
Surviving Disasters:

*Questions and Considerations
for Law Firms Preparing
Business Continuity Plans*

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About the Author

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Executive Summary

What if you couldn't gain access to your office for the next week ... or month? Sounds simplistic, but these are fundamental questions law firms must address. A range of possible disasters—from the obscure, like computer viruses, burst pipes and downed power lines, to the page-one natural (and man-made) disasters such as a bomb, fire, flood, tornado, hurricane or earthquake—can immobilize your firm, causing loss of revenue-generating clients to competitors who are prepared. The time you have to respond to a disaster ranges from only minutes to days.

Yet most law firms do not have comprehensive disaster recovery or Business Continuity plans. According to the 2005 annual survey of the International Legal Technology Association (ILTA), only 36 percent of the more than 430 firms surveyed have such plans in place. Most firms, more than 50 percent according to the survey, list their plans as "under development."

Your Business Continuity plans can be ready to execute long before you need them. This paper can help. Knowing the right direction often begins with asking the right questions. To that end, this paper compiles the fundamental questions firm management must ask and answer in order to develop a successful Business Continuity plan that protects the firm's most important assets—its human capital, its revenue-generating clients and its stock in trade, i.e., its data and intellectual capital. Written by a law-firm technology specialist with first-hand survival experience, this paper also offers valuable insights for getting the firm back into business after the disaster.

What if you couldn't get access to your office tomorrow?

Basic Issues Every Firm Must Address

Disaster preparation starts with basic issues and basic questions. For example:

Disaster Probability

- If doing business from the Carolinas through Houston, or along a fault line, how many evacuations are you planning for this year? (The average Business Continuity plans for firms in the hurricane zone list two to four.)
- Are you aware of the number of fires in your building historically?
- Are you aware of the architecture of water or sewage mains above your office space?
- Are there sprinkler systems inside your network server rooms?

Insurance Coverage

- What does your firm's basic insurance cover (wind, fire, structural damage, etc.)? If your firm owns the building, what "act of God" clauses exist?
- What does firm professional liability insurance cover (e.g., salaries) and for how long? What is the cost of increasing that professional liability insurance?
- What's involved in filing a professional liability claim or a claim covering structural damage from, for example, a fire in the building. What is the timeline or deadline after a disaster for filing the claim? (e.g., what revenues would have been produced or what plans or expansions/mergers would have taken place if there not had been a business interruption)?
- Does your insurance carrier provide a discount for having a Business Continuity plan? What level of discount?

Credit and Capital

- What is your current line of credit? If you have a business interruption, how quickly could you get an increase in your line of credit? Do you have a national bank instead of local?
- Who has the checkbook and credit cards to make immediate purchases?
- Who is authorized on your firm's line of credit? And, who is authorized to increase it, if needed? Who is authorized to step into this role if the appointed person is unavailable or incapacitated?

Relocation

- Where would you relocate if you lost your office space and its equipment for two weeks ... one month ... maybe more?
- Do you represent clients in real estate, apartments or hotel chains that you could reach out to for assistance in temporary space?
- Who would you turn to (specific names and contact numbers) when looking for space to relocate whether temporarily or permanently?
- Who else would be competing for this temporary space?

Bottom line ... your firm simply cannot afford to think it won't happen. Fortunately a good disaster-preparedness plan is within reach of firms who do think ahead.

People—Staff and Clients

- Is there a special red envelope in each employee's car glove compartment—ready to use in case of evacuation for any disaster?
- What is your plan to produce revenues when missing staff members?
- How could you communicate with clients once you are “up and running” again? Clients need to be reassured they do not need to turn to other law firms or counsel for their legal needs and that their data is secure and safe. Be aware that clients may have statutes of limitation or acquisition dates that cannot wait.
- Do your clients know that you do have a plan in place to protect their data? (Conversely, what would they do if they discovered you do not have a Business Continuity plan?) Be aware that more corporate clients are asking their law firms about their Business Continuity plans, either for peace of mind or for regulatory compliance.
- What is your market share in your area? What if the entire area is hit by a disaster? What software tools do you use currently to examine your market share?

Disaster Preparation 1-2-3

As the issues above hint, **Disaster Preparedness planning is vital in three main areas. These areas are of equal importance and require equal planning efforts: Staff/Human Capital, Revenue-Generating Clients, and Data.** This paper looks at each area and walks you through the questions your firm management should answer in order to prepare effectively.

But first you need the right management team. Conversations with many firms reveal a large misconception that this team is solely technology based; that is simply not the case. You need a Business Continuity Committee. From our experiences with law firms who have survived disasters, recommendations for committee members are: Executive Director or Chief Operating Officer, Technology and/or Library representatives, Accounting representative, Facilities and Administration representative, Litigation Representative, Human Resources representative, Technology Partners representative, Recruitment Director (What if the disaster hits during the recruitment process?) and Marketing Director.

