



Awakening the Heart of Justice: The Next *Pro Bono* Challenge

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I am longing these days for an honest, analytical, critical discussion about *pro bono* work, one that embraces both the light and shadow of this issue: its successes



and massive potential, and its equally significant challenges and failures. This conversation is vital for two reasons. First, it is necessary for realistic planning and delivery of legal services to low-income clients both now and into the foreseeable future.

Without such a dialogue, we will simply reproduce the status quo, having a modest impact on the legal problems confronting low-income people, but leaving the structures that produce those problems largely intact.

Second, clarity about the role of lawyers and the provision of *pro bono* services is essential for the health of the legal profession, and, indeed, of our entire system of justice. The legal profession is in serious trouble. Ours is the profession with the highest rate of depression, and the incidence of suicide and addiction is rising steadily. Disheartened practitioners leave the profession in droves every year, citing the pressures of billable hours, business production, and the bottom line. Law is now more business than profession, with a high misery index among its practitioners. This is a profession in which sad, disheartened people are not uncommon; many articulate a lack of meaning in their work lives. Because of its potential to be both energiz-

ing and vital and because of its centrality to the essential role and function of lawyers, *pro bono* involvement may be precisely the remedy needed to cure what ails us.

Decades ago, psychoanalyst Freda Fromm Reichmann observed that alienation is the source of most human suffering, alienation from ourselves and from each other. Lawyers as a group are suffering from alienation, having succumbed to the intense pressures of professional life, and, in the process, becoming distanced from even their own dreams. How then, do we expect them to be able to care about or even imagine the dreams of others, for fair wages, safe living environments, healthy families, good schools and equitable treatment in the marketplace? The suffering caused by alienation is extensive and socially corrosive at all levels.

Work to Do

There is much that can be done to work for needed changes in our legal environment, including the encouragement of holistic life styles and legal practice. Certainly our exhausting pace and loss of leisure time is a major factor in the inability or unwillingness of attorneys to do *pro bono* work. All of us would benefit from a concerted effort to face and address the issues that cause such an imbalance in our lives. But connecting lawyers to the needs of poor people and the indispensable role that lawyers must play in meeting those needs is one ingredient in the prescription needed to heal the suffering of both attorneys and of clients living on the social margins.

Part of the difficulty is that the lives of most lawyers are lived at vast distances from those of low-income individuals. The affluence gap is real and growing, with the effect that the legal needs of those with the least are not known, understood, or even acknowledged by those with the most. The ignorance at best, and indifference at worst, of many members of the Bar to the suffering of so many clamoring to climb onto the scales of justice is cause for deep concern, if not embarrassment.

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Greater exposure to the real lives of low-income people and to the context for and consequences of the legal difficulties clients face would have a significant impact on both the quantity and quality of *pro bono* services. Such knowledge acquired and reflected upon has the capacity to stimulate creative and intelligent advocacy, and can lead to sophisticated systemic analysis and responses to the legal challenges faced by the poor. It also has the potential to forge deep bonds between lawyers and clients, to enlarge the heart, engender compassion, and generate solidarity. As Leon Bloy observed, “There are places in the heart that do not yet exist, and it is into these that suffering enters, that they may have existence.”

A closer look at the current state of *pro bono* underscores the need for and desirability of such an approach. There is much to celebrate in national trends in *pro bono* involvement. Happily, thanks to all of those who have labored mightily in the *pro bono* field for the past few decades, the belief that it is important for lawyers and firms to be actively engaged in *pro bono* work is gaining ascendancy. The *American Lawyer*'s annual *pro bono* statistics as well as data available from the *Pro Bono Institute*'s 2003–2004 survey of major law firms indicate an increase in both *pro bono* participation and in the development of *pro bono* infrastructures within firms. The marriage of the highly specialized expertise of both public interest attorneys and private bar practitioners coupled with the ability to utilize the resources of firms on behalf of low-income clients is yielding some inspiring results. The energy unleashed by these successful collaborations is potentially transformative both for the lives of poor people and the lawyers who represent them. Where firms and individuals have immersed themselves in *pro bono* work, the effect is powerful; low-income individuals and groups receive comprehensive, high-quality, adequately resourced and often creative advocacy.

