EMERGENCY MANAGEMENT AND LAW

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Abstract

The following chapter relates the history of law and emergency management, discusses vulnerability and steps to be taken for its reduction, defines various concepts from a legal perspective, and examines gaps in knowledge between the two fields. The chapter also notes how law may improve emergency management and identifies considerations that are paramount to the future. The major argument to be presented is that law and emergency management are inherently intertwined and that legal norms in the disaster field are changing and having a significant impact on the profession.

Introduction

In many ways, emergency management could not exist without the law. In the United States, legal enactments provide the authorities and funding for emergency management. Definitions of critical emergency management terms have been established in legal enactments. Although their interaction may be difficult at times, lawyers and emergency managers need one another. A major obstacle is the mutual ignorance that all

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too often characterizes their relationship. When attorneys, emergency managers, and leaders of units of government take the time to build a relationship that encompasses all phases of emergency management, the result can be shelter from liability as well as greater life safety and improved property protection.

History of Law and Emergency Management

The history of disasters in the United States is intertwined with the law (FEMA, 2005a). On the federal level, as early as 1803, Congress enacted legislation to provide relief from a severe fire in a New Hampshire town. The Congressional Act of 1803 is generally thought of as the first piece of disaster legislation. During the next century, specific legal enactments authorized funding for the response to disaster events one incident at a time. The 1930's brought about an organized federal approach to disaster law. The Reconstruction Finance Corporation was authorized to generate disaster loans for the repair and reconstruction of some public facilities after an earthquake. This authority was extended later to other varieties of disaster. The Bureau of Public Roads, under a 1934 law, was empowered to provide funding for highways and bridges damaged by natural disasters. Another important piece of legislation, the Flood Control Act, expanded the authority of the U.S. Army Corps of Engineers to put into effect flood control projects. This approach to disaster assistance improved on the prior "one at a time" practice of creating legal authority. Yet problems remained. The ever increasing size of the national government meant that sometimes federal agencies with different pieces of disaster authority found themselves working at cross purposes. As a result,

Congress enacted legislation requiring better greater cooperation between federal agencies and authorizing the President to coordinate these activities.

The subsequent history of disasters reveals that they steadily grew in both number and magnitude. The federal government was faced with enormous disasters in the 1960's and early 1970's. The Federal Disaster Assistance Administration, which was located in the Department of Housing and Urban Development, coordinated these efforts. Hurricanes Carla (1962), Betsy (1965), Camille (1969), and Agnes (1972), as well as large earthquakes in Alaska (1964) and San Fernando in California (1971) put natural disasters in the forefront of national attention, and resulted in legislation. The 1968 National Flood Insurance Act gave homeowners new assistance, while the 1974 Disaster Relief Act regularized the procedure for issuance of Presidential disaster declarations.

Despite this legal progress, there was still not a unified framework for emergency and disaster practices. By the 1970's, disasters, hazards and emergencies were the business of over 100 federal agencies. On the state and local level, similar structures were in place. The result was a confusing welter of groups and efforts that often competed with or duplicated one another. At the request of the National Governor's Association, President Jimmy Carter moved to consolidate federal emergency functions.

In 1979, President Carter's issued an executive order unifying federal disaster activities under the newly created Federal Emergency Management Agency (FEMA). FEMA incorporated many bodies, including the Federal Insurance Administration, the National Fire Prevention and Control Administration, the National Weather Service Community Preparedness Program, the Federal Preparedness Agency of the General Services Administration and the Federal Disaster Assistance Administration from HUD.

Civil defense moved to FEMA from the Defense Civil Preparedness Agency in the Department of Defense.

In the aftermath of the first attack on the World Trade Center (1993) and the Oklahoma City bombing (1995), FEMA's "all-hazards" approach to disaster management was overshadowed by a concentration on homeland security matters. The Homeland Security Act of 2002 (HS Act) united 22 federal agencies, programs and offices, including FEMA, to create the Department of Homeland Security (DHS). Creating DHS was another legal step in unifying disaster preparedness and response. DHS' mission focuses on terrorism, including prevention, vulnerability reduction, minimizing damage, and assisting in recovery from terrorism attacks (107th Congress, 2002, § 1(a-c)). Also included in the Department's responsibilities is carrying out all functions of entities transferred to the Department, including acting as a focal point regarding natural and manmade crises and emergency planning (107th Congress, 2002, § 1(d).