Get your team together and meet regularly. *Mandatory attendance.* Enforcement **must come from the top down.** *Remember, many of your competitors have already started this process and are marketing it to potential clients or to increase market share. It's important.*

PREPARATION AREA 1:

**Staff/Human
Capital**

*Keep in mind ...
in a catastrophic
disaster, no gas
stations, no ATM
machines, no regular
phones, cell phone
towers—nothing
electrical—works for
a period of hours,
days or weeks.*

*Each of these
management
contacts needs
backup, not just
for disasters, but
to cover illnesses,
vacations or job
changes.*

It needs to be stressed again that a Business Continuity plan is more than a technology plan. Some firms that suffer a loss in client market share, revenue stream or facilities assume it's all about technology. However, when the human factor is overlooked, firms find themselves scrambling.

Communication with your internal talent to secure their safety is key. For example, a firm Web blog/extranet or Web site outside the disaster zone that staff can access from any Internet connection can become a central location to post messages on employee safety and location. Who will be in charge of this internal communication task, and who will be their backup in case they are unavailable, injured or displaced?

It must be established up front which decision maker(s) (e.g., managing partner, CEO) ultimately declares the disaster (e.g., fire, flood, or evacuation) and orders the implementation of action plans. In addition, each management team member will have different Business Continuity needs:

Partners—Must be informed in writing on how long the dark period might be (ball park) for different disasters, as well as the revenue impact (Business Impact Analysis) for work in progress (WIP) and costs of paying salaries and operating expenses. In addition, the Managing Partner(s) needs communication devices such as walkie-talkies or a satellite phone in a briefcase ready to evacuate the building.

Executive Director—Needs to have all pertinent HR/alternate contact information and walkie-talkies or a satellite phone in a briefcase ready to evacuate the building. The HR person needs to have a back-up person in case (s)he is incapacitated or out of touch due to the disaster.

Technology and/or Library Director—Must have all pertinent vendors phone numbers for hardware, system hosting, software client-access licenses and walkie-talkies or a satellite phone in a briefcase ready to evacuate the building. Library directors are well advised to keep subscription/collection details as well. Keep in mind contractors or consultants may be evacuated as well.

Marketing Director—Must have pre-written messaging ready to get out to the public and the firm's Web site (outside of the disaster zone), along with walkie-talkies or a satellite phone, and a means of communicating the message to the client base. Messaging would include details on where the firm will be located for business until they return to their office space. If the firm has a Client Relationship Management Tool, or even an access database, this information must leave with you when you evacuate. These are key contacts to reach out—and assure—the firm has everything under control. Billing information from the accounting system will only provide billing contacts, not necessarily key contacts/clients. Once relocated, the Marketing Director should have access to track the firm's clients if the disaster affects an entire city or region.

Litigation Department Representative—Must have all docketed information, access codes for active cases and hosted discovery review in a briefcase along with walkie-talkies or a satellite phone, ready to leave the building.

To successfully plan in this area, your firm and its Business Continuity committee should ask these questions:

1. What evacuation plan is in place? For example, continuously updated disaster envelopes for each firm member (with instructions to keep their envelope in their vehicle's glove compartment) with all emergency contact information. This is a critical component of your business continuity plan.
2. Does the firm have a Web blog/extranet/Web site that firm staff can access from any Internet connection? Do you have a backup listing of staff's personal e-mail addresses so you can communicate if your firm e-mail is down?
3. What do you know about your people? Who is going through a life event (e.g., ill family member, new baby, etc.)? These events may affect their priorities in a catastrophic disaster. Know who may not be available. Realize that local consultants may not be available.
4. How long is the firm willing to be without e-mail? How long is the client willing to tolerate not being able to communicate with the firm via e-mail before they reach out to another firm?
5. Are there alternate phone numbers away from the disaster where messages can be left (e.g., a phone tree, an 800 number at another location, relatives, etc.)? Does your phone system easily provide redirected numbers? Do you know the exact steps to take with your provider for redirecting these numbers? There could be many customers affected in a building or region, so it is imperative to have the correct contacts, their backup contacts, and steps necessary to reroute your phone numbers.
6. Does the firm have several sets of walkie-talkies (and extra batteries) to communicate when there is no electricity or e-mail? Have you looked at key personnel having satellite phones?
7. Where will you house your people if displaced? (From our experiences, we know that real estate such as apartments, hotels, rental homes, corporate housing, etc., will be secured by businesses as well as law firms within hours or days. What are your plans?)
8. Which attorneys from each practice area will be sent to temporary work space or hotels to continue obligations you have to clients outside of the disaster zone? If personnel has family, are you planning to send them as well? Have you budgeted to provide food for the personnel you will be depending on to help bring the business back in working order?
9. What if something happens to the managing partner? Who steps in?
10. What if something happens to the executive director? Who steps in? Would they know what to do, and where to access the needed information?
11. What if something happens to the head of technology? Who steps in? Would they know what to do, and where to access the needed information?
12. What if a vital vendor lives in the disaster zone and is not available?

