

**FRAMING DISASTER PLANNING FOR PEOPLE WITH DISABILITIES:
ANALYZING THE CALIF V. CITY OF LOS ANGELES LAWSUIT**

by

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ABSTRACT

In 2009, Communities Actively Living Independent and Free (CALIF), a non-profit organization representing people living independently with disabilities, alleged in a lawsuit that the City of Los Angeles had broken federal and state law by failing to plan adequately for the needs of people with disabilities during disasters. As part of the lawsuit, written and oral testimony regarding the validity of the case was presented. These depositions and declarations provided a window into how decisions were framed by different government departments, non-profits, and individuals and specifically explored disaster planning in the context of access and functional needs. In light of the varying opinions expressed in the documents, it was clear that stakeholders within the City did not share the same views on what constituted meaningful access to an emergency program. Textual analysis was conducted using the sixteen declarations and thirteen depositions filed in connection with a motion for summary judgment by both the plaintiff and the defense. Those documents were analyzed using open coding to determine framing themes in the various documents with Atlas TI software. Manifest and latent barriers and motivations for action as expressed by different stakeholder groups emerged from the data. Consequences of limited funding, attitudes against incorporating outside ideas, and universal issues with

passivity inhibiting interaction between stakeholders all pointed toward the challenges that need to be addressed to ensure that positive changes can come from this lawsuit.

Chapter 1

INTRODUCTION

Cities have long struggled to care effectively for their residents during times of disaster. Out of the desire to ensure that the best possible response occurs, specific departments are charged with coordinating preparedness, response, recovery, and mitigation practices for those within the city's boundaries. They work to ensure that the city is able to withstand and resist the harmful impacts that hazards can bring. In preparing emergency and disaster plans, there are sometimes challenges associated with addressing the needs of segments of the population, in particular, residents with disabilities. In order to ensure that everyone is protected equally under the law, planners must balance the needs of a diverse population and ensure that no discrimination occurs based on legally protected categories.

The Americans with Disabilities Act mandates that reasonable accommodations must be made by cities in any program that they conduct, including disaster planning. However, the disparate stakeholders involved in that planning define the concept of reasonable accommodations in different ways. This discrepancy is particularly clear in the 2009 lawsuit filed by CALIF. The organization alleged that the City of Los Angeles had broken federal and state law in failing to plan adequately for the needs of people with disabilities during disasters. In a 2011 ruling, the United States District Court for the Central District of California agreed, granting the motion

for summary judgment filed by the plaintiff. The ruling stated that while plans were made that covered all residents of the City, residents with disabilities lacked meaningful access to aspects of the emergency program because their needs were not anticipated or met (Rutkow et. al. 2011).

Various individuals appeared as witnesses in this lawsuit, representing different organizations and City departments, and carrying a broad range of perspectives. In order to gain a more comprehensive understanding of how the different groups involved in disaster planning for the City of Los Angeles viewed this issue, a content analysis of the depositions and declarations filed for this lawsuit was completed. The analysis sought to explain how the different frames employed by stakeholders in disaster planning for people with disabilities affected what they saw as reasonable accommodations and access to services. Disasters such as Hurricane Katrina demonstrated that simply planning for a population as a whole, without regard to different groups within the population, would result in the most vulnerable people facing a heightened degree of danger in the same disaster (National Organization on Disability, 2005). With a greater understanding of the frames that were used, it may become easier for the stakeholders to work together, understand the views of others involved in the process and improve the planning outcome for people with disabilities.

Chapter 2

LITERATURE REVIEW

The topic of disability in disaster has emerged as a prominent research and policy area over the last decade, with a body of research that is still in flux as more attention and funding is directed towards improving understanding of current issues. The first challenge in studying the topic of disability in disaster preparedness and planning is the varied terminology used by researchers and practitioners. Legally, the Americans with Disabilities Act (ADA) defines disability as “a physical or mental impairment that substantially limits one or more major life activities of such an individual; a record of such impairment; or, being regarded as having such an impairment” (ADA 12102-1). Physical, sensory, and cognitive disabilities all can fit into this definition. However, the emergency management community has often included those with disabilities into a broader classification, that of *special needs*. There is no legally binding definition of special needs, and it can include people with many different types of needs, including women in late-term pregnancy, persons who do not speak English, or families who rely on public transportation (Clive, Davis, Hansen & Mincin, 2010). This presents a particular challenge to emergency managers, who must seek to care for the whole community while also meeting the legal requirements set by federal and state law. The current movement in federal disaster planning is towards a whole community approach, which includes the larger

community of people with disabilities (Whole Community Approach, 2011). The legal requirements for each individual group varies based on local and federal law and how disability is defined in that law.

Defining Disability

Another term used in planning documents to categorize the types of assistance needed during disasters is *functional needs support services* (FNSS). There are legal implications in how this term is used and implemented. The Federal Emergency Management Agency (FEMA) uses FNSS to describe services that allow people to remain independent while in general population shelters. FNSS includes people with disabilities as described by the ADA, as well as pregnant women, elders, and the people who are obese (FEMA, 2010). The population of people who require FNSS services are described using the term “functional and access needs” (FAN).

A significant number of people in the United States of America identify themselves as having a disability or impairment. The 2010 Report of Americans with Disabilities used U.S. Census data to determine the population of people with various types of disabilities. In this report, disability is defined in a variety of ways, and separated into three domains: communicative, mental, and physical. Communicative disabilities include those who are blind, deaf, or have difficulty having their speech understood. The mental domain includes learning disabilities, developmental disabilities, dementia, and emotional conditions that seriously interfere with everyday life. Those with physical disabilities include people who use assistive devices to move

and those who have a medical condition (such as cancer, diabetes, heart problems, or arthritis) that limit their ability to perform daily activities. The report further divides each of those categories into non-severe and severe levels. The estimates in the report do not include people living in institutional group quarters, such as nursing homes. In the population, 18.7 percent of people reported having some type of disability in 2010, with 12.6 percent of the population as a whole reporting a severe disability (Brault, 2012).

Models of Disability

Historically, authorities have approached people with disabilities using a medical model, in which their condition is equated with a sickness that can be managed solely by the health care system. Another model commonly in use is the charity model, where people with a disability are presented as needing to be helped by others in order to be protected or treated fairly (Yeo, 2005). Replacing the medical model is the functional model, in which the population of people with disabilities is seen as heterogeneous, with needs varying based on their individual conditions (Clive, et. al., 2010). The focus remains on the impairment faced by a person, but it is more specific to an individual. This shift in models helps explain some of the different ways government and non-government organizations treat people during disasters. A medical model in disaster planning concentrates planning efforts for people with disabilities on the medical challenges for the health system, instead of integrating people with disabilities into the process as a whole. A functional model instead looks

at the specific needs for access and functioning of the individuals within the population of persons with disabilities.

Along with the functional model discussed above, the social model has challenged the early focus on medical and charity interventions. This model views disability from outside the confines of a specific human body, instead looking at how a society is designed, and how a social system can hinder a person's ability to function in a community or area. Instead of the specific impairment causing the disability, structural, environmental, and attitudinal barriers stop people from being able to live fully (Kett, Lang, and Trani, 2009). This shifts the onus of dealing with disability issues from medical professionals and humanitarian charity agencies to governments and those who determine the priorities and practices of social organizations. In this model, "people with similar impairment characteristics become more or less 'disabled' in different environments and social circumstances" (Priestly and Hemmingway, 2008). While the social model moves beyond looking at specific medical conditions or impairments, a challenge presented by this model is that it makes it difficult to quantify a specific number of people with disabilities, or to look at interventions that can specifically address different issues caused by impairments.

The rights approach to disability has evolved over time, starting with a focus on the dependency of people with disabilities on others, but eventually becoming a model that encourages full participation and involvement. The Universal Declaration of Human Rights put disability under the same category as unemployment, sickness, and old age, aligning it with a group of issues beyond one's control and by virtue of

being dependent on others. In 2000, a shift began following involvement by international groups representing people with disabilities. Instead of considering people with disabilities as dependent, they were positioned in the discourse as deserving the full rights and freedoms of the rest of the population and also deserving full participation in the basic units in society. The discourses encouraged an incorporation of disability rights into all aspects of planning and policy, not simply as a separate category to be checked off. ‘Nothing about us without us’ became a rallying cry for the international disability movement as they fought for inclusion in the policy making process (Kett et al, 2009). The varied models discussed in this section help to explain the approaches used over time to intervene with issues and shape discussion in the community of people with disabilities.

