
NEW YORK STATE UNIFIED COURT SYSTEM

PRO BONO CONVOCATION:

WORKING TO DESIGN A PRO BONO SYSTEM *for* NEW YORK

FORDHAM UNIVERSITY SCHOOL OF LAW • JAMES B. M. MCNALLY AMPHITHEATRE
140 WEST 62ND STREET, NEW YORK, NEW YORK

PROGRAM

REGISTRATION AND CONTINENTAL BREAKFAST ATRIUM 8:30 A.M. – 9:00 A.M.

OPENING REMARKS AND KEYNOTE ADDRESS AMPHITHEATRE 9:00 A.M. – 10:00 A.M.

Opening Remarks: HON. JUDITH S. KAYE, *Chief Judge of the State of New York*

HON. JUANITA BING NEWTON, *Deputy Chief Administrative Judge for Justice Initiatives*

Keynote Speaker: MICHAEL A. CARDOZO, *Esq., Corporation Counsel of the City of New York*

PANEL PRESENTATION AND DISCUSSION AMPHITHEATRE 10:00 A.M. – 11:30 A.M.

MODELS FOR EXPANDING PRO BONO

Moderator: HON. STEVEN W. FISHER, *Administrative Judge, Queens County Supreme Court*

Panelists: HON. PHILLIP ADLER, *Chair, 7th District Pro Bono Committee, Indiana*

DEAN ELLEN CHAPNICK, *Center for Public Interest Law, Columbia Law School*

SHARON GOLDSMITH, *Esq., Executive Director, Pro Bono Resource Center of Maryland*

CHERYL ZALENSKI, *Esq., Assistant Staff Counsel, ABA Center for Pro Bono*

WORKING GROUP SESSIONS CLASSROOMS 11:30 A.M. – 12:30 P.M.

I. ORGANIZING A STATEWIDE PRO BONO SYSTEM: What Makes Sense for New York?

FACILITATORS: Hon. Phillip Adler, Sharon Goldsmith, Esq. and Cheryl Zalenski, Esq.

II. OVERCOMING THE OBSTACLES TO PROVIDING PRO BONO SERVICES: What are the Elements of an Ideal Pro Bono System?

FACILITATORS: Dean Ellen Chapnick and Michael Miller, Esq.

III. FACILITATING PRO BONO THROUGH LIMITED REPRESENTATION: How can this be Accomplished in New York?

FACILITATORS: Hon. Fern Fisher and Lynn Kelly, Esq.

BUFFET LUNCH ATRIUM 12:30 P.M. – 1:30 P.M.

WORKING GROUP SESSIONS (*CONTINUED*) CLASSROOMS 1:30 P.M. – 3:30 P.M.

REPORTS OF WORKING GROUPS AND CLOSING REMARKS AMPHITHEATRE 3:30 P.M. – 4:30 P.M.

**Keynote Address of Michael Cardozo, Esq.
New York State Unified Court System Pro Bono Convocation
Fordham University School of Law, June 20, 2002**

Thank you so much Judith, that's really very kind. I hesitate to start by correcting our Chief Judge, but the facts are that she has now admitted error. Judge Cardozo never graduated from Columbia Law School. The story is that while Judge Cardozo was in Columbia Law School, Columbia changed the law school from a two-year curriculum to a three-year curriculum, made the rule retroactive. Not only did Judge Cardozo refuse to abide by this retroactive decree, but that is the reason, people say, is why he was interested in prospective overruling. But that's not the subject for today.

From my perspective, I think that this conference is just terrific. As she has done so often in the past, our Chief Judge has seized the moment to present a critical challenge to all of us: design a workable system for pro bono services in New York. Rarely has there been a time when the need is so great, and in my view, rarely has there been a time when the Bar has shown – at least a large part of the Bar – a willingness to take up the challenge. I think our question today is “how do we capture the pro bono spirit that we saw post-9/11, and how do we incorporate that spirit into some kind of workable system?” And as I look around this room, and I know almost as many of you as Judith does, I can't imagine a better group of people to solve that problem.

Certainly, as the Chief Judge said, we don't need to tell this audience the need for pro bono help. The unmet legal need of the poor is overwhelming. We have cases involving eviction, deportation, homelessness and so much more. I hesitate to put a damper on the enthusiasm of the day, but I do want to say that one area that I do not think can be looked at, in the foreseeable future, for any significant help, is the government. Unfortunately, you have all read about the deficits. The City's deficit next year is projected to be higher than the deficit that, hopefully, will be closed when the City Council passes the budget this afternoon. The State's deficit is even worse, projected to be even worse next year. While we can all as advocates argue that the government should spend more money on Legal Services because that will reduce many of the things that government has to do, I think the brutal reality is that the likelihood of finding significant increased government help, in the foreseeable future, is small, which makes our challenge today even greater.