Some experienced emergency management observers believe that the focus at DHS is too terrorism-oriented (Nicholson, 2003a), with troubling impact on the all-hazards preparedness mission that FEMA has traditionally espoused (Waugh, 2002). This is an issue that has two sides, but whatever perspective one endorses, to a great extent the argument revolves around the nature of legal enactments and their interaction with policy. From the view of statutory construction, however, the fact that the Department's terrorism responsibilities are listed as the first three parts of its mission while other hazards are lumped together in fourth place means that Congress intended DHS' terrorism responsibilities to be more important than those dealing with other hazards.

Defining and Reducing Vulnerability

The National Response Plan (NRP) (National Response Plan, 2005a), and the National Incident Management System (NIMS) (National Incident Management System, 2005a) do not define "vulnerability." In the FEMA publication *Building Design for Homeland Security*, "vulnerability" is defined as "any weakness that can be exploited by an aggressor or, in a non-terrorist threat environment, make an asset susceptible to hazard damage" (FEMA, 2005b). The publication discusses vulnerability assessment as well as what steps to take once vulnerabilities have been identified in order to mitigate against the identified threat.

The persuasiveness of authority for the term "vulnerability" is somewhat less than if it were defined directly in the NRP or NIMS. Its promulgation by FEMA and general use in the profession, however, indicate that an American Court under the commonly accepted business practice doctrine (discussed at greater length below) would find them influential.

Recently, a pair of Australians made an interesting suggestion for an increased role for legal enactments in vulnerability reduction (Handmer and Monson, 2004). Their approach features a definition of vulnerability as "a multi-faceted concept incorporating issues of livelihood, housing, security, and gender, among many others" (Handmer and Monson, 2004). The piece suggests that a link between vulnerability and law exists when laws set out rights to adequate housing and livelihood, for example. In addition to the familiar constraints of public and private law, social norms, custom, and international law are posited as having the potential to regulate vulnerability (Handmer and Monson,

2004). The article focuses on human rights as found in national public law, since such laws have been enforceable by the citizenry against their government. Enforcing other types of law is a much less certain endeavor.

Vulnerability is a "function of susceptibility to loss and the capacity to recover" (Handmer and Monson, 2004). Due to their more positive connotations, some prefer the terms resilience or capacity to vulnerability. The most vulnerable people are those whose basic human needs, like adequate food, shelter, health care, and education, are unmet. These needs are defined by the piece as "fundamental human rights."[1] The rights based approach works from the bottom – originating with the affected groups –as opposed to from the top – through government, Courts, and experts. The approach identifies the sources of vulnerability (failure to meet certain rights) and contains a way to reduce them (through legal enforcement of rights).

The article posits that international law may provide a method for expansion of enforceable human rights, through more inclusive interpretation. For example, it suggests that the right to life, liberty and security of every person under the *Universal Declaration of Human Rights* might expand to include protecting the "security of the person" from other harm, like natural disasters. Such an approach overemphasizes the force of international law, whose power extends only to those matters by which individual nations agree to be bound. Nations unilaterally may change their adherence to such agreements, other than in matters of torture and genocide. The article acknowledges an "implementation gap" on human rights, even in wealthy nations as well as the virtual impossibility of enforcing naked (that is, without incorporation into domestic law)

international law. While some may espouse universal human rights, their practice is far from uniform around the world.

Three South African cases are interesting illustrations of the authors' premises. The first establishes a constitutional obligation to provide disaster relief, but states that a hearing is not required for all who object to the way relief is given (Handmer and Monson, 2004). The exceptional circumstances in a disaster allow the government to forego more onerous procedures than would normally apply to decision making. While the United States has never held disaster relief to be a constitutionally protected right (and the possibility of that ever happening in the US is highly unlikely, to say the least), the ability of the government to avoid procedural inconveniences is well established here.[2] The second decision revolves around access to housing and health care. Like many other nations with constitutions established or heavily revised in the second half of the twentieth century,[3] South Africa's constitution lists a range of rights to be provided within its available resources, including housing and health care. The residents in this case were squatting on private land, from which they were cruelly ejected, after which they were relocated into intolerable conditions. They appealed to the Constitutional Court. That tribunal held that, despite the challenges in enforcing them, "these are rights, and the Constitution obliges the State to give effect to them" (Public Law, No Publication Year).