Internationally, the United Nations has taken steps to develop a systematic framework for defining health and disability. Commonly referred to as the ICF, the International Classification of Functioning, Disability, and Health is used as a framework specifically for international health organizations. In 2002, the designers of the framework purposefully moved away from defining disability as a lack of health, instead focusing on the functioning part of the framework’s name. The basic manual describing the ICF discusses the disability/health relationship in this way: “By shifting the focus from cause to impact it places all health conditions on an equal footing allowing them to be compared using a common metric- the ruler of health and disability”(WHO, 2002). Instead of focusing on a medical model or social model of disability, the ICF is described as a biopsychosocial model, integrating the medical

and social. This tool is specifically designed to avoid labeling people with disabilities as a separate group. Rather, it seeks to describe the barriers and facilitators to performance in a continuum of human functioning. If a person's capacity is greater than his or her performance, then some aspect of the environment is hindering his or her ability to live to full potential. For a specific health condition, such as a spinal injury, the impairment (specific to that injury), activity limitation, and participation restriction are identified. In this instance, the impairment is identified as paralysis, while the activity limitation could be described with reference to an inability to use public transport. The participation restriction could include a lack of accessible public transport that leads to an inability to participate in religious activities (ICF, 2002). In this framework, the physical or medical issues faced by a person are paired with the limitation forced on that person because of external social forces. These varying models toward disability offer a lens through which policies and government actions can be viewed. Researchers have largely shifted away from medical and charity models of disability; however, policymakers have been slower to adapt to social or biopsychosocial models.

Recent Research on Disability and Disaster

The literature on disability and disaster includes some studies of specific disaster events and how effectively services reached people with disabilities during those disasters. Early work by Tierney, Petak and Hahn (1988) specifically addressed issues faced by people with disabilities during earthquakes. While much of the focus

of the book was on structural engineering and other hazard specific information, the book touched on aspects of emergency planning, particularly for nursing homes and other institutional settings where large numbers of people with disabilities reside, as well as the social dimensions of the impact (Tierney, Petak, and Hahn, 1988). By acknowledging the differential impact on people with disabilities, this work led the way in considering vulnerabilities during disaster.

In 2002, Ben Wisner returned to the topic of vulnerability for people with disabilities in earthquakes. He explained the three major approaches that governments take globally when planning for people with disabilities in a disaster. The first approach was doing nothing, which was unfortunately a path often taken when resources were scarce and needs were great. A second approach was more common in the United States, where ‘top down’ planning for people with disabilities takes place, largely without their input. In this approach, “They presume the dependence of the disabled person upon a care-giver and disregard situations in which there may not be anyone to assist the person in question” (Wisner, 2002). The third method is participatory and inclusive, purposefully including people with disabilities in all states of disaster management. While Wisner acknowledged the superiority of the third approach, he was unable to identify any specific governments using that approach towards the issue (Wisner, 2002).

Sheltering is a recent focus of disability related research. For example, the 2011 paper by Twigg, Kett, Bottomley, Tan, and Nasreddin examined the current practices of sheltering people with disabilities. While it focused largely on problems

facing people with disabilities, specifically challenges with access, needs assessment, communications, and personal support, it also called for a more inclusive approach to sheltering people with disabilities. The more effective method “is to use a flexible framework addressing a broad set of function-based needs and reflecting the capabilities of the individual, irrespective of any specific diagnosis” (Twigg et.al., 2011). This approach was echoed in a 2013 paper specifically looking at sheltering for people with disabilities in Japan following the 2011 earthquake, tsunami, and nuclear accident. Brittingham and Wachtendorf explored the importance of situated access, how people’s physical location and social location can affect their ability to receive and use information, material and other resources following a disaster. People with disabilities had different access to services and supplies in many of the shelters, which may have hindered their ability to recover from the disaster. Using the concept of situated justice, they called for increased research into “how people with disabilities conceptualize justice and adequate access to services in post-disaster and catastrophe environments” (Brittingham and Wachtendorf, 2013). This ongoing research demonstrates the continued importance of including considerations for people with disabilities in disaster planning.

Watershed Moments for Disability and Disaster

In 2003, severe wildfires in Southern California forced hundreds of thousands of people from their homes. The State Independent Living Council (SILC) conducted a study on the impact of these fires on people with disabilities by gathering data from

public forums in the affected areas, listening to both the responding agencies and the evacuees. From these forums, the SILC identified five key areas where people with disabilities faced challenges. Preparation, notification, evacuation, sheltering, and recovery were cited as areas in which significant improvement was required. Non-profit groups involved in assisting people living independently with disabilities were not consulted at any point during the planning process before the disaster. This meant that many people who were unable to take protective actions before the fires due to disability (such as cutting back brush to create defensible space around their property) were not assisted in ways that could have minimized damage. Notifications were “haphazard” during the fires, and mainly distributed via television news programs and radio broadcasts, which were rarely captioned and thus inaccessible to deaf residents (SILC, 2004). At the time of the fires, no reverse 911 system was in place to ensure that everyone living in a threatened area received word of the danger by a reliable, standard method. Given that it can take longer for people with disabilities to evacuate, the fact that warning messages were poorly distributed put them at a disproportionate risk.

Shelters had to be chosen rapidly during this event, and were not screened to ensure accessibility. This meant that many of the facilities lacked the accommodations necessary to ensure that people with disabilities had access to the same services and information as the rest of the population. A lack of accessible housing stock, particularly for people who used HUD Section 8 vouchers to help pay for their home, resulted in many people with disabilities not being able to return to

their original neighborhoods following the fires (SILC, 2004). Overall, this report revealed that many of the areas in California, specifically San Diego and San Bernardino counties, were not properly prepared contend with the needs of people with disability during disasters. While many of the challenges discussed in this report were temporarily handled by people improvising on the ground, the system set up before the disaster had not compensated or planned for effectively handling these issues beforehand.

Hurricane Katrina was a focusing event, shedding light on the issues people with disabilities face during disasters. Focusing events are defined as “An event that is sudden; relatively uncommon; can be reasonably defined as harmful or revealing the possibility of potentially greater future harms, has harms that are concentrated in a particular geographical area or community of interest; and that is known to policymakers and the public simultaneously” (Birkland, 1998). US Census data from 2000 indicate that 23.2 percent of New Orleans residents had a disability (NOD 2005). The National Organization on Disability generated a report on how Katrina evacuees with disabilities were treated after leaving New Orleans. They received time sensitive data through representative sampling, specifically looking at people with disabilities and the elderly in the weeks following the hurricane. They found that only 50 percent of emergency managers had a plan for assisting people with disabilities, and 54 percent had no memoranda of understanding with agencies that assist people with disabilities. Without such agreements, it is far more challenging for partnerships to function effectively during the disaster. The researchers also found a lack of

coordination between shelters and inconsistent sheltering situations. Some were well managed, either by the local community or by groups like the American Red Cross, and some were poorly managed, again by both groups. Even those that were well managed were unable to communicate with other shelters, so coordination of resources was not possible. Two-thirds of shelter workers had questions about how to manage the intake and registration process of people with access and functional needs. The medical model was often used, leading people with disabilities to be separated from their support networks and unnecessarily placed in medical shelters. Some evacuees were even institutionalized, despite the fact that they neither requested nor required that type of housing (NOD, 2005). The report also cited great concern about the attitudes of shelter workers who were working with those with disabilities and elderly. Several shelter managers expressed “the misguided impression that aging and disability issues [are] not of concern to general shelter managers” (NOD, 2005). The report called for a change in the understanding of the responsibilities and populations to be expected in general population shelters.

Katrina brought to the forefront some of the legal issues involved in the merger of disability issues with disaster planning, response and recovery. A lawsuit was filed in 2006 alleging that FEMA was violating the Fair Housing Amendments Act and Stafford Act by not providing accessible trailers. The court ruled that FEMA was required to provide trailers that would be accessible to the plaintiffs and some other individuals with mobility disabilities, but not the entire population (Lord et. al., 2009). This ruling helped set the stage for the legal issue addressed in this research.

The *Nobody Left Behind* project studied disability-related disaster and emergency response practices at local emergency management agencies. This extensive empirical study was conducted using telephone surveys of emergency managers, reviews of emergency plans, and an online survey with personal descriptions of people with mobility impairments. Due to the funding source for the project, the focus was on the people with mobility impairments, excluding other disabilities. The final report, issued in July 2007, reviewed all of the different findings generated during the study. Forty-three percent of emergency managers knew the number of people with mobility impairments in their jurisdiction; of those, twenty-seven percent used U.S. Census numbers or voluntary registries to find that information. Of those who did not know this number, fifty-nine percent would have found the information useful. A majority of emergency managers had no training in working with or accommodating people with disabilities or other unusual needs, and there was little to no representation of people with mobility impairments in the planning stages of emergency management. The report also found that while lessons learned during disasters improved a jurisdiction's ability to assist people with mobility disabilities, those lessons were not incorporated into the plans for future disasters (White, Fox, Rooney, & Rowland, 2007).

