described in the *ABCNY Fund Report*, senior Legal Aid lawyers staffed the legal services table at the Disaster Assistance Service Center at 141 Worth Street, every day from 4:00

81. This arrangement is unusual, but reflects in part the high level of private support that the New York Legal Aid Society, dating from the 1890s, continued to receive from the organized bar even after federal funds supported the creation of LSNY's predecessor organizations in the 1960s.

82. See Legal Svcs. Corp., *Map of LSC Programs*, at <http://www.lsc.gov/fund-prog.htm> (last visited Apr. 27, 2004).

83. ABCNY FUND AT AL., *supra* note 1, at 847, 881.

84. See Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996).

85. By the end of 2002, the Legal Aid Society had received grants of \$5 million to support its disaster relief activities. Grants came from, *inter alia*, the Ford Foundation, the Unitarian Universalists, and the New York Times Foundation. See THE LEGAL AID SOCIETY, *supra* note 7, at 4.

86. *Hearing on the Federal Response of 9/11 Before the S. Comm. on Env't and Pub. Works*, 107th Cong. (2002) (Statement of Danny Greenberg, President and Attorney in Chief, Legal Aid Society), available at 2002 WL 31151402 (F.D.C.H.).

to 8:00 p.m. The Legal Aid lawyers' advice was invaluable because, unlike most of the other lawyers involved in providing disaster legal services, they had:

legal expertise and relevant experience in critical areas. As poverty lawyers, they were familiar with the nature of the problems faced by many economic victims at the Disaster Center. These people needed benefits, whether public or private; they had housing problems, with many facing eviction and rent arrears; they had no health insurance or means of obtaining needed medical care. The expertise of Legal Aid's staff allowed them to be effective advocates on behalf of victims, and their experience dealing with people in crisis enabled them to handle the challenges of the situation expertly.⁸⁷

With less budgetary flexibility and fewer private dollars supporting its disaster relief advocacy than Legal Aid, LSNY focused its efforts on providing direct services in its target communities and conducting trainings of pro bono attorneys. Legal Services was not at the center of the legal mobilization described in the Report. This "follower" role for the only federally-funded Legal Services program in the City is all the more remarkable because the World Trade Center disaster resulted from international terrorist attacks—by its very nature a federal concern—rather than a circumstance such as flooding that might be deemed more local and less deserving of federal attention.⁸⁸

III. A DIFFERENT MODEL: FEDERAL FUNDING FOR DISASTER LEGAL SERVICES

Would the provision of legal services in the wake of the September 11th attacks have been different if, instead of directing an insignificant subsidy to private pro bono efforts, FEMA provided adequate funding for disaster legal services to the New York agen-

87. *ABCNY FUND AT AL.*, *supra* note 1, at 877.

88. Of course, Legal Services for New York City, the only federal legal services grantee in New York City, represented many clients affected by the September 11th attacks, and played an important role in providing training and back-up advice to volunteer lawyers. As the *ABCNY Fund Report* indicates, "[n]onprofit and legal service organizations participated in every aspect of the legal relief effort." *Id.* at 845. Without additional funding to support disaster legal services, however, and with an active docket that pre-existed the attacks, LSNY could only redirect its efforts in a limited way. In describing the significant contributions that LSNY attorneys made as mentors, the Report hints at the efficiencies that might have been gained had LSNY been in a position to more freely share its lawyers' time and expertise. *See id.* at 848-52 ("Legal services organizations, such as Legal Services for New York City and New York Legal Assistance Group, played a vital role in providing and recruiting mentors with relevant expertise."). *Id.* at 852.

cies already specializing in legal assistance to indigents? Certainly. Greater funding of Legal Services lawyers would have enabled them to take a larger leadership and coordinating role in providing services to low income victims, through such means as hiring additional staff to provide services and working in closer partnership with neophyte pro bono lawyers. Legal Services lawyers' involvement would have increased the general expertise of lawyers providing assistance and ensured that the legal needs presented by clients would be evaluated in the larger context of the community. While pro bono lawyers would still be a vital part of such a massive assistance effort, the greater involvement of Legal Services lawyers might have built closer long-term ties between the public interest legal community and the pro bono attorneys who volunteered in the wake of September 11th.⁸⁹ Further, Legal Services organizations would have been well-positioned to provide "holistic" assistance in a wide range of areas, using existing funding to address clients' legal issues that pre-dated the disaster as well as new funding to address those problems caused or exacerbated by the World Trade Center attacks.