The third case discusses the right to treatment for HIV patients. Some scholars view AIDS as a type of disaster (Varley, 1994). Clearly, the illness's effect on public health budgets has been disastrous. This case provided that South Africa had the constitutional obligation to provide HIV treatment to pregnant women to help prevent

transmitting HIV to their unborn children. The South African Constitution recognizes a right to access to public health care services and requires the state to take reasonable steps, within its available resources, to achieve the progressive realization of this right (Public Law, No Publication Year). The Court found that the government was not going far enough in making appropriate medication available.

The South African cases illustrate how far a country may go in guaranteeing and enforcing human rights that go well beyond those afforded in the United States. Other nations with similar constitutions might pursue the same approach. In Europe, human rights established by the European Union cannot be enforced in the European Court of Human Rights, which enforces the European Convention on Human Rights. That convention does not recognize, for example, a right to adequate housing or health care. The best approach in Europe, as well as in Australia, is posited to be through legislation rather than Constitutional change (Public Law, No Publication Year). This is because, as in the United States, it is very difficult to amend the Constitution.

Parenthetically, it must be observed that the desire to resist the faddish causes of the moment and preserve existing property and other legal relationships is an important reason that Constitutions are difficult to amend.

Also, as a practical matter, establishing the redistribution of wealth in the manner envisioned by the expansion of fundamental human rights to include disaster relief, housing, and medical care is most likely to result in national bankruptcy for those countries that decide to put it into action. The limit placed on such services by the "progressive realization" language cited by the South African Court decisions may mean

that the process of bankruptcy will be prolonged rather than immediate, but that does not make it less probable.

The Legal Perspective

As might be expected, hazards, disasters, and emergency management have definitions established by law. Definitions are found in various locations, most importantly including glossaries in the National Response Plan (NRP) (National Response Plan, 2005) and the National Incident Management System (NIMS) (National Incident Management System, 2005). States also define some of these terms. Federal and state law also determines responsibilities for preparedness.

When finalized, the NRP and NIMS will be the end product of a process that began with the passage of the HS Act of 2002. On February 28, 2003 President Bush issued Homeland Security Presidential Directive 5 (HSPD 5) (The White House, 2003). HSPD 5 directs all Federal agencies to take specific steps for planning and incident management. HSPD 5's major goal is to establish a single, comprehensive approach to domestic incident management. The effect of this unified approach will be efficient and effective operation of all levels of government as regards disasters. The Directive specifies the lead agencies for terrorism events and other major disasters. HSPD 5 directs all Federal agencies to work together with DHS to institute the NRP and NIMS. NIMS is the operational portion of the NRP (Homeland Security Presidential Directive 5, 2003). In this manner, legal authority for creating the NRP and NIMS flows from the HS Act of 2002 through HSPD 5 to DHS (Nicholson, 2003b). Failure to comply with the mandates of the NRP and NIMS subjects emergency response and emergency management groups

to sanctions, in the form of losing federal grant funds (Homeland Security Presidential Directive 5, 2003).

Given that the NRP and NIMS establish enforceable standards, their definitions have the effect of law for those entities that do not wish to lose their federal funding. For the few entities that do not elect to preserve their federal funding, the NRP and NIMS definitions will also have legal effect as industry standards. The "commonly accepted business practice" doctrine operates to establish elevated standards of care when a large number of similarly situated concerns take supplemental actions. Here, adoption of NRP and NIMS by an overwhelming majority of emergency management groups would be strong evidence to a Court that it should hold all emergency management organizations to these norms.

The NRP and NIMS define "hazard" as something that is potentially dangerous or harmful, often the root cause of an unwanted outcome (National Response Plan, 2005; National Incident Management System, 2005). To define "disaster," the NRP and NIMS refer to the Stafford Act's definition of a "major disaster" as:

> Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought) or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby (National Response Plan, 2005; National Incident Management System, 2005).