The State of California recognized the difficulties and lack of proper preparation of people with disabilities during disasters. Indeed, the State offered a variety of resources to assist the counties and cities within its borders to plan effectively for this population. One of these programs is specifically designed to

ensure that the needs of people entering shelters are met sufficiently by providing state resources and personnel that can be used during disasters. The FAST (Functional Assessment Service Teams) program uses teams of 2-8 people who deploy to general population shelters to conduct functional assessments on individuals with access and functional needs as they arrive at the shelter. The teams work with shelter workers to meet existing functional needs, and assist with acquiring needed personnel and materials such as medications, durable medical equipment, personal assistants, and interpreters. This program, started in 2006, was prompted by the problems seen during Hurricane Katrina (“FAST”, 2006). The State also has a document designed to assist with planning for people with access and functional needs—a statewide sheltering plan called the “People with Access and Functional Needs Shelter Annex” (PAFN). Designed to “establish an effective process for activating and operating a state mass care and shelter delivery system for PAFN during a major emergency/disaster” (“People with Access and Functional Needs Annex”, 2006), it defines necessary activities at the four phases of disasters, as well as the relationships between and roles of federal, state, and regional agencies during disasters. These resources are available to planners throughout the state; however, their reach and effectiveness are unclear. In order for cities to use these resources, they must be aware of their existence, and have the time and opportunity to attempt to incorporate them into pre-existing plans that are their current priority.

Framing

Framing is the process by which people are able to use a specific perspective on an issue to orient their emotions about that issue (Entman, 1993). A classic example of framing is asking people to consider a rally sponsored by a hate group. When an individual is asked whether or not they support such an event, the answer can be affected by the frame that is used when asking that question. If the rally is discussed in a context of free speech, the individual is more likely to support it, while if the rally is discussed in the context of public safety, the individual is more likely to be against it. The frame that is used to ask the question has a significant impact on how the individual views the issue, and what political and personal values he or she brings to mind when making decisions about how to handle a controversy (Chong and Druckman, 2007). Frames do not force someone to respond one way or another, but they play into pre-existing personal value systems to encourage a decision in the direction desired by the communicator (Chong and Druckman, 2007).

Traditionally, framing is used as a method of analyzing media and political spin on a variety of events and issues presented to the public at large. Any particular frame for an issue of communication can only be defined when examining the specific situation that it is attempting to affect. In their 2007 review of framing theory, Chong and Druckman identify basic steps required to study how framing can be recognized and analyzed. The first step is identifying the specific issue, which in this case is planning for people who are disabled in disaster preparedness and response. Secondly, specific attitudes need to be considered in how frames affect the opinions of

those dealing with the issue. For this study, such attitudes were identified inductively through analysis of the various documents available for the case. Those specific attitudes were then shaped into an initial set of frames that were used to code the text under examination. The rich source of information that the evidence from the CALIF v. City of Los Angeles lawsuit provides was examined using frames identified following initial analysis. In other research, issues examined in the way described above include support for war and attributions for responsibility for the obesity epidemic (Chong and Druckman, 2007). By using framing as a driver for analysis, controversial issues in which varied stakeholders have different and contrasting values can be analyzed.

Entman (1993) discussed framing's effect on the communication process. He suggests frames can be found in four locations in the communication process: the communicator, the text, the receiver, and the culture. Of particular importance for this study are the communicators, who are adjusting what they say, either consciously or not, guided by frames. These communicators then create the text, in this case the evidence submitted by each side of the lawsuit, which has frames embedded that “are manifested by the presence or absence of certain keywords, stock phrases, stereotyped images, sources of information, and sentences that provide thematically reinforcing clusters of facts or judgments” (Entman, 1993). The textual analysis in this research attempted to find these various manifestations in the work, looking particularly for stereotyped images, keywords, and the sources of information cited by the various informants.

Why do frames make a difference when looking at how various stakeholders in different parts of the City of Los Angeles conceptualize disability and reasonable accommodations in the context of disaster planning? Frames motivate the actions taken by such stakeholders. Frames help a person notice that problems exist, and affect how that person evaluates and makes decisions about action regarding the problem (Entman 1993). The impact that frames have on how a person regards the issue at hand can vary based on the amount of information that the person already has regarding the issue. Those with preexisting strong attitudes are more likely to argue against information that goes against those views, only recognizing the information that confirms what they already believe (Chong and Druckman, 2007).

The 2003 book, *Rights of Inclusion* provides an example of incorporating framing into the study of disability. Engel and Munger explored how the Americans with Disabilities Act changed the way that Americans living with disability identified themselves and their rights. Using narratives provided by people with physical and mental disabilities regarding their lives, the authors examined the power that a law has to change what people view to be their position in the world and rights in that position. While Engel and Munger focused on experiences with reasonable accommodations in the school and workplace, many sections were relevant to framing in a disaster planning context. Of particular interest to this research was a section in which interviewees defined their position in the world using different frameworks. Three major discourses emerged from the interviews: racial justice, the market, and faith. These discourses helped define the types of language used to describe

accommodations and also shaped how the subjects viewed their position in the larger world of rights advocacy. For instance, Simon, one of the interview subjects, evaluated whether or not he would request additional assistance in an aspect of his job based on whether or not it would prove advantageous to other employees as well, feeling that accommodations should benefit the group, not simply one person. By using a market framework, he defined what he believed were necessary interventions (Engel and Munger, 2003). These discourses acted as a starting point for exploring types of frames that emerged in this analysis.

Chapter 3

METHODS

In order to reveal the frames used by stakeholders in the lawsuit, the primary documents in the motion for summary judgment were the focus of this research. The plaintiff filed a motion for summary judgment, defined as “a judgment granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law.” (Garner, 2011). If the motion is granted, the judge makes a final decision in the movant’s favor on the merits of the case based upon written evidence supplied by the plaintiff and the defendants. If the motion is denied, the case proceeds to trial. The City of Los Angeles and CALIF both filed depositions and declarations to support their interpretations of the merits of the case. Generally, the documents filed by CALIF sought to prove the allegations in the complaint, often using the words of City personnel to prove those allegations. Through this evidence, CALIF proved that it was entitled to summary judgment. The City of Los Angeles filed documents intended to dispute CALIF’s factual allegations and sought to show that there were genuine issues in the case that needed to be decided by a trial.

This research specifically analyzed the depositions and declarations that were considered significant enough to be filed during the summary judgment process. A declaration is characterized as, “in a few American jurisdictions (such as California), a

formal written statement resembling an affidavit and attesting, under penalty of perjury, to facts known by the declarant” (Garner, 2011). CALIF used declarations from leaders in the disability community to support its claims of discrimination under the ADA. City attorneys used declarations as rebuttals to the claims made by CALIF. These written documents were signed by witnesses whose depositions were taken, often seeking to clarify statements made during the depositions in reference to how those statements were used by the opposition. An example of the language that begins most City employee declarations is, “Plaintiffs have used my deposition testimony as support for their undisputed ‘facts.’ However, in many instances I did not testify then, nor do I do so now, in the manner Plaintiffs suggest. In fact, the Plaintiffs have turned my opinion and other hopes for what may [sic] prior to, during in the aftermath of a disaster, into ‘facts.’” (Featherstone Declaration). Such a statement reflects the interpretation of deposition statements imposed by lawyers in the actual motion for summary judgment. The document analysis used only the primary documents themselves, not the interpretations by lawyers in later documents. Some of both the defense’s and plaintiff’s declarations were presented in the plaintiff’s reply brief. See Table 1 for the order in which the documents were filed.