A Parallel Reality

But if we are to be completely honest about the state of *pro bono*, we must also acknowledge a parallel reality. There is another darker side of the *pro bono* buzz — a preoccupation with form over substance, a desire to give the appearance of doing *pro bono* without actually committing any significant personal or institutional resources to it. Consistent with our cultural preoccupation with appearances, there are sectors of the legal community in which talk, but not action, is the preferred form of *pro bono* involvement. In my office, we routinely have cases returned to us by lawyers who take

a case for various reasons, but then change their minds and send it back. We have an overly-rigorous system to track the status of cases, necessitated in part by the excessive number of volunteers who put their *pro bono* case on the bottom of the pile, and require a nudge every now and then to actually complete the work. I have grown wary of high-publicity announcements of new *pro bono* initiatives by firms, preferring to save my enthusiastic endorsements for the publicity attending the demonstrated successes or completion of such projects.

There are other troublesome aspects of *pro bono* culture. What is the function of *pro bono* publicity and awards as they currently exist? There are many individuals and firms who are truly committed to *pro bono* work, and who publicize their efforts honestly and proudly. But there are many others who pay lip service to *pro bono*, producing expensive publicity materials which inflate their actual *pro bono* contributions. Or what of firms who appoint *pro bono* coordinators, but then allot them little or no time to actually coordinate *pro bono* work amidst the crush of billable practice expectations? What is the role of *pro bono* awards, the numbers of which are proliferating rapidly, especially on the local level? Gratitude is an essential human quality, a noble and necessary expression of genuine appreciation. It's important to say “thank you” and to acknowledge extraordinary effort. But I sometimes feel burdened by the plethora of nomination forms and frank expectations for recognition that come across my desk. I am greatly appreciative of the volunteer who returned a certificate of thanks that we routinely send out. His reply note said that he really had not done that much, and that it was only what he should be doing anyway; he wanted no special recognition for it. His response made me wonder, to what degree does our cooperation in this culture of proliferating awards and incentives amount to collusion in the manufacturing of the appearance of greater *pro bono* effort than really exists? Might everyone benefit if we made awards rare, and hence more meaningful?

Let us also be frank about the cost of *pro bono* legal services. As others have concluded, one cannot legitimately compare the per-case cost of staff vs. *pro bono* model legal services. But we can say that it is expensive to run a *pro bono* program; the cost of case development, recruitment, training, monitoring, outreach and education is quite high. If the goal is to process the legal needs of low-income clients as inexpensively as possible, then it is most reasonable simply to fund staff attorneys to resolve cases. The *pro bono* programmatic option only makes economic sense if there are other

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achievable goals, such as: a significant increase in the quantity and quality of legal services available to low income people, the education of lawyers about the legal needs of poor people, and ultimately, the transformation of legal culture to embrace such representation as standard practice. Can we live into the ideal of a profession where *pro bono* involvement exponentially increases legal services to low-income people, but guarantees that those services are provided by a unified, cohesive segment of the Beloved Community... lawyers, who fully grasp their key role as guarantors of justice for all.

One final concern is a nagging doubt that I have about making "The Business Case" for *pro bono*. In my experience, this is an effective and persuasive means of convincing firms and individuals to increase their levels of *pro bono* participation; it has become a staple in the recruitment menu of *pro bono* programs. I do, and will continue to, utilize it as an effective way to market *pro bono* cases. But I must confess to a lingering doubt about its long-term usefulness. I believe that the majority of lawyers fundamentally have hearts of justice, and that lasting, permanent changes in legal culture will come only if we awaken the fire of compassion that dwells there. Even as we pursue the business case strategy, can we gently invite lawyers to reflect upon issues from a more sociological and philosophical perspective, helping them to connect their minds and hearts to clients' problems? The overwhelming need is for attorneys to do relatively mundane, vital, but not publicity-generating cases for average people in danger of losing homes, income, family, or community. Are we, perhaps, trading short term gains in *pro bono* activity for the potential to make some more permanent, lasting changes in legal culture, changes that ultimately would be more beneficial for low-income clients? A deep and abiding commitment to do the kinds of cases where help is most needed must spring from and be nourished by a deeper well than self interest.

We do our clients and our profession a disservice if we ignore these realities in the *pro bono* enterprise. The growth of our system of laws into a true system of justice is dependent upon our willingness to be scrupulously honest about our world and our profession... both of which are suffering. I am not suggesting that it is the sole responsibility of lawyers to eliminate poverty and to remedy its resultant social ills. I am suggesting, however, that the legal monopoly on access to justice which is at the heart of the practice of law carries with

it a great and exhilarating challenge, that of ensuring that everyone, everyone, can raise a cry and have it heard in the halls of justice.