States typically have their own definitions of disaster.[4]

The NRP and NIMS do not define "emergency management." Two on line courses offer definitional assistance that is consistent. The FEMA on line course

Introduction to Emergency Management does not offer a simple designation. Rather, it discusses the nature of comprehensive emergency management, building from the simple image of a homeowner responding to a broken water pipe and a flooded basement. The course sums up the modern emergency management's focus as follows:

> Today the emphasis is on the protection of the civilian population and property from the destructive forces of natural and man-made disasters through a comprehensive program of mitigation, preparedness, response, and recovery (FEMA, 2005c).

FEMA's on line Principles of Emergency Management course defines the term rather straightforwardly as "Organized *analysis, planning, decision-making, and assignment of available resources* to mitigate, prepare for, respond to, and recover from the effects of all hazards" (FEMA, 2005d). States also have their definitions for emergency management, which correspond to the federal approach described above.[5]

The persuasiveness of authority for the term "emergency management" is somewhat less than if it were defined directly in the NRP or NIMS. Its promulgation by FEMA and general use in the profession, however, indicate that a Court under the above discussed commonly accepted business practice doctrine would find it influential.

The HS Act of 2002 is somewhat contradictory in setting out responsibilities for preparedness. The role of FEMA is defined to include its Stafford Act functions as well as reducing the loss of life and property and protecting the nation from "all hazards" by leading and supporting the nation in a comprehensive, risk-based emergency management program.[6] The law tasks the Office of Domestic Preparedness (ODP) with terrorism preparedness, in contrast to FEMA, which is specifically entrusted with preparing for and mitigating the effects of nonterrorist-related disasters in the United States.[7] The statute's reader wonders whether the "all hazards" language is mere window

dressing, given the division of roles in the description of ODP's tasking.

The end result must be confusion to emergency management, similar to that engendered by Congress' decision to break off planning for release of extremely hazardous substances (EHS) from "all hazards" emergency management in 1986. The federal Emergency Planning and Right to Know Act (EPCRA) requires state and local units of government to split off an important part of emergency management to another entity. EPCRA is contained in the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III) (USC, 2005, §§ 11001-11050). EPCRA mandates that a State Emergency Response Agency (SERC) must ensure planning for EHS releases (USC, 2005, § 1001(a)). The SERC creates emergency planning districts and superintends Local Emergency Planning Committees (LEPCs), (USC, 2005, § 1001(b) (c)) which do the planning for EHS releases (USC, 2005, § 1001(a)).

Emergency management has been able to incorporate LEPC plans as annexes to emergency operations plans. LEPCs and emergency management generally work well together. It remains to be seen whether the same approach will be applied as successfully to terrorism planning at all levels of government.

The Interaction Between Law and Emergency Management

The relationship between law and emergency management may be characterized as one mutual need. Mitigation in particular is an area where the two disciplines have the potential to interact very well. Regrettably, in spite of the fact that the law creates emergency management, in general the understanding of emergency managers and

lawyers may be described as mutual ignorance. Some are not even aware that their activities are governed by both federal and state law (Pine, 1991).

Many business and government leaders are uninformed regarding the laws that control their behavior. Sometimes, emergency managers may pay no attention to the law. They may vociferously declare themselves to be "too busy saving lives and protecting property to bother with all that legal mumbo jumbo." Such an attitude is peculiar, given emergency management's "all hazards" character. Analysis of the instructive resources accessible to most emergency managers, however, renders their stance more comprehensible. Despite the fact that emergency management is a legal product on the federal, state and local levels, FEMA's educational materials have historically been deficient regarding coverage of legal issues (Nicholson, 2003c). As a result, matters of liability constitute the greatest unanticipated and unexamined vulnerability that emergency management confronts.

One characteristic shared by top attorneys is their knowledge and understanding of their customer's industry in general, as well as the specifics that set the client's business apart from the rest. Sadly, emergency management lawyers possess minimal assets outside of statutes and interpretations thereof as source material to utilize when counseling their clients on even simple legal matters (Nicholson, 2003d). The wise attorney will recognize his or her ignorance and pursue knowledge of the client's organization. It will be necessary to hunt up resources that go beyond the Continuing Legal Education that lawyers usually see as their main font of information. One way for the emergency management lawyer to go farther is to enroll in the Emergency

Management Professional Development Series offered by the Federal Emergency Management Institute (FEMA, 2005e).