Table 1 Timeline of Lawsuit and Associated Primary Documents

| <u>Date</u> | <u>Action</u> | <u>Associated Primary Documents</u> |
|---------------------|--|--|
| 1/14/2009 | Complaint Filed Against City and County | |
| 1/27/2010-7/23/2010 | All Depositions Taken | Depositions of Plaintiff and Defense Witnesses |
| 8/2/2010 | Motion for Summary Judgment | Declarations of Plaintiff Witnesses |
| 8/18/2010 | Opposition to Motion for Summary Judgment | Declarations of Defense Witnesses |
| 8/27/2010 | Reply Support Motion for Summary Judgment | Reply Declarations of some Plaintiff Witnesses |
| 2/10/2011 | Order Granting Motion for Summary Judgment | |

In the motion for summary judgment filed by CALIF, relevant sections of depositions were cited in support of assertions made establishing issues of material fact. Depositions are transcribed interviews of relevant parties taken under oath when lawyers for both sides are present (Garner, 2011). They hold the same weight as statements made under oath to a jury. In order to establish the material facts needed for the motion for summary judgment, depositions were taken of key individuals involved in the case, in a manner similar to how people would be called to the stand as a witness during a trial. In the actual documents filed with the court, only the sections of the depositions that are quoted in the motion are included as evidence. Through contact with the plaintiff's and defense's lawyers, full transcripts of the depositions were obtained for analysis. While depositions of other individuals were taken in the course of this lawsuit, (as referenced in the text of the depositions themselves) those excluded depositions were not considered significant enough to include in the actual

motions before the court. This meant that a full list of them was not publicly available, and that they were not part of the public record of the case. Instead, this analysis focused on depositions that were considered to be significant enough to the case to cite during the summary judgment proceedings.

Textual analysis was conducted using court documents filed in support of and in opposition to the motion for summary judgment, as well as the full text of the depositions of witnesses. The analysis followed an inductive approach, utilizing open coding to determine framing themes throughout the data, followed by grouping of the codes that “belong” together, and full coding of the data into appropriate categories (Warren and Karner, 2010).

Specific sources for this research are the evidence cited in the plaintiff’s motion for summary judgments and submitted by the defense in opposition to the motion for summary judgment. The plaintiff combined the depositions of a variety of personnel from the City of Los Angeles’s Emergency Management Department (EMD) as well as depositions from other people in charge of various disaster response functions in the City, including representatives from the Los Angeles Chapter of the American Red Cross, the Department of Recreation and Parks, the Department of Public Health and the City’s Department on Disability (DoD). The plaintiff also filed a variety of declarations from expert witnesses who represented different disability organizations active in the City, including people with significant experience in dealing with the issues of disability and disaster, such as the former executive director of the National Council on Disability. The defense presented declarations from many

of the people cited in the depositions, as well as additional City workers. In response to the declarations filed by people with disabilities and representatives of organizations working with people with disabilities, the defense conducted depositions of several of the witnesses, which were then used in the opposition to the motion for summary judgment to rebut CALIF's allegations. A full list of the depositions and declarations are found in the Appendix at the end of this document.

Following an inductive approach to content analysis, the previously discussed data was analyzed following an open coding plan using Atlas TI software. According to Warner and Karner (2010), open coding is the process in which themes and analytic patterns emerge following careful study of the data. Specific terminology for the codes was developed using the language in the original document, instead of using a set list of potential codes. This ensured that no important aspects of the data were overlooked during the preliminary analysis (Warren and Karner, 2010). Key frames and concepts were identified in each deposition and declaration, particularly regarding the issue of planning for people with disabilities. Legally required language was present in both the declarations and depositions, often to ensure that witnesses understood the process and were aware that they were under oath. The personal backgrounds of every deposed witness were also included, with information such as their educational and employment record. These two sections of the documents were excluded from the analysis, except to the extent that they were relevant to the individual's specific knowledge of people with disabilities. The declarations were coded in their entirety, excluding the previously discussed sections of legally required

language. The coding of the transcripts focused on the answers of the witnesses, with lawyer's questions included to provide context. On some occasions, the questions themselves provided important data regarding the position of a lawyer representing one of the stakeholder groups, or appeared to lead witnesses to answer in a specific manner. In that situation, the questions themselves were also coded. Generally, the focus of coding was on the answers given by witnesses, rather than questions from lawyers.

Following the creation of a preliminary set of open codes, the codes were analyzed, looking for themes in the topics and issues addressed by each code. Similar codes that were replicated with slightly different wording were combined to ensure consistency. Codes that discussed similar issues to other codes were collapsed into families of codes, all revolving around concepts (e.g. self-identified barriers to enacting changes for people with disabilities in disaster planning). After that point, the codes were focused into analytical categories and grouped under broader headings that fit the content of the code, such as barriers and motivations for action, divided by stakeholder groups. Those categories were created by analyzing the emerging themes in the codes, then creating categories in which the content fits into only that category, and no others (Elo and Kyngas, 2007). Once appropriate categories were adjusted, with sub-categories and individual codes within them, conclusions about framing were drawn from the data.

Charts for each analytical theme were created and sorted under the categories of significant stakeholder groups. The stakeholders were generally divided into four

categories: City EMD employees, first responders [including the Los Angeles Police Department (LAPD) and Los Angeles Fire Department (LAFD)], representatives of people with disabilities (including expert witnesses and access and functional needs organizational representatives), and other stakeholders (including the Los Angeles Chapter of the Red Cross and other City departments). A table describing the various stakeholder groups in Table 2. Specific positions within organizations are included in the Appendix.

Table 2 Stakeholder Groups and Associated Primary Documents

| <u>First Responders</u> | <u>LA City EMD</u> | <u>Plaintiff's Witnesses</u> | <u>Other</u> |
|--|---------------------------|-------------------------------------|--|
| <i>Stacy Gerlich, LAFD</i> | James Featherstone | Michael Collins, Expert | <i>Albert Torres, Recreation and Parks</i> |
| <i>Andrew Neiman, LAPD</i> | <i>Keith Garcia</i> | Norma Jean Vescovo | <i>Michael Kleiner, Red Cross</i> |
| Luann Pannell, LAPD | Anna Burton | June Isaacson Kailes, Expert | Steve Dargan, Contractor, Public Health |
| Thomas Ottman, LAFD | Robert Freeman | Shannon Murray | Angela Kaufman, Dept. on Disability |
| | Eric Baumgardner | Lilibeth Navarro, CALIF | Ralph Acuna, Dept. on Disability |
| | | <i>Audrey Harthorn</i> | |
| <u>Key</u> | | | |
| <i>Italics= Only Deposition</i> | | | |
| Regular= Only Declaration | | | |
| Bold= Both Deposition and Declaration | | | |

This Los Angeles lawsuit provided a unique example of a successful use of the litigation based on Americans with Disabilities Act to affect change in disaster planning. It stood as an example for other cities across the country that might find themselves in similar circumstances, and offered insights into the types of issues that might emerge.

Chapter 4

ANALYSIS

When discussing the process of planning for people with disabilities during disasters, different stakeholders identified specific barriers to action that were stopping them from taking effective action. While some of these barriers were the same across all of the witnesses in the depositions and declarations, some differed based on the agency that was represented. Motivations for action were identified throughout the documents, and these varied between stakeholder groups. These barriers and motivations were sometimes explicitly expressed as such by the involved parties. Some of them, however, were instead implied through answers to questions and the phrasing of statements. The way that certain concepts were framed elicited latent barriers and motivations that were clear based on the language used by the writers, but not necessarily acknowledged by them.

One reason for such differentiation between self-identified reasons for action and underlying ones is found in the structuralist-functionalist perspective. This sociological theory asserts that, “a society is a complex system composed of various parts [that] work together to keep society alive” (Newman, 2006). In this perspective, social institutions are essential to ensure that societies function effectively and stably. These social institutions can have manifest and latent functions, which affect their ability to carry out tasks properly. Manifest functions are defined as, “the intended,

obvious consequences of activities designed to help some part of the social system” (Newman, 2006). An example of this in a disaster context is that city emergency management departments are charged with creating disaster plans to help guide a city in its response to a hazardous event. The plan is meant to improve the ability of the city to carry out the actions required of it to respond to such a disaster. Latent functions also play an important role in the ability of social institutions to work properly. They are defined as, “the unintended, sometimes unrecognized, consequences of actions that coincidentally help the system” (Newman, 2006). Continuing with the city disaster plan example, the process of creating such a plan with a variety of official and community organizations might bring together groups that otherwise would not interact, and enable them to work together on unrelated projects that are of interest to both of them. This in turn helps ensure that the city as a whole works more effectively. This perspective is somewhat limited in that it assumes that any dysfunctional aspects of social institutions will eventually abate, as their harm to the system will be recognized, and thus those dysfunctional elements will be eliminated. While it is certainly hoped that social institutions will continue to improve and recognize where they fail, this process depends on the recognition of the areas where problems lie, and the willingness to change them. The first section of this analysis will identify the motivations and barriers, acknowledging both the manifest and latent functions that are revealed through the data.