PREPARATION AREA 2:

**Revenue-
Generating
Clients**

Its critical clients get the message that the firm is still there to take care of their needs. This applies to any business interruption (fire in your space, fire on a floor above your space where sprinkler water mandates your office evacuation, etc.) During the aftermath of hurricanes Katrina, Rita and Wilma, some firms sent e-bulletins announcing they were ready to help the city rebuild, and that they were temporarily relocating in Baton Rouge, Houston, etc. The true message was clear: If you can't find your lawyer, and you need that closing or merger done, we're here ... call us.

Be aware that your firm may have the only copy of a signed agreement or a document proving a client's innocence or guilt. Clients will be asking how their data and work product is protected by your firm, and they are aware that backup tapes are no longer considered the most reliable method.

There will be a flurry of different types of law suits filed in a large disaster—Real Estate, Toxic Torts, Bankruptcy, Employment, Tax, etc. Who in your firm will be on your Disaster Recovery (DR) team? Many firms are marketing the availability of a DR team to new/potential clients—and are gaining client market share in their cities.

To successfully plan in this area, your firm and its Business Continuity committee should ask these questions:

1. What is the firm ratio of local clients to national clients? What software tools do you need to get that information? Where can you acquire them?
2. How do you currently grow your business outside your "region?" If clients are affected—even wiped out in worst-case scenario—they no longer can pay you. That means the partners and staff can't be paid once the professional liability insurance runs out.
3. If your clients knew how unprepared you were today, would they take their business elsewhere? Your competitors are raising the bar here especially if working in the medical or regulatory arenas.
4. What is your marketing budget for print, radio and television ads announcing that the firm is up and running or back in business? Who would your Marketing Director reach in media outlets to spread the message to the clients?
5. Who holds the calendar of all docketed events in other cities or jurisdictions? How will that information be kept safe and shareable (e.g., via an extranet)? How will you communicate this to your clients if you do not have e-mail, working cell phones, updated client contact lists and phone numbers?
6. Who are the key partners and personnel in the firm who will be reassuring clients in order to avoid business loss?
7. How long will your clients tolerate a business disruption? One day ... three ... five?

PREPARATION AREA 3:

**Data That Runs
Your Business**

Your data is your business. Without phones, computers, copy machines—all of the modern conveniences—you don't have a business. Three critical factors are electrical power, Internet access and network servers/workstations/laptops. (PDAs would also be out if a large-scale disaster affects towers.) If you have all of these critical servers in one location, and this hub suffers a fire or catastrophic loss, what are your recovery plans?

First, a word about backing up to tapes ... don't. There is a misconception in the legal arena that Business Continuity protection is prohibitive when it comes to costs; this is simply not true. There are several affordable ways of backing up your firm's and client's data reliably, but tape drives are no longer the trend in corporations and law firms. Backing up disk to disk, securely across the Internet, away from the office location, is favored. (What do you expect after 9/11, two active hurricane seasons and close to 600 tornados since January 2006?)

Law firms can't take a cookie-cutter approach when it comes to solutions. You must balance the risk you want to accept (at the highest executive level) with the costs of being down and what your clients will tolerate. Of course, when you look at the loss in potential revenues (i.e., your Business Impact Analysis), it certainly justifies a Business Continuation plan covering data protection, firm members and clients.

There are several ways to protect your data, but getting a copy of your data away from your hub office **is vital**. (This does **not** mean storing a tape offsite or at a staff member's home.) As a first step approach, you can bunker your data across T1 lines to a co-location and recover from that location. At the very least, your data is secure and safe, and while you're restoring that data to new servers, you will gain some valuable time. (By the way, you'll need less time than if you were restoring from tapes.)

Consider on-demand software or software-as-a-service for document management and extranet capabilities. Since the applications are hosted and maintained by the software vendor-not internal IT staff-and then delivered over the Web like a service, the obvious benefit is that your firm will have continuous availability of documents, including during times of business interruption. Any time elapse between disaster and document availability is removed entirely and full access to the firm's documents or client extranets is available using any workstation (home or other location) or other Internet-connected device (BlackBerry® or PDA).

Another approach is to create a hot site. This would allow your firm to basically flip a switch, fail over to a cloned site, often called a co-location, declare an emergency to all staff/firm members, and evacuate the office(s). With this option, your staff can securely access e-mail, documents, Client Relationship software tools, accounting and litigation software and continue working from their new or temporary location. This option would work for any disaster (fire, flood, hurricane, bird flu, etc.) and is not as cost prohibitive as some may imagine.