How Legal Advice Can Improve Emergency Management

An integrated emergency management system is composed of a conceptual framework that increases emergency management capability through networking. To achieve increased capability, there must be prior networking, coordination, linkages, and partnerships. There must also be creative thinking about resource shortfalls. All hazards threatening a community must be identified so that needs may be compared with resources (FEMA, 2005e). This process requires emergency managers to be pro-active risk managers as opposed to reactive risk ignorers.

Given the all-encompassing nature of law's relationship with emergency management as discussed above, potential liability is a hazard that confronts all emergency management organizations and the units of government that they serve. Potential claims in the aftermath of disasters include wrongful death, negligent planning or actions during the disaster, civil rights violations resulting from improper use of authority, exceeding the scope of proper practice for emergency management, failure to properly distribute aid, monetary damages resulting from loss of business during an evacuation, and many more.

The advance networking required to address the legal hazard entails joining together with legal counsel to avert prospective liability. Properly trained legal counsel may offer beneficial input prior to the emergent event that gives rise to possible liability.

Networking with legal counsel in such a manner defines "litigation mitigation" (Nicholson, 2003e). Litigation mitigation has three complimentary objectives:

1. reduced exposure to legal claims;
2. improved life safety; and
3. enhanced property protection.

Typically, legal counsel looks at the first element as his or her main concern. To an emergency manager, all three components are of critical significance. Actually, life safety and property preservation are natural byproducts of legal protection.

If litigation mitigation makes so much sense, one may inquire as to why it is not more prevalent. Several impediments prevent litigation mitigation. A few are intentionally inflicted, while others are the product of the natural evolution of groups with different traditions.

One important obstacle to pro-active connections with attorneys results from groups' usual approach to the use of legal counsel. By tradition, governmental employees look on the attorney like a "legal firefighter." The lawyer gets the call following the legal conflagration's eruption. All too frequently, the client only contacts the attorney after the arrival of legal documents indicating commencement of a lawsuit. The other side of fire fighting is fire prevention, just as the other side of emergency response is mitigation. For emergency management, the attorney could prove to be the equivalent of a fire inspector. Like the inspector, the attorney often may recognize the tinder for a legal inferno and highlight economical approaches that might reduce the hazard.

To the person in the street, lawyers may have an almost priestly appearance - they employ their incomprehensible terminology and execute their esoteric rites. Unfortunately, some attorneys revel in the feeling of exclusivity. In the same way, certain emergency managers use acronyms with meanings shrouded in obscurity to those not initiated in the fraternity. Clearly, unusual language and rituals distinguish both groups from the laity as well as each another. This method is the antithesis to the networking, coordination, linkages, and partnerships essential to creating an integrated emergency management system. It is essential for legal counsel and emergency manager to rely on and comprehend each other as equal partners for litigation mitigation to be successful.

Attorneys also find themselves unable to locate resources that explain the process for engaging in litigation mitigation. Their professional training at law schools does not include this topic, in general. The majority of such institutions rely on a "case study" approach first created hundreds of years ago. Another barrier is the emphasis placed by law schools on if a case is ready to take to Court. Undertaking a pro-active pursuit such as mitigation litigation is contrary to the training and long-standing traditions of the law.

Another factor in lessening the likelihood of networking partnerships between emergency managers and lawyers is the developing nature of the legal market. On one hand, corporate clients insist on a firm that can "do it all," resulting in ongoing pressure to make firms ever larger. Simultaneously, business clients often look at firms as sources of skilled operators who can manipulate the legal system rather than as places to go for trustworthy counselors. Often, companies pay no attention to lawyers' guidance unless it matches with what they wish to hear. The networking and trust needed for a quality

litigation mitigation association do not exist in such circumstances. Rather, the lawyer is viewed as a remote, unfamiliar "legal information engineer" who is a tool instead of a partner (Caplan, 2003).