External Barriers to Change

All of the stakeholders openly acknowledged one major barrier to the ability to change anything about disaster planning in the City: the lack of funding, which in turn resulted in a lack of personnel. The impact of the recession strongly affected City funding throughout the course of this lawsuit. The director of the City's Emergency Management Department indicated at the time of his deposition that he was forced to lay off employees and unable to hire new personnel to fill needed positions. He believed that he would have to lay off more employees at the time of his deposition, stating, "...The Department, I believe it was around 27 people when I took over, I'm guessing now. By June, I'll be down to between 20 and 23 people" (Featherstone Deposition). Throughout his deposition, he frequently referenced this loss of funding and workers as a reason that new actions were not taken, and insisted that more could be done with a greater number of employees. He also indicated that this situation put the City of Los Angeles in a comparatively weak position as compared with other cities of similar size: "...The Emergency Management Department in Los Angeles is significantly behind in terms of staffing, relative to comparable cities throughout the country" (Featherstone Deposition). Los Angeles is the second largest city in the United States, but has had significant financial difficulty leading to massive reductions in budgets. Significant layoffs of City personnel and cuts in the budget to departments involved in disaster response occurred in response to the recession and fiscal challenges within the City in 2010 (Zahniser & Reston, 2010). In this lawsuit, some of the consequences of those reductions became apparent.

Others not directly within the City EMD shared concerns regarding the money available to make the changes called for by this lawsuit. The City's DoD was threatened with disbandment during part of the time period of this lawsuit due to budgetary challenges. While it survived at least to the completion of this research in July, even the representative from CALIF expressed doubts about whether it could be successful with its level of funding, stating, "Whether or not they're competent is one thing, but whether there are enough people to implement all the responsibilities this poor little department is saddled with is another, and I know if they are to do everything they're supposed to do they are grossly underfunded" (Navarro Deposition). As is further demonstrated below, the EMD depended on the DoD to represent all people with disabilities within the City. However, there was not one person in either department tasked with specifically representing people with disabilities in the disaster planning/emergency management context. When asked by the plaintiff's attorney if having a specific representative of DoD working on emergency planning would be helpful, the DoD witness stated, "...It's become more time consuming, and having the additional staff to focus on that, to be able to not have to take time away from other duties, would be of benefit to the City. Yes" (Kaufman Deposition). Both the EMD and the DoD needed to work together to deal with the issues behind this lawsuit, and clearly faced significant funding challenges.

Other external challenges were specifically identified by City personnel attempting to help people with disabilities. For example, the media occasionally derailed the attempts of City emergency managers to ensure that people who

experienced difficulty hearing were able to understand the information shared in news conferences regarding ongoing disasters. A common practice is to position a sign language interpreter next to the speakers during a press conference, to ensure that unsubtitled broadcasts are still accessible to people with difficulty hearing. As the expert witness for the plaintiff, June Kailes, noted during a wildfire in Sylmar, however, “The good news was there was an interpreter on stage in the press conference. The bad news was the media cut out the interpreter in the broadcast” (Kailes Deposition). The ADA Compliance Coordinator for the DoD also noted similar challenges, stating that “The City would employ the media, and, unfortunately, we have no control over what the media does to make their programming accessible or not accessible” (Kaufman Deposition). While the message shared by officials may have purposefully included essential information for people with disabilities, others outside the control of the City were responsible for the dissemination of that information.

Budget challenges and lack of media cooperation, as identified by staff members, prevented the EMD from fully integrating people with disabilities, and were largely caused by forces outside of their control. These were the issues that City personnel were most comfortable discussing as reasons behind their reluctance to address the issues posed by the lawsuit. By framing the barriers as challenges beyond the control of any individual within the department, there was little impetus to change anything about how the department is functioning. While these specific challenges were not easily altered by the staff, there are other barriers implicit in the testimony of the defendants that suggest other reasons for the resistance to change.

Learning from Others

Depositions led by the plaintiff's attorney used a general pattern of questions to establish the circumstances surrounding a variety of issues. One of these series of questions asked of all of the witnesses was about learning from other cities' plans and past disasters. The plaintiff's expert witness specifically pointed at this as a reason that the EMD was violating the ADA, stating, "the City has not adopted the recommendations or guidance of any national report or incorporated any practices from other jurisdictions for serving the needs of people with disabilities" (Kailes Declaration 1). The highest levels of the department exhibited a resistance towards learning from other cities, with the General Manager of the EMD responding to the question, "Have you ever read any report of any organization on improving emergency preparedness for people with disabilities?" by saying, "Not that I recall" (Featherstone Deposition). Even more explicit was the deposition of the Assistant General Manager, who was asked, "Do you think it might be a good idea to look and see what other jurisdiction do?" and responded, "No", and then later responded when questioned about reading any types of reports regarding generally improving preparedness, "I hate reading" (Burton Deposition).

While the leadership of the EMD was clearly resistant to looking at outside documents to help shape their own plan, other forces in the City occasionally pressured the department to consider such comparisons. According to the testimony of the emergency preparedness coordinator for the EMD:

The previous deputy mayor for Homeland Security and Public Safety had seen the San Francisco disaster plan and wanted us to revise and revamp our disaster plan to their structure... We had several meetings within our department, within our planning division of our department, where we came up with a similar structure and demonstrated that to the mayor's office.

Q: Do you know if that was actually ever implemented?

A: It was not (Garcia Deposition)

Later in the same deposition, a similar recognition of the benefit of learning from others that was then ignored was exhibited:

Q: And with respect to each of those problems for people with disabilities that you've just described, which you read about in the wake of Katrina, the City of Los Angeles emergency plan does not provide for remedying those problems; is that correct?

A: That's correct (Garcia Deposition)

This pattern of failing to incorporate the lessons learned by other jurisdictions during disaster situations indicated an organizational culture that was not interested in outside influences affecting their operation. All of the personnel questioned regarding learning from previous disasters and other cities were blunt in their estimation of the City's lack of interest in actually incorporating such information. While some individuals were personally interested in what went wrong in previous disasters, they did not change what they were doing in their jobs in response to that information.

Resistance to change was also a major factor in the insularity of City departments exhibited throughout the testimony. Five different City departments were represented in the depositions and declarations. While they worked with each other more or less successfully, to plan for emergencies and disasters, they shared a

tendency to rely only on other City agencies rather than seeking outside input. The relationship between the DoD and EMD, acknowledged by members of each agency, drove policy decisions, with an EMD employee stating, “As an agency, the EMD is aware of the City’s Department on Disability. EMD is aware of the emergency preparedness, response, and recovery role of the City’s DoD” (Freeman Declaration). The leadership within the EMD also recognized the importance of having a representative for people with disabilities in the planning process, stating, “Because not being disabled myself, I rely a lot on people who represent the perspective of the disabled”, whom he indicated to be the DoD (Featherstone Deposition). Outside input was not consistently valued by the department, however, with the Assistant General Manager expressing that not every plan needed input from experts on the topic:

Q: Would you agree that it’s important that persons with disabilities are included in the emergency planning process at all levels?

A: I would disagree. I think there is a variety of levels of emergency planning that takes place that not all of the focus or the issues require a subject matter expert from the disabilities community (Burton Deposition)

Instead, she explained that emergency planners could consider issues faced by people with disabilities without needing to have someone specifically representing that group involved in the process. Another employee from the planning unit of the EMD agreed in a limited manner, stating, “While ‘stakeholders’ should participate in the creation of emergency plans, the involvement of any participant, be it government agency, non-governmental organization, volunteer group or community group should only be to the

extent of their involvement in the incident the plan addresses” (Baumgardner Declaration).

These statements did not necessarily indicate a specific disregard for representatives of people with disabilities in the planning process. Instead, they pointed to a general orientation away from consulting outside organizations in any part of the process unless absolutely necessary. While revising the welfare and shelter plan, the DoD was consulted, specifically to “ensure appropriate language is developed regarding this issue [of better addressing people with disabilities]” (Freeman Declaration). In this manner, the DoD was framed as having the role of making sure that up-to-date terminology and concepts were included in new plans. This involvement accomplished the manifest goal of ensuring that any language regarding disability used in the document would be appropriate for current standards. They did not have to make sure that the plans themselves were completely inclusive. The department was used to check off the box that access and functional needs issues were addressed, not to fully incorporate people with disabilities into the process. In this way, the latent function ensured that the EMD was in compliance with standards without requiring major involvement by the DoD or changes in the planning process.

Presence and its Connection to Emergency Operations Center Placement

The tendency towards isolation discussed earlier generally influenced the inclusion of outside departments in EMD plans, and particularly affected the structure of agencies involved in a disaster response. In deposition testimony, City personnel

agreed that one of the few major changes in addressing the needs of people with disabilities that happened in the year between when this lawsuit was commenced and when the depositions were taken was the purposeful inclusion of the DoD in the City's Emergency Operations Center. Money was specifically allocated to ensure that the seat for the DoD was equipped with software to be fully accessible to representatives who might themselves have access and functional needs. As one EMD employee stated, "I've worked with the Department on Disability to provide specialized communications equipment at a workstation within the City's EOC and to undertake some physical alterations of the building's entry and exit points to ensure accessibility" (Freeman Deposition). While this commendable action ensured that specific consideration of people with disabilities during disaster took place, there were two indicators that this change was used as a band-aid meant to solve the problems raised by the lawsuit.