History has taught that in times like this, the Bar has stepped forward. The history of lawyers doing good work dates back to the beginning of time practically. I did a little research and found that as early as four hundred A.D., clergymen were being directed to find people to help the poor, to help them in their legal problems. Moreover, as we all know, the pro bono obligations that we all feel in this room are embodied in the lawyer codes of our country. But I found it frightening and disturbing, when I read the materials for this conference, to learn that about half of the lawyers in this state do not perform any public service at all, and an equal number of them remain unconvinced that they should perform such service, and that it is in their interest and that it is fun to do so. It was Edmund Burke, in the eighteenth century, who said that “the only thing necessary for the triumph of evil is for good men to do nothing.” We can't do nothing. We've got to find a way, and I'm convinced that there is a way, and there is particularly a way if we focus our efforts at younger lawyers, and younger people.

I was recently at a graduation ceremony at Dartmouth College, where my niece graduated, and there was a program there that honored all the graduating students who had performed public service. I was just amazed at the overwhelming number of people in that graduating class who had done things ranging from working in soup kitchens to spending a semester in Africa working with people with AIDS. The examples could go on and on. I said to myself, "A lot of these people are graduating and going to law school, and after they graduate from law school they are going to start practicing law. How can we capture the spirit that is exemplified by these young people graduating from college, full of enthusiasm; how can we capture that spirit, so that after three years of law school and after they join a law firm or a legal employer, we can remind those people that they were so enthused about public service when they were in their early 20s." There is a willingness out there, and somehow too frequently we lose that willingness five or ten years later when those people start practicing law. How do we capture that enthusiasm?

I think one way to do it is to focus on law school programs. I know Columbia has one, I'm sure many, many other schools have as well, which inculcate the pro bono spirit into law students, teaching them about how much fun it is, how much satisfaction it is, what an obligation it is. It's vital.

Yesterday at the City Bar Association, there was a project sponsored by the Committee on the Homeless where it invited some associates to hear about pro bono opportunities in that area. They heard a terrific panel of speakers, including some of the people in this room, talking with enthusiasm in doing pro bono work; we have to build up that enthusiasm. Last year there was a conference of younger lawyers on the same subject. We have got to focus our attention on that. Because there is no doubt that, despite the fact that half the Bar remains unconvinced, there is a terrific pro bono spirit out there.

The Chief Judge has called the 9/11 efforts by the Bar the Bar's shining moment. I think of the lawyers who lined up down 44th Street, around onto 6th Avenue a few days after 9/11, standing up to get training with the Bar Association to help the families of the victims. It's a story that needs to be told over and over again. The examples of the Bar stepping up after 9/11 are not just limited to what we have heard of the typical Bar Associations. The Trial Lawyers formed an organization – Trial Lawyers Care. They gave free legal advice to all the families of the victims as they went through and made applications to the Victims' Compensation Fund. What a terrific statement of public spirit.

Also of extraordinary significance, in my view, is the way inside corporate counsel responded to the tragedy of 9/11. At least when I was president of the Bar Association, one of the problems we found when we talked about pro bono is that as difficult as it was to get the private Bar to step up to the plate, it was even more difficult to get inside corporate counsel to be involved. Well, there was a celebration last week sponsored by the American Corporate Counsel Association of all the efforts that were made by inside corporate counsel. I think it is extraordinarily significant that hundreds of inside corporate lawyers participated in all these post 9/11 events. I also think it is noteworthy that there is at least one corporation, and its representative is here today, that has established a Pro Bono Coordinator for the inside corporate counsel modeled after the way some private law firms are organized. I think that is very significant as we ponder how can we get more people involved in pro bono activities. It should not take a crisis of the dimension of 9/11 to convince our colleagues that pro bono should be a part of our regular practice.

But as Evan Davis wrote, “Adversity almost always has a counterpoint. From scandal comes reform; from disease comes medical advance The tragedy with which we are coping has revealed the Bar’s deepest character.” I think we have got to find a way to capture that character.

So what lessons can we learn from 9/11, what can we do, how can we make this all work? Let me suggest three principles as you go forward in your work today. First, we must motivate people to do pro bono; we must make them understand the satisfaction you get from doing pro bono work. Second, we must create a framework for legal employers to understand that it is in their self interest to encourage lawyers to perform pro bono work, and third, we must make it as easy as possible for that pro bono work to be performed. Let me expand on these themes just a little bit.