Another major obstacle between attorneys and emergency managers is cost. Although an emergency manager will typically have access to the advice of a city or county attorney, he or she may need more specialized assistance, which may cost a significant amount. A specialist attorney's professional advice may run as much as several hundred dollars an hour, or more. Clearly, lawyers run more per hour than some other types of mitigation. Still, considering the down side of a lack of litigation mitigation, one is hard pressed to see a valid argument against this enhanced safety. An option that may provide for cost controls is negotiating an arrangement with a firm to provide discounted hourly rates in return for an assured number of hours yearly.

From the government side, several significant obstacles exist. Smaller units of government may have attorney advisors who are local practitioners. These lawyers often collect decreased hourly wages for their government work compared with what they collect for normal hourly fees. The result of this arrangement may be that government work gets done only when ordinary business is lacking. This schedule often results in a conflict with the unit's desire for the attorney's help. Another difficulty is that rural units hardly ever make available funding for Continuing Legal Education (CLE) for their lawyer employees or contractors. The untrained country attorney may prove to be unable to give the high-level guidance the unit needs. The lack of CLE training necessary to bring the lawyer up to speed merely emphasizes the difficulty. The lawyer in such circumstances might be in danger of committing malpractice by advising beyond his or

her ability. In some cases, the attorney advising the local unit receives the contract for legal services thanks to political activism instead of any actual knowledge of the practice area. A unit's attorney is often appointed on a political basis, even when the City Manager is a merit position. The effect of this situation may not be ineffective counsel, but it may result in regular changes. The potential exists here for recurring legal fees for getting on top of things as well as conflicting legal guidance.

Future Developments

In late 2004, the 9-11 Commission officially endorsed adoption of the National Fire Protection Association 1600 "Standard on Disaster/Emergency Management and Business Continuity Programs, 2004 Edition" (NFPA 1600) (NFPA, 2004) as the national preparedness benchmark. On December 17, 2004, (The White House, 2004) President Bush signed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTP Act), (Intelligence and Terrorism Prevention Act, 2004) which recognizes NFPA 1600 as a "voluntary" national preparedness norm. NFPA 1600 and other documents such as the Capability Assessment for Readiness (CAR), constitute the core of the Emergency Management Accreditation Program (EMAP) (EMAP, 2005). The accreditation procedure includes application, self-assessment, on-site assessment by an outside review team, committee and commission review of conformity with the EMAP Standard, and re-certification every five years. Adoption of NFPA 1600 is not yet mandatory. It might be said that EMAP is well on its way to becoming the United States' *de facto* emergency management standard. As other emergency management programs are accredited under the standard, it becomes more likely that a Court might hold all

emergency management groups to the NFPA 1600 criterion. One nationally known expert believes that "synergy is already building between NFPA 1600, EMAP and the NIMS Integration Center. It's just a matter of time before they are incorporated into NIC's requirements."[7] In fact, mandatory adoption of NFPA 1600 into NIMS will be an important part of standards to be set by the NIMS Integration Center.[8] Emergency management professionals will need to understand and comply with the full dimension of their legal obligations under NIMS, including NFPA 1600 and EMAP.

Other legal needs that will doubtless receive more attention in the future include liability issues in the aftermath of terrorism events. In the wake of the 9-11 attacks, insurance policies are being re-written to exclude terrorism coverage or to make premiums for adding it prohibitively expensive. The result is that businesses and units of government find themselves to be self-insured for this huge potential liability. Every state should examine its immunity statutes to see if the exclusions for third party acts are broad enough to protect from liability from terrorism events. Going hand in hand with that examination, of course, will be the need for units of government to ensure that their steps to provide for the safety of visitors and employees in their offices are appropriate for the dangers involved. As with the private sector, this will involve examining what similar units of government are doing, and being at least as safe. For example, state governments that do not provide for screening of people and parcels entering their premises might be exposed to liability in the event of a suicide terrorist bomber entering their premises unchallenged and causing death or injuries.