The first indicator was that the City installed the specialty equipment at just one desk. By creating a workstation specifically for people with disabilities, the City implicitly suggested that other workstations were not appropriate for people with disabilities and confined the DoD representative to one specific seat in the room. An EOC is designed to encourage the interaction and cooperation between different agencies, bringing them together to solve problems that arise during disaster. By confining the DoD representative to a specific location, the City essentially restricted that person's ability to engage others within the EOC, and forced others to come to the

representative instead of allowing the representative the ability to move about freely as needs dictated.

Another factor keeping the DoD from integrating fully into the EOC was the hierarchical position given to that representative. As the General Manager stated in his deposition,

My initial suggestion was to them [the DOD] was that they should be part of the management section. Then looking at it later on, it's just that I thought- I said, well, that may not be the best place, because they're actually more effective in the mass care branch out on the floor. That way you have the disabilities' perspective represented and in the decision- in the branch that actually makes decisions about human service (Featherstone Deposition).

While placement into the mass care branch completed the manifest goal of giving the DoD the opportunity to affect directly the functions that mass care addresses, including sheltering and public health, it also separated the DoD from many of the top decision makers within the EOC. This served the latent function of confining the influence of the DoD into one specific area of the EOC, instead of incorporating it throughout. It also could remove them from affecting the overall strategic direction of the response, which was typically driven by what the management section initially suggested. The DoD certainly has an vitally important role to play within human services and mass care; however, that is not the only domain requiring inclusion of people with disabilities.

The Role of Response Agencies

On the ground response agencies struggled with how best to incorporate the needs of people with disabilities, as demonstrated in the depositions and declarations. For agencies such as the fire department and police department, emergencies were daily events, and disasters were secondary considerations. While the responders played essential roles in the City's ability to plan for disaster, they generally looked at disaster response as a secondary function, which used their already developed skills in a slightly different setting. The belief that patterns of behavior appropriate during normal situations would work in disasters and that flexibility and innovation could be relied upon when normal responses failed were two major drivers of the attitudes of first response agencies towards planning for people with disabilities during disasters.

Consideration for people with disabilities was incorporated into the basic structure of first responder education for day-to-day responses. An LAFD representative stated, "Department members receive training on addressing the unique needs of persons with disabilities at EMT refresher training or paramedic continuing education" (Ottman Declaration). The police department representative indicated similar training priorities, stating, "The LAPD trains regularly on how to work with the many divergent needs of community members that have varying degrees of ability and disability both mental and physical" (Pannell Declaration). The first responder witnesses demonstrated a basic level of awareness for all response personnel regarding issues that people with a variety of disabilities face. Everyday responders worked with people with disabilities in emergency situations, and were often informally

familiar with the locations of some people with disabilities as a result of previous responses to those people. A fire department representative indicated, “People are made aware- or were made aware of them in their geographic areas because we know we will be dispatched to those individuals on a more regular basis, potentially” (Gerlich Deposition). In this manner, responders became comfortable with their ability to respond to people with disabilities during the regular course of events.

The individuals represented in this lawsuit indicated their expectation that the processes that worked well for them during normal emergencies would also work during disaster situations. When asked about the presence of written plans to identify vehicles that could transport people with disabilities specifically during a mass evacuation, a fire department commander stated, “Well, we have different accessories, for lack of a better term, that we utilize on a daily basis” (Gerlich Deposition). The LAPD officer who was deposed stated, “I don’t know specifically related to disaster, but I know that throughout my career, I’ve received training on dealing with persons with disabilities for all kind of situations” (Neiman Deposition). One of the basic principles of disaster management is that disasters are qualitatively different from emergencies, and thus require different plans and responses. As Quarantelli stated in his 1999 paper, “There are behavioral differences in degree and in kind. For instance, because of the typical massive convergence on the impact site of a disaster, the responding organizations have to deal with far more and usually previously unknown groups than in an everyday community emergency” (Quarantelli, 1999). Techniques and patterns of behavior that are effective when resources are expected and

organizations have practice coordinating together do not necessarily work during a disaster. Helping to mitigate against such challenges is one of the reasons that disaster planning is undertaken in the first place. First responders in this lawsuit fell back on their training for normal emergencies when describing how to meet the needs of people with disabilities during disasters. This will not always be adequate.

When confronted with specific questions regarding disaster situations, the first responders indicated the importance of considering improvisation and creativity as major factors in their ability to adapt to disaster challenges. The importance of individual responsibility and adaptations to the situation was key for responders. In discussing how to ensure that service animals stayed with their owners, the fire department representative said that it is, “just each of us having that responsibility to make sure that we cover the bases that need to be covered” (Gerlich Deposition). The LAPD representative expressed similar views in discussing mass notification, stating, “We have general guidelines on how to make notifications, and that would include individuals with disabilities and the elderly. And, again, common sense, and many cases, would dictate that” (Neiman Deposition). Even when discussing extremely complicated disaster functions, such as ensuring that a mass evacuation would appropriately include people with disabilities, improvisation was stressed:

A: We would develop plans, like we always do, for unforeseen emergencies.

Q: That is, you would develop a mass evacuation plan on the spot?

A: If that was the requirement, yes, sir. (Neiman Deposition)

This emphasis on the importance of innovating and solving problems at the scene was also present in the attitude of one of the parties responsible for setting up and running shelters. In Los Angeles, the Department of Recreation and Parks has a lead role in sheltering. Their representative discussed the importance of ensuring that his staff was prepared to deal with a wide variety of situations, saying, “It could be as general as a reminder to facility managers who are operating a shelter to be sensitive and flexible, or it could be part of the Red Cross shelter management training” (Torres Deposition). While previous research on disasters, such as the waterborne evacuation of Manhattan on September 11, 2001, has shown that improvisation is essential to dealing with unexpected situations during disasters, and therefore should be encouraged, such research does not negate the importance of adopting plans where time and circumstances permit (Kendra and Wachtendorf, 2006). Planning to improvise aids creativity and flexibility, allowing for rapid adjustments to changing events (Webb and Chevreau, 2006). Yet, plans remain important in providing a foundation for action. As stated by Kendra and Wachtendorf, “Planning and improvisation are important aspects of any effective disaster response and are best considered as complementary” (Kendra and Wachtendorf, 2006). Instead, the deposed responders in Los Angeles saw working with people with disabilities as an element of the disaster situation that would always be unplanned for and would require creativity and flexibility to address, not planning.

The response-oriented agencies were not alone in focusing on improvisation as a solution to the lack of written plans. While discussing creativity in the context of the

Incident Command System, one EMD employee stated, “In an actual emergency, written plans may serve as ‘a reference guide’, but Incident Commanders in the field make the actual call as to what actions should be taken” (Baumgardner Declaration). The General Manager of the EMD shared a similar sentiment, stating in his declaration, “The plans and procedures must allow operational entities the ability to address rapidly evolving situations and scenarios where emergent decision making is essential to the preservation of life, property and incident stabilization” (Featherstone Declaration). While, again, creativity and emergence are essential to solving challenges in the field, none of the research negated the need for plans to exist in the first place. As stated by Quarantelli, “Without assuming that emergent behavior or groups are necessarily bad in a disaster response, it does appear that prior planning can preclude or discourage dysfunctional or unnecessary emergence” (Quarantelli, 1995). As the City’s planning status at the time of these proceedings included minimal, if any, references to planning for people with disabilities, the foundation of written plans discussed in both of these declarations did not exist. When challenges that have life and death consequences for individuals facing disaster can be addressed beforehand, those where anticipation is possible should be incorporated into the planning process. Planning does not negate the importance of allowing for creativity, flexibility, and emergence in the face of unexpected and unplanned for situations during disasters. While emphasizing the importance and utility of improvisations served the manifest needs of the EMD, it also worked latently in allowing the city to avoid planning for issues that were identified and known beforehand.