As it was, because of the unprecedented level of private philanthropic funds available in the wake of September 11th, LSNY's and Legal Aid's efforts were well-supported even without FEMA funds. In fact, private funds directed to legal services organizations were preferable in some ways to government sources—and even to private bar pro bono efforts—since these funds came without restrictions on representation. As described above, pro bono lawyers' representation was often circumscribed by potential conflicts of interest. The use of FEMA funds for legal assistance was also significantly limited by the terms of the FEMA-YLD contract.

But New York is unique. It is more pertinent to ask, perhaps, how provision of legal services to low income disaster victims might be different in less resource-rich areas experiencing disasters such as the California wildfire areas, Mississippi floods, or Oklahoma City bombings, if FEMA adequately funded Legal Services organizations to provide disaster legal services. Disaster victims in these areas currently receive from the government, at most, access to a hotline and consultation with an attorney, paralegal or law student who must terminate the conversation if the possibility of suing the government is broached. In many instances, these vic-

89. Assuming that FEMA funds were limited to disaster legal services to the poor, the organized Bar would still play a key, independent role in providing advice and referrals to disaster victims who did not qualify as low income.

tims remain vulnerable to the same legal “sharks”—or “disaster gypsies”—who moved so quickly to solicit clients after the Staten Island ferry disaster. Were the 179 Legal Services organizations around the country funded to provide disaster legal services to low income victims, coverage would certainly be significantly more seamless than it is under the FEMA-YLD contract.

In fact, the benefits of such a Legal Services-centered system would be significant, particularly from the client’s perspective: they could expect lawyers with pertinent expertise and experience in the relevant communities; readily-available, on-the-ground institutional support; and long-term commitment to the issues and the community that transcend the immediate disaster. But there are also downsides: 1) the possible loss of broad participation by volunteer attorneys, along with the attendant personal and professional benefits of pro bono efforts; 2) with greater government funding, the potential for more dramatic governmental restrictions designed to control advice and representation; and 3) the possibility that disaster legal services might overwhelm the fundamental mission of federally funded legal services. Each of these potential drawbacks are discussed below.

First, if federal funding for disaster legal services wholly eclipsed individual pro bono efforts, the profession would definitely be the worse for it. That need not be the case, however. With greater funding, Legal Services lawyers can provide greater leadership in providing disaster legal services by conducting training sessions, creating mentoring relationships, or supervising pro bono counsel while still involving volunteer attorneys in all aspects of the representation. The personal rewards of pro bono work will still be available—and indeed, might be even greater because of the increased opportunities to work closely with, and learn from, public interest lawyers. Further, the role of pro bono in shoring up the profession’s image would not be undermined. Several surveys indicate that public interest lawyers generally enjoy greater public trust and support than do lawyers at large.⁹⁰ Situating disaster legal services as an effort of full-time public interest lawyers, supported fully by public-spirited private lawyers acting pro bono, will more

90. In the ABA’s April 2002 survey of the public’s perception of lawyers, sixty-three percent of those surveyed rated it important that lawyers engage in community service work and pro bono cases in order to improve the public’s perception. See LEO J. SHAPIRO & ASSOCS., *supra* note 12, at 37. Participants generally held negative views on lawyers, reserving their neutral or positive reactions only for real estate and public interest lawyers. *Id.* at 16.

likely than not enhance the profession's reputation. It clearly can't hurt.

Second, LSC's experience with governmental restrictions clearly underscores the danger of federal funding. The particular restrictions currently imposed on FEMA funds, however, barring suits against the government—including administrative appeals of agencies' benefits decisions⁹¹—would not likely survive a legal challenge in the wake of the Supreme Court's decision in *Legal Service Corporation vs. Velazquez*.⁹² Like the restrictions challenged there, the limitations on representation imposed on YLD lawyers as recipients of FEMA funding constitute viewpoint-specific conditions that violate the First Amendment.⁹³ On a broader note, because the poor deserve full and fair legal representation, it is important to continue defending government-funded legal services against these sorts of restrictions. Beating a retreat, and substituting private pro bono representation and voluntarism for federally funded Legal Services, will serve neither the profession nor clients in the long run. The fact that the possibility of federal funding for disaster legal services has not been more forcefully raised unfortunately speaks to the effectiveness of years of attacks on federally funded Legal Services.

Finally, would responsibility for disaster legal services overwhelm LSC-funded organizations? The argument might go as follows: day-to-day, Legal Services offices simply are not staffed-up to the necessary levels to undertake legal representation of all low income disaster victims. More importantly, disaster legal services are far outside the scope of legal services' mission of using law to promote social change and social integration of the poor. If disaster is added to Legal Services' portfolio, these offices will simply become routine service centers rather than organizations providing their communities with strategic counsel as well as daily representation.