Select a trusted partner to develop this co-location. Also make sure your partner has experience—years of data and disaster-recovery experience—and isn't just jumping on the bandwagon with low entry fees. Never sacrifice experience. Your clients have hired your firm because of your talent, history and experience. In turn, partner with someone who has long-term experience in the legal arena and who focuses on protecting those assets. Remember, your clients assume you have data safety under control.

Keep in mind that a partner who focuses on the legal industry will help ensure that your firm will not be bumped down the list of priorities in a major disaster.

After the Disaster

Whether a disaster occurs or not, update your Business Continuity plan consistently. Schedule mandatory team meetings. Schedule tests of the plan, such as evacuating staff from the building in an orderly fashion (especially helpful if your offices are on the 42nd floor). Most importantly, invest the funds necessary to put a Business Continuity plan into place (e.g., staffing, insurance coverage, data hosting and equipment).

If the disaster does come, here are some additional considerations, following the three key areas of concern:

Staff:

Recognize that not all staff members will be equally resilient. If there is a major disaster, there will be a level of post-traumatic shock your employees (and clients) will go through. Watch your staff, bend the rules, and keep them as comfortable as possible. Give time off to recover.

Plan on having more insurance claims filed with the firm health-care provider. Also plan on filing paperwork with your professional liability insurance company, including what potential projects, earned revenues, etc., would have transpired during the displacement period. One final note on insurance: Have a contingency plan for what the firm would do if your insurance carrier goes bankrupt. And be prepared to answer these questions:

1. Where and how are your people? Who can come back ... and who can you afford to bring back?
2. How are you helping firm members? Employee assistance program for counseling? Financially? Housing? Meals? Make plans on what the firm can afford in advance and be ready to use that line of credit.
3. What is your plan if you lose firm members to other locations or other firms? (NOTE: Within 48 hours after hurricanes Katrina, Rita and Wilma, area lawyers were being swarmed by recruitment firms hoping to relocate lawyers to other areas.)
4. What is the physical shape of your office and the to/from routes?
5. Can you escalate reinstallation of phone, Internet and power back to your facilities?
6. What if the post office is destroyed? Where will clients' payments be sent?
7. What local bar associations and vendors are offering aid to help you get back on track? To find assistance, will you need Internet access and someone outside the disaster zone to make contact via phone or Web?
8. Who (vendors/partners/clients) do you contact to let them know about your new, temporary location? How do you contact them?

Avoid planning major events, such as new office openings, for 4 – 5 months after a major disaster.

Clients:

Continuous messaging to your client base is CRITICAL—reaching out via Internet, radio, print, and television (and e-bulletins, if possible)—as soon as possible so as not to lose market share. *“We are up and running and can take care of you, and your information is safe.”* You need to budget for this messaging before a business interruption. And continue to reach out to clients via every method available until you can contact them. Contact them more than once, and follow up. Also be prepared to use your Client Relationship Managements tools or extranets. And answer these additional questions:

1. Do you have alternate e-mail addresses to contact clients regarding their damage? Assess their damage (revenue stream) to the firm, and offer assistance (pro bono work, good will, etc.) where possible.
2. Are you ready to contact clients with upcoming events outside the disaster zone? What can you tell them, e.g., partner X will be in touch regarding the closing next week?

Data (your business):

Work from a temporary location until it is safe to return to your office(s). Work with your trusted partners at new locations that ALREADY have different power grids, different phone system grids, and different Internet carriers. For example, redundancy is important since cities outside the disaster area will be overburdened. The population of Baton Rouge doubled overnight after Hurricane Katrina, taxing the phone systems, highways, gas stations, housing, food supplies, etc.

When allowed back into your building, recover what you can from your office (workstations, BlackBerry® devices, laptops, etc.) if possible. And recognize that you may only have a certain window of time (in some cases hours) to recover items like equipment, files, items in the safe, etc. Go ahead and place orders for new equipment. Once new equipment comes in, consider using existing servers, if they are still in good shape, in your co-location site.

Keep your technology staff working in shifts—not 24/7. The trauma of a disaster will impact their abilities to get things up and running again. (And reward staff across the board financially. Without talent and data, you have no business.) Reach out for assistance to trusted partners offering free or temporary services during the crisis.

Realize that having Internet access installed for a medium-sized firm may take **weeks** under normal circumstances, and depending on the area affected, workers will be restoring corporate clients as well as law firms. Be ready to prioritize the restoration of law firm tools:

1. Firm Web site ready to go with a message to clients and contact numbers
2. E-mail/Web mail/extranet
3. Client Relationship Management tools
4. Citrix – VPN – Remote access
5. Documents
6. BlackBerry/PDA
7. Accounting—billing software, check writing
8. Litigation tools

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- Use of a global data network with nodes in most major cities for customer connections
- Business continuity planning, design and testing
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