Modeling the Discussion

Some of the models of disability discussed in the literature review section were used by the various stakeholders to discuss planning for people with disabilities during disaster. People with disabilities and their representatives were the most likely to utilize some of the concepts of the models when discussing the issue, particularly invoking the functional model and rights model. For example, a woman with a mobility disability stated, “What my need are may not necessarily fit a person’s needs, say, five miles from here, from where I am”, using a functional model to express how the specific impairment affects the needed accommodations (Harthorn Deposition). Specific reference to the rights of people with disabilities was often implicit in the discussion, given the legal rights context of the lawsuit overall. However, occasionally stakeholders would purposefully bring it up, with the founder of CALIF saying, “You go to an elevator and you see it. It’s discriminatory right there, tells you in case of a fire don’t use the elevator, use the stairs. So what are you telling us? That infuriates me. Why, to this day and age, haven’t we figured out a way to evacuate people with disabilities?” (Navarro Deposition). Her purposeful use of the term discriminatory reflects her leadership in bringing forth the lawsuit, and the importance she feels that issues regarding emergencies and disaster have in the complete lives of people with disabilities.

While examples of this usage occurred occasionally in the text of the depositions and declarations, purposeful evocation of the models was not seen across the entire stakeholder group, and was even rarer in the words of the first responder and

City department personnel. In first responder statements, the importance of the functional model, focusing on specific impairments, was key, with one individual responding to the question, “Would you agree that, generally speaking, persons with disabilities are disproportionately at risk in the event of a major disaster?” by stating “It would depend on their disability” (Neiman Deposition). In a rare example of a city representative also using the rights model, a representative from the DoD objected to separate registration systems for locating people with disabilities, stating:

As an example, requiring the deaf or hard of hearing community to register their TTY numbers, instead of having a system that can auto-detect TTY tones appears discriminatory.... Any Mass Notification system that does not require the general public to register should not require the deaf and hard of hearing community to register either (Kaufman Declaration)

In this quote, Kaufman purposefully used the rights model as a reason for inaction, as having a separate system for people with disabilities would put an undue burden onto them. She was able to argue that City policy actually protected the rights of people with disabilities through their inaction. These few examples of models offered a preliminary look into the ways people involved in the lawsuit framed disability, and how they stated them, but did not definitively show single individuals or stakeholder groups are utilizing one model more than any other.

The Universal Challenge of Passivity

Every stakeholder in this lawsuit shared a similar approach to working with other stakeholders outside of their immediate vicinity: one of passivity. Even when agreeing to the importance of joint action to prevent future issues for people with

disabilities, the stakeholders did not reach out to take any actual action. This mind-set was first exhibited by representatives of organizations that work with people with disabilities. The executive director of the Independent Living Center of Southern California stated, “We have not received any information from the City about what the City will do regarding people with disabilities in an emergency” (Vescovo Declaration). This attitude was shared by the acting Executive Director of Lamp Community, a non-profit organization focused on serving people with mental illness, who wrote in her declaration, “I have never been informed whether the City of Los Angeles has an emergency preparedness plan that serves the needs of people with disabilities” (Murray Declaration). Both of these statements indicated an expectation that City agencies would purposefully address these issues directly with organizations in the community and reach out to them, not that the community organizations need to address them without specific prompting. The organizations stated that they valued the issue, with the Executive Director of CALIF stating, “it is very important that the disability community have a voice in the development of emergency plans, as our community is often best situated to inform local authorities as to needs and possible solutions for people with disabilities” (Navarro Declaration). Nevertheless, CALIF’s director admitted in her deposition that she had not reached out to the City to share her concerns regarding integrating people with disabilities in the planning process. When responding to a question regarding whether she had requested any changes from the City, she stated, “Did I call the City of LA and say, ‘Hey,’ no, I haven’t” (Navarro Deposition). She did indicate, however, that she sent a letter to the mayor regarding

emergency preparedness. The response to that letter, if any, was not discussed in the deposition.

This same passivity was apparent among City employees. The Department on Disability's approach towards addressing disaster related issues for people with disabilities was, "to provide reasonable accommodations, upon request, to individuals with disabilities" (Kaufman Declaration). The DoD was, in many ways, one of the few instigators of change for people with disabilities within City departments. It initiated the use of Department of Justice surveys on shelter sites to ensure that shelter sites were accessible, and was active in the inspection of shelters during events and prior to expected events. Still, many of the department's actions remained reactive. When asked if the City could have a list of accessible shelter sites for a theoretical disaster that was expected two days in the future, a DoD representative stated, "If I have two days' notice, I believe the City could do a bang-up job to tell the public as to which shelter sites would be accessible, absolutely" (Kaufman Deposition). She then explained, however, that the information to verify that accessibility was not already prepared, and would require at least a degree of emergency inspections of shelters prior to the event. Given the propensity of the City for earthquakes, which have no warning period, this need for time in advanced of a disaster is troubling. In addition, the DoD described their role in an emergency operations center as, "monitor[ing] the situation as to what is occurring and mak[ing] recommendations to what might be needed" (Kaufman Deposition). The DoD responded to problems that people with disabilities faced during disaster, but often were unable to prevent those situations

from occurring in the first place. For example, in the Merrick Sesnon fire, a DoD representative went to shelters to determine whether any problems were occurring. The representative stated, “Shelters were already set up, they were already being utilized, and now we were just trying to see who was in the shelters and what needs they might have, and if there were any barriers for them, if we could move them” (Kaufman Deposition). Problems with the toilets and showers were identified during this inspection. The DoD responded after the problem had already occurred, rather than preventing the problem in the first place. This is representative of the challenge of passively waiting to be needed, instead of seeking out appropriate actions before problems occur.

First responder agencies demonstrated similar passivity in their approach to outreach to community organizations representing people with disabilities. When discussing the Community Emergency Response Team (CERT) program, the Fire Department agreed that no specific outreach was made to disability-related organizations, such as inviting them to participate in the training, but stressed that “this training is available and can be given to anyone that requests it” (Gerlich Deposition). The Police Department also engaged in little outreach to the community, and responded to the question, “Are you aware of any input from the disability community currently to the Emergency Operations Guide?” with “No” (Neiman Deposition).

Overall, this passivity greatly hindered the ability of any of the stakeholders to initiate change in the current functioning of the system. In order to ensure that the

needs of people with disabilities are actually included in the process, all parties must agree that this issue is a priority, and then purposefully move towards addressing it.

As discussed by one of the expert witnesses:

It seemed that there were- nobody seemed to have the authority, responsibility or resources to pull these issues together. There was no real go-to person, go-to place, with the responsibility to help bring the pieces together in terms of the plan so that people were included (Kailes Deposition).

Each party expected that others would begin the process of changing how plans were created in the City, and that others would take action while they waited to follow.

Without active, purposeful movement towards change, it may not occur.

Money, personnel, and time were all cited by officials as reasons that they were not incorporating people with disabilities into the system of emergency management. Analysis revealed, however, that systematic practices of insular planning, resistance to change, and concerns regarding the inclusion of outsiders in planning were all undefined, yet significant barriers. First responders clearly expressed the belief that the practices that they used day-to-day would be sufficient to address response needs. Creativity and the ability to improvise were offered as justifications for the lack of planning. First responders also stated that situations faced during normal emergency incidents were similar to those faced in times of disaster. This viewpoint led to satisfaction with the status quo, as they did not see problems in the current methods of addressing the needs of people with disabilities. Functional and rights models were occasionally used by stakeholders from a variety of groups to discuss the issue, although they were not pervasive throughout the documents. All

parties shared a basic passivity towards the issue, not seeking to change the status quo, and thus leaving the current structure in place.

Chapter 5

CONCLUSIONS

Los Angeles is the second largest city in the country. Based on the large number of hazards, including earthquakes, wildfires, mudslides, tsunamis, flooding, and technological hazards, it is often considered to be one of the most significant players in emergency management throughout the United States. The Incident Command System that California launched to fight wildfires is now used throughout the country as an aspect of the National Incident Management System. The first Community Emergency Response Teams in the United States were established in the City of Los Angeles, and remain exemplars for including community member involvement in the emergency management practices of a municipality. Given the significance of the city in the larger understanding of expectations regarding emergency management at a municipal level, the results of this research offer a sobering look at the state of inclusion of people with disabilities in the planning process. While national level documents have been released indicating the needed actions required to ensure that ADA standards are maintained in disaster situations, the Los Angeles lawsuit demonstrates that there is significant resistance to such innovation, caused by both outside economic forces and internal cultures that discourage learning from others and reaching across departmental and organizational lines to coordinate planning efforts.

Manifest and latent motivations for action (or inaction), were identified regarding a variety of issues. The structuralist-functionalist approach to roles and functions within a social institution places an emphasis on how manifest and latent functions helped the social system. In this situation, that system is the City's EMD. The identified functions generally have the manifest role of solving a problem or complaint (such as the need for inclusive language), without requiring major changes to organization as a whole. This latent role helped the organization continue to function in the manner in which it was accustomed, without needing to make significant changes in how it operated. Through identification and understanding of both of these aspects of how organizations function, the reasons behind decisions are clearer.