Interstate and intrastate mutual aid are currently the focus of examination by emergency response and emergency management across the nation, with NEMA making

significant efforts to ensure that common language is available for both. Mutual aid agreements will be required under NIMS in the near future.[8]

Notwithstanding the obstructions discussed previously, litigation mitigation offers benefits that make its adoption highly advisable. As a mitigation step, it is a natural part of comprehensive emergency management. This approach is challenging. Both the attorney and the emergency management client must be willing to commit to a partnership that is based on mutual trust and respect. Both groups need to obtain knowledge of pertinent legal standards so that they may support one another. The attorney must understand the client's business in order to provide the best legal advice. Litigation mitigation must be actively practiced to fully address vulnerability to the hazard of liability.

Whether a rights-based approach to vulnerability is a trend that will grow in the future or a fad confined to nations with significant socialist leanings is a matter well worth following. Most likely, an impetus to create such rights worldwide will result in significant resistance from those nations whose assets are likely to be redistributed by such an approach. As those nations (like the United States) are powerful, their opposition may make difficult reaching a common agreement on universal enactment of fundamental human rights.

Conclusion

Law and emergency management are inextricably bound together. In the United States, emergency management law has a history of over 200 years. That history reveals emergency management law as ever more all embracing. Some nations have taken

emergency management much farther, incorporating disaster relief, housing, and health care as "fundamental human rights" protected by Constitutional guarantee. This approach changes emergency management law into a social engineering standard that acts to redistribute wealth.

Emergency management legal standards in the United States are in the process of evolution as well. The NRP, NIMS, NFPA 1600, and EMAP are all working together to bring national uniformity to the practice of emergency management.[9] In the U.S., legal norms for emergency management focus on greater professionalization and better execution of traditional functions. Concentrating on the nuts and bolts of emergency management, rather than creating new rights that incidentally affect the discipline, appears to be the direction of future legal development in the United States.

Endnotes

[1] Id. at 46. One feels constrained to point out that such needs are typically "rights" only in socialist countries.

[2] See, e.g., Indiana Code 10-14-3-12 (d) (1) (2005).

(d)In addition to the governor's other powers, the governor may do the following while the state of emergency exists:

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with any of these provisions would in any way prevent, hinder, or delay necessary action in coping with the emergency.

[3] E.g. Zimbabwe, Zambia, Algeria, Angola, Armenia, and India. "Public Law in Vulnerability Reduction" 54.

[4] See, e.g. Indiana Code 10-14-3-1(a) (2005).

"Disaster"

Sec. 1. (a) As used in this chapter, "disaster" means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause.

(b) The term includes the following:

(1) Fire.
(2) Flood.
(3) Earthquake.
(4) Wind.
(5) Storm.
(6) Wave action.
(7) Oil spill.
(8) Other water contamination requiring emergency action to avert danger or damage.
(9) Air contamination.
(10) Drought.

(11) Explosion.
(12) Riot.
(13) Hostile military or paramilitary action.
As added by P.L.2-2003, SEC.5.
[5] See, e.g., Indiana Code 10-14-3-2 (2005).
"Emergency management"
Sec. 2. As used in this chapter, "emergency management" means the preparation for and the coordination of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters. The functions include the following:
(1) Firefighting services.
(2) Police services.
(3) Medical and health services.
(4) Rescue.
(5) Engineering.
(6) Warning services.
(7) Communications.
(8) Radiological, chemical, and other special weapons defense.
(9) Evacuation of persons from stricken areas.
(10) Emergency welfare services.
(11) Emergency transportation.
(12) Plant protection.
(13) Temporary restoration of public utility services.
(14) Other functions related to civilian protection.
(15) All other activities necessary or incidental to the preparation for and coordination of the functions described in subdivisions (1) through (14).
[6] HS Act § 507 ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.
(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include the following:
(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—
[7] HS Act § 430 (c) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—
(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;
[8]Telephone interview May 9, 2005 with Kay C. Goss, CEM, Electronic Data Systems Corporation, US Government Solutions, Senior Advisor for Homeland Security, Business Continuity Planning, and Emergency Management Services.
[9]Interview with Acting Director Gil Jamieson, NIMS Integration Center, Washington, DC (June 3, 2005). "I see the prospects of their being part of NIMS for emergency management. I have met with both the NFPA 1600 committee and the EMAP people, and I endorse the process, but it needs to evolve and be more inclusive of NIMS."

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