Motivation: Everyone in this room could tell story after story about the satisfaction he/she has received from doing pro bono work. I do think it is a useful story for me to say that six months ago I was a partner in a major New York City law firm. I had an interesting practice. Now I am privileged to have what I think is one of the greatest jobs in New York City. I have that job not because I was a partner at Proskauer but because of the pro bono and legal services work that I did. It was there – private law firms are great and my law firm was great – but it was in the public service activities that I was exposed to the issues of the pro bono challenges, the 18-B issues, the homelessness issues and so forth.

One of my most enduring images as president of the Bar Association – which today pales in significance to what happened on 9/11 – but what I can remember vividly, is going to Kennedy Airport after the crash of TWA 800. I stood there talking to the families of the victims of that tragedy and telling them that there were 30 lawyers in the room standing there ready to help. That was the satisfaction that I got, that I will never forget. We have to publicize that satisfaction over and over again. I think that the tragedy of 9/11 opened up the eyes of many, many lawyers to the satisfaction that you can gain.

But we can’t stop there. We must make it in the employers’ self- interest to have employees perform pro bono service. It’s not enough for us to ring our hands and say these private law firms, they are making lots of money, their lawyers are being paid extraordinary amounts of money and oh, if they would only take a step back and do some pro bono service. That is nice rhetoric, but we’ve got to make it in their self-interest.

It’s hard to believe, but it’s not so many years ago that we were having this debate about how can you persuade private law firms that it’s in their self interest to employ minorities and employ women. It’s an issue that we don’t even debate today, it’s self evident and we have to make it self evident to the private law firms that it’s in their self interest to perform pro bono work. I think we can do that. I suggest, number one, that we go back to the law students, the best and the brightest whom the law firms are competing for, and we have to encourage those law students to say “Hey, which is the firm where I can best continue my pro bono efforts?” They will have to ask the questions of the law firms “what will my opportunities be to perform pro bono legal services if I go to firm A verses firm B” because I think that is pressure. At one law school with

which I am affiliated, the Board of Visitors of that law school passed a resolution encouraging law students to ask the questions of their prospective employers, "What can I do if I go to your law firm for pro bono work?" We have to encourage that demand.

Second, as the Chief Judge has suggested, because pro bono is fun and is interesting, it is a way for younger lawyers to gain greater satisfaction in the practice of law. While private law firms are great and the challenges there are interesting, we all know that there are too many young lawyers who are not happy in the practice of law, and they are happier when their practice can have added to it, not just long hours, but the fact that they are also doing something where they are in court right away, where they are helping people right away and that they are not just on a team of four, five or six lawyers.

Pro bono service does make the practice of law more enjoyable, and we have to educate the employers that it is in their interest to have their lawyers do the pro bono work because there will be great satisfaction. In that regard, I am encouraged by the following story even though it stretches the definition of pro bono just a little bit. As you all know the City has a fiscal problem. I put out a SOS to all the law firms in the City, and I said the Corporation Counsel's office does not have enough lawyers and we cannot hire any more lawyers because of the fiscal problem, please help. The response of the private bar has been extraordinary. Twelve law firms donated an associate to us for six months at no charge to try cases. Close to thirty law firms have agreed to represent the City on a pro bono basis. Part of that is because of the hands on training these young lawyers are going to get and the experience, but part of it is because the lawyers in the law firms, I think, recognize a need, a desire of the younger lawyers to help – not just help the City, which is what I was interested in, but to help in some way. There is a great desire out there to help.

I also think that the corporate counsel example that I mentioned a few moments ago is another way that we have to focus on, to show that it is in the private employer's interest for its employees to perform pro bono work. I commend Pfizer and the other corporations that have stepped up to the plate. We have to reward the corporations, we have to reward the law firms who do step up to the plate, to help it make it in their self-interest, because we do need, as the Chief Judges has said, we do need leadership from the top to encourage the younger lawyers to do the work. We have to find a way to make it good business for the law firms and the corporations to do pro bono service.

Finally we have to make it easy. There are so many lessons from 9/11 that many of you know far better than I. The one-stop shopping, I call it, that we offered after 9/11 where the lawyers were sitting there, after appropriate training, helping people, serving as lawyers for families of the victims. We have to make it efficient and uncomplicated, we have to eliminate the barrier. Every time you do pro bono work and you have a bureaucracy to cut through, we lose the momentum. It has to be made easy. I'm not sure how to do that. I hope you can find some ways to do that today. I do know, in my view, that the energy of the lawyers and the willingness of the lawyers is there and is untapped. It is particularly there among the younger lawyers. I hope today that everyone in this room can find a way to tap that energy, harness it in some way so that we can have a workable pro bono system in this State.

Thank you very much.

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