Certain limitations to the scope of this research are essential to understanding the significance of the findings on the larger discussion of integrating people with disabilities and their specific needs into the planning process. The intended goal of the depositions and declarations cited in this research was to establish and challenge the City of Los Angeles's planning process for people with disabilities. Therefore, all of the depositions were taken with the specific purpose of proving or disputing the factual allegations on which the case was based. Lawyers for both the plaintiff and the defense were seeking to gain information regarding the specific issues relevant to their case, and therefore did not necessarily follow up on questions that were not completely answered or on answers that evaded the issue if those answers were deemed irrelevant to the case. When using primary documents intended for a different

purpose, it is essential to keep in mind the context in which the documents were produced. All of the depositions were taken under oath, with the witnesses swearing to their truthfulness. This does not mean that the answers to questions indicated the complete context of the reality of the situation with a stakeholder. For instance, the Los Angeles Red Cross representative was often asked if the organization had sole responsibility for certain aspects of sheltering within the city. His negative response accurately indicated that the Los Angeles Red Cross was not the only organization responsible for the shelter, but did not go beyond that to explain that the Los Angeles Red Cross did have some role in sheltering. Since the deposing lawyer did not explore the representative's negative response, the actual role of the Los Angeles Red Cross within the city was not clear in that deposition. Testimony must be understood within the legal context in which it was taken.

The selection of witnesses was also a major factor in the larger picture formed by this lawsuit. Lawyers for both parties specifically chose witnesses and declarants based on their relevance to the issues derived from the information they then had. This does not necessarily mean that the most knowledgeable sources were chosen, just the most knowledgeable within the ability of the lawyers to discover. An example of this challenge can be seen in the differing individuals used to represent the Los Angeles City Fire Department and Los Angeles Police Department. The two individuals deposed by the plaintiff's attorney were specifically produced as the most knowledgeable individuals on the issue of disaster planning for people with disabilities in their respective departments. Later, the defense used two different individuals to

represent the departments in the declarations filed in opposition to the motion for summary judgment. The presiding judge later ruled that those declarations could not be considered in ruling on the motion for summary judgment, as those individuals were not produced by the defense to be deposed by the plaintiff's lawyer. The declarations have been included here as they add context to the positions of the fire and police departments; however, their exclusion from evidence indicates the challenges faced in choosing the correct people to testify in a lawsuit. Still, the fact that these depositions and declarations were filed in the first place in support of and opposition to the motion for summary judgment, and the fact that the plaintiff's motion was granted indicate the strength of these witnesses' testimony.

While the City of Los Angeles faces specific challenges that differentiate it from other cities in the country- including significant budget constraints that limit the ability of over-tasked departments to expand their efforts beyond their current scope of responsibility- it also shares enough similarities in the basic functioning of those agencies tasked with responding to disaster to have broader implications for the national disaster management sphere. One major implication of this research is the significance that budget restrictions can have on the functioning of any emergency management department. All parties agreed that the lack of funds significantly influenced the City EMD's ability to do more for people with disabilities. While this lawsuit happened during the height of the recession, a global financial crisis with ramifications worldwide, one impact of restricted budgeting was seen in the limitations of City departments to take effective action. Budget challenges are not

restricted to global recessions, and this research begins to address how policy decisions to cut back on funding emergency management has a broader impact on a city's ability to serve all of its constituents in peacetime and times of disaster.

This line of research is ripe for future exploration and analysis. In the case of this event interviews with stakeholders involved in this legal proceeding may confirm that the analysis presented here accurately depicts the situation faced by organizations within the City and ensure that the previously discussed limitations of a legal setting did not significantly influence the perceived barriers and motivators to action. Yet future research must also involve studying other major, comparable cities to determine whether similar barriers to coordination and cooperation are evident elsewhere.

Follow up studies are needed in two directions. First, efforts are necessary to examine if similar relations are present in cities where no legal actions have been taken regarding the ADA. Second, studies should include cities that faced or are currently facing litigation based on actual or perceived problems with delivery of services during an actual disaster situation, instead of simply within the planning process. Following up on the results of this lawsuit and other similar litigation could offer insight into whether legal action drives significant change both in the plans developed by cities and in the culture within agencies that respond to disasters.

Based on the analysis of this lawsuit, specific practical implications for future action are apparent. While this research does not and cannot define what is legally required for city emergency management departments to avoid action under the ADA, certain remedies to issues that emerged during the lawsuit are recommended. The

most essential action is that anyone concerned about issues relating to people with disabilities and disasters must break through the wall of passivity and purposefully take action to integrate community organizations into the larger emergency management structure. Emergency management agencies could, for example, invite organizations that represent people with disabilities to serve on planning committees or become involved in revisions to current planning documents. In addition, community organizations could invite emergency management agencies to their facilities and demonstrate the capabilities such organizations have to strengthen a city's ability to respond to situations relating to people with disabilities. These actions would shift the relationship between government and community organizations to an inclusive one where stakeholder representatives for a variety of groups are welcomed, instead of a top/bottom approach. While the lawsuit purposefully focuses on community organizations representing people with disabilities, a more purposeful outreach to stakeholders could have a positive impact on a variety of other vulnerable groups as well. Neither city nor community organizations should wait for a mandate requiring their cooperation and coordination. Instead, they must creatively and proactively seek to understand each other and find where they can help each other.

Challenges in institutionalizing knowledge from previous disasters and lessons learned from other cities must also be addressed. An emergency management department that specifically seeks to incorporate improvements based on previous experiences will be better able to improvise effectively and fairly work with all people when new, challenging circumstances arise. Encouraging individuals at all levels of

an organization to engage in discussion and then take action based on the after action reports, research, and other external sources of information ensures that insularity does not prevent the department from changing and growing as needed.

As the City of Los Angeles works to fulfill the requirements set by the outcome of this litigation, it has the opportunity to serve as an example to others throughout the country of how the specific abilities and needs of people with disabilities can be incorporated in preparedness, response, recovery, and mitigation measures. By pushing through insularity and passivity, yet continuing to capitalize on the creativity and emergent activities that have driven past success, it will be possible for all stakeholders to engage each other successfully in emergency management.

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Appendix

SOURCES IN LAWSUIT

Depositions-Plaintiff:

James Featherstone- General Manager at Emergency Management Department (EMD) for City of Los Angeles

Keith Garcia- Emergency Preparedness Coordinator at EMD for City of Los Angeles

Albert Torres- Emergency Preparedness Coordinator at Los Angeles City Department of Recreation and Parks

Michael Kleiner- Director of Emergency and Disaster Response at American Red Cross of Los Angeles

Stacy Gerlich- Community Emergency Response Team Commander at Los Angeles City Fire

Anna Burton- Assistant General Manager at EMD for City of Los Angeles

Andrew Neiman-Officer in Charge, Emergency Management Section, Los Angeles Police Department

Steve Dargan-Liaison between County Department of Public Health and EMD for City of Los Angeles (Private Contractor)

Robert Freeman- Chief of Operations at EMD for City of Los Angeles

Angela Kaufman- ADA Compliance Coordinator with Department of Disability for City of Los Angeles

Declarations- Plaintiff:

Michael Collins- Expert Witness

Norma Jean Vescovo- Executive Director of Independent Living Center of Southern California

June Isaacson Kailes- Expert Witness

Shannon Murray- Acting Executive Director of Lamp Community (Non-profit focusing on mental illness)

Lilibeth Navarro- Founder and Exec Director of Communities Actively Living Independent and Free (CALIF), person with mobility disability

Depositions- Defense:

Audrey Harthorn- Founding Board Member of CALIF, person with mobility disability

Lilibeth Navarro- Founder and Exec Director of Communities Actively Living Independent and Free (CALIF), person with mobility disability

June Kailes- Expert Witness

Declarations- Defense:

Ralph Acuna-Management Analyst II at Department of Disability for City of Los Angeles

Eric Baumgardner- Emergency Preparedness Coordinator I at EMD for City of Los Angeles

Anna Burton- Assistant General Manager at EMD for City of Los Angeles

Steve Dargan- Liaison between County Department of Public Health and EMD for City of Los Angeles

James Featherstone- General Manager at EMD for City of Los Angeles

Robert Freeman-Chief of Operations at EMD for City of Los Angeles

Angela Kaufman-ADA Compliance Coordinator with Department of Disability for City of Los Angeles

Thomas Ottman- Battalion Chief for Risk Management Section at Los Angeles City Fire

Luann Pannell- Director of Police Training and Education at Los Angeles Police Department