It is my experience that the most faithful and passionate *pro bono* advocates are those who have a profound, heart-level connection to their clients or issues: the attorney whose mother was abused and who now dedicates herself to obtaining protection from abuse orders for other women; the lawyer with a special needs child, who throws himself into advocacy on behalf of other children in special education placement cases; the child of refugees, who utilizes her legal skills on behalf of asylees; the formerly abused and neglected child who is a fierce child advocate; the formerly aloof attorney whose world was rocked by a simple visit to his client's decaying and dangerous home. These attorneys never need to be prodded or poked to work on their cases. They do not lose interest and send them back for re-referral. Actual experience deepens understanding and enkindles compassion. It is possible to ignite this spark in many, many lawyers, and doing so not only would vastly increase services to clients, but it could also revitalize the legal profession, infusing it with an energy and passion for justice that is now sorely lacking. But how do we light that flame?

We must continue to take broad and diverse approaches in working with the private bar to expand the provision of *pro bono* legal services. Signature projects, the development of law firm practice groups in areas of poverty law, making the "business case" for *pro bono*, increasing opportunities for transactional lawyers, designing projects that appeal to and are consistent with a firm's culture, all of these have great potential to vastly increase the services available to low-income clients. It would also be beneficial to continue to broaden the dialogue about which cases are most appropriate for *pro bono* lawyers, and which are more efficiently handled by staff attorneys; it may be necessary to alter current models drastically. But unless we can connect lawyers to the needs of low-income clients on a deeper, more profound and meaningful level, we will keep running on this hamster wheel, pleading the case for *pro bono* with some result, but no real change.

I am not discouraged about the future of *pro bono*; far from it. I am excited by the possibilities for deepening our understanding of what it means to be a lawyer, to be a midwife for justice, to be engaged in the transformation of our legal system. Our collective weight could effectively bend that long arc in the moral universe more sharply toward justice. But for change of this dimension to occur, we need unclouded sight,

a clarity of vision achieved by an uncompromisingly honest assessment of the current *pro bono* environment.

Symbolic of this shift in perspective, it is time to re-evaluate our current national symbol of our system of laws, a blindfolded Lady Justice holding balanced scales. We humans continue to evolve. As our knowledge of social processes and dynamics has expanded, so have our ideas about law and justice. We now recognize that poverty is not an individual failing, but the product of unjust and inequitable systems and institutions, including the legal system. When the poor are confronted daily with socially constructed obstacles, blind justice is a naïve and even elitist metaphor; the overwhelming majority of marginalized people never even get close to those scales. In a world of gross differential access to resources, we need an unmasked Justice, one of vision and clarity that seeks to eliminate those barriers preventing access to those unweighted scales.

We are learning, as a species, of our vast interconnectedness, our inextricable unity and interdependence. Our steadfast refusal to acknowledge this unity is placing us in great peril. One of the primary tasks of *pro bono* organizations and projects is to educate attorneys about these connections, to bridge the chasm between the rarified world of lawyers and the daily lives and struggles of low-income people. To that end, I propose the development of more extensive, expanded, and focused educational opportunities for lawyers as a necessary and central component of any *pro bono* recruitment and training efforts:

- Facilitate greater exposure to the lives and environments of clients. Where appropriate and non-exploitative, facilitate having *pro bono* lawyers visit client homes and neighborhoods whenever possible: home visits, clinics, community education programs, etc. Create client panels for programs in firms.
- Improve attorney training programs. Incorporate information on the social context for clients' legal problems whenever and however possible. Revise current Continuing Legal Education programs to include suitable materials.
- Equip attorneys with basic social analysis tools, making such instruction an integral and essential part of all attorney training and recruitment programs.

- Develop a range of ethics programs specifically for *pro bono* lawyers. Courses could focus on: issues of representation for low-income clients, issues specific to particular substantive areas of poverty law; and law as an instrument of social change.
- Arrange for program board retreats and other events to take place occasionally in neighborhood and community locations, and to include "reality" tours and client interviews and presentations around specific legal issues, e.g. housing.

The potential for lasting change if lawyers "only connect" with these issues is vast. Personal familiarity with the lives and circumstances of those perceived as "the other" penetrates and profoundly alters our view of reality. I am reminded of the story of a German ambassador to the Soviet Union, who one day had a sudden and profound change of heart, quit his job and returned home. When questioned why, he said, "One night in Moscow, I heard the screams."

There are many unheard screams and unheeded cries in our society. Law is the cornerstone of our culture, and our belief in the rule of law is central to our self-concept as a fundamentally good, fair, and equitable society. As lawyers, as the gatekeepers of justice, our task is to ensure that all voices are heard. Closely linking lawyers to clients and the serious issues facing them is a step toward curing the deafness, and healing the profession.

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