The response to this legitimate concern is twofold. Initially, as set out above,⁹⁴ giving Legal Services lawyers responsibility for providing and coordinating disaster relief activities should not imply that no other lawyers would participate. Indeed, only a truly inefficient system would ignore the availability of volunteer legal assistance and mandate exclusive Legal Services staff attorney rep-

91. See *supra* notes 76-78 and accompanying text.

92. 531 U.S. 533 (2001).

93. See *supra* note 66.

94. See *supra* notes 89-90 and accompanying text.

resentation. Rather, additional federal funds would allow Legal Services offices to increase or reallocate staff, at least temporarily, to provide additional disaster services, including administration and coordination, but not to supplant all pro bono efforts. Consistent with current Legal Services efforts to involve pro bono counsel, each Legal Services office might include a disaster legal services coordinator to oversee the pro bono efforts of lawyers. By linking these pro bono efforts directly to federally funded Legal Services, an institution with a long-term commitment to providing legal assistance in the affected community, new volunteers might gain connections that would enable them to continue their legal volunteerism long after the disaster receded.

Moreover, LSC's strategic mission need not be compromised—in fact, it would be furthered if Legal Services lawyers receive funding to assist a wider range of the poor in their communities. To ensure that resources are allocated properly, routine procedures could be delegated to trained pro bono attorneys or paralegals under the supervision of Legal Services lawyers, leaving experiences staff to attend to more complex or time-consuming tasks. Legal services lawyers would then be able to bring their expertise to bear on the area of disaster relief for the poor in the same way that they have successfully analyzed public benefits delivery, housing laws, family law and health law. The areas are conceptually and practically closely linked.⁹⁵ Such continuity of legal services could create some important synergies that would inure to clients' immediate benefit and would improve disaster relief systems overall.

CONCLUSION

Given the existence of substantial, well-coordinated pro bono efforts in this area, increasing federal funding for disaster legal services is a long-term project. But even though it is not pressing, such a shift would yield definite advantages to both the profession and to disaster victims. Private attorneys seeking to dispel the image of “sharks in a feeding frenzy” would benefit from the close association with legal services for the poor. Legal services organizations would benefit from the association between their work and the disaster relief efforts of the Department of Homeland Security. And clients would gain access to greater legal expertise in relevant areas and more continuity in representation.

95. See Landis, *supra* note 18, at 971.

How much would it cost? As it stands, FEMA is benefiting from an essentially free arrangement with the ABA-YLD. Funding legal services organizations to provide disaster legal services will definitely cost more, though economies of scale will help keep costs down. For example, accessible federally funded Legal Services offices are already present in many communities, and many have already established outreach mechanisms such as hotlines.

The current annual congressional budget for the LSC is a bare minimum of \$336.6 million.⁹⁶ Most Legal Services organizations supplement these funds with other grants from states and private sources.⁹⁷ The best course might be to create a pilot program to explore federal funding of disaster legal assistance: increase the federal Legal Services budget by, say, ten percent in the next budget negotiation with funds appropriated from the Homeland Security budget and designate the increase on an experimental basis to fund certain Legal Services offices in providing disaster legal relief. The Legal Aid Society received more than \$5 million in private funds supporting its disaster relief efforts in the case of a major disaster; the ten percent budget increase might permit experimentation by five to fifteen Legal Services offices in administering disaster legal services responses to disasters small and large. The intention at this initial stage would not be to provide comprehensive disaster legal services, but to begin establishing reasonable budget parameters for providing necessary services. Given the existing language of the Stafford Act permitting such an arrangement for provision of disaster legal services, no Congressional involvement would be necessary, aside from budgeting additional Homeland Security funds to cover the pilot program.

As FEMA has found, disasters are not wholly predictable, and there will have to be some flexibility in any budget. But especially after September 11th, we can predict with some certainty that more disasters are in the offing. The lawyers of New York City Bar, acting with courage, generosity and compassion, showed what was possible when the unexpected occurred. By better utilizing the expertise available through federally funded Legal Services, we can be even better prepared next time.

96. Consolidated Appropriations Resolution of 2003, Pub. L. No. 108-7, Div. B tit. V, 117 Stat. 96 (2003).

97. See, e.g., Neighborhood Legal Services, Inc., *Foundation Support for Neighborhood Legal Services*, at <http://www.nls.org/foundation.htm> (last visited May 20, 2004) (listing non-LSC donors to the Buffalo, New York-based Legal Services office).