

Thoughts on "Looking Ahead"

Remarks of U.S. Senior Circuit Judge
Frank M. Coffin,
Governance Institute Conference:
The Law Firm and the Public Good
Georgetown University Law Center,
Washington, D.C., June 23, 1995.

This has been a day of culmination of a worthy, if modest, enterprise. There is every reason to be proud of the lawyers who crafted this book, The Law Firm and the Public Good, the American Bar Association Challenge Project, and all of you who have contributed to this colloquium. We applaud the Challenge Project with its focus on the reporting of progress toward specific goals. We value the work of the large firm lawyers participating in this work who have presented their insiders' view, combining realism and idealism, pointing out the fit between pro bono commitment on the one hand and, on the other, the individual lawyer's interest in the quality of life in his firm, the firm's interest in lawyerly development, and the legal profession's inherent ethical obligation.

But this is no time to rest on laurels. Not only is a national, publicly supported legal services operation in dire jeopardy, with the unmet legal needs of people rising, but there are even disturbing reports of a slackening of pro bono efforts within the legal profession during this recessionary period.

Therefore, the subject of "next steps" is not one dealing with things that would be nice to do to put a better shine on the silver, but with things that must be done if the profession is to realize its potential role in assuring equal access to the law and ensure its own humanization, refreshment, and reputation.

I see four general areas for "next steps." What is not clear at this time, and perhaps must remain unclear for a while, is who should bear the responsibility in each area.

I. End-of-1995 A.B.A Pro Bono Challenge Reports. The occasion of the filing of the reports from the 171 Challenge signatories offers a clear opportunity to advance thinking and action. The opportunity ought to be exploited to the full. Of course, the results of the basic questions concerning percentage of billable hours and number of partners and associates devoted to pro bono should be tallied to determine, as Esther Lardent wrote (on p. 82), "whether that heightened activity has resulted in substantial new services to the communities in which the firms practice."

Beyond this there are the opportunities to press as many firms as possible for answers to the optional questions relating to the existence of written policies, innovative activities, a pro bono committee, an annual report, changes in promotion policies, and monetary contributions to legal service organizations. But even beyond this there is the opportunity to maintain and even increase momentum by the most careful analysis of reports, identifying areas of progress and of problems, and to deepen the dialogue.

And at the end of this time of initial review and evaluation, there will be the opportunity for the Project to gather together key participants and discuss future actions.

II. Follow-up Studies. The work already revealed in The Law Firm and the Public Good suggests lines of further fruitful exploration.

A. The book itself should be as widely circulated as feasible and reactions from

readers solicited and noted. Of course the immediate hoped for audience is the community of the large law firm. The events of this day constitute a promising beginning in this outreach effort.

B. Even before formal Challenge reports are filed at year's end, there exists the opportunity for firms which share a deep commitment to pro bono to meet and engage in relaxed and informal peer review and exchange-of-experience sessions, where the objective would not be to censure but to obtain knowledge on how to do the job better.

C. Work should continue in several promising areas noted in the book:

1. The contributions of pro bono to lawyer competence. Law firms could make a meaningful contribution by consciously developing a heightened awareness of the linkage of pro bono to lawyer skills. Not only should individual lawyers be asked to reflect on their experience, and supervising attorneys be asked their evaluations, but third party objective observers might well be able to discern and articulate what the participant himself has not realized. The development of a rich, detailed, and credible literature on the linkage between pro bono experience and such lawyer skills as counseling, litigation, negotiating, and communication to all kinds of audiences would be most helpful.

2. Hand in hand with such studies would be similar inquiries addressing the linkage between pro bono experiences and the perception of a better quality of life in the firm. Lawyers would be asked to reflect on the effect that particular kinds of pro bono work had on their morale, feelings of self worth, and sense of burnout.

3. Firms might also make their own investigation into ascertaining the real costs of pro bono work in both lean and busy times, supplementing the work referred to by Judge Parker.

Research in these three areas would produce increased knowledge of both the benefits and costs of pro bono work, providing a much more accurate perspective undergirding decision making.

C. The Role of Law Schools and the Media.

1. I suspect that law schools do not need too much encouragement to demand more and more detailed information from firms about their pro bono policies and programs. Beyond seeking such information, however, it seems to me that the Academy can play a constructive role in probing the opportunities for pro bono service that exist in the varied specialties being taught. One of the problems faced by firms and attorneys with the best intentions is how experts in tax, trusts and estates, intellectual property, and pension plans can contribute their expertise. It would seem to me that law faculty might have some creative suggestions.

2. As for the media, even though the specialized legal periodicals are showing a lively interest in more detailed and discriminating reporting on pro bono, as Esther Lardent observed, "Despite an increase in coverage, . . . the legal media's reports on law firms are still dominated by bottom-line issues." What I hope for, as progress is made under the Challenge Project and by firms generally, is much more sophisticated reporting at the local level.

D. Expanding the Study to Smaller Firms. If the first step is to do missionary work with the several hundred large firms of the country, a vaster population inhabits the small firm. Professors Galanter and Palay have reported 35,000 lawyers, as of 1988, in 115 firms of 200 or more, but 105,000 in 2000 firms of 20 or more. They also, in the last footnote in their chapter, have signaled their belief that smaller firms, lacking the chance to realize economies of scale, may find "systematic pro bono commitments" more difficult. So it is important to expand the kind of inquiry made by our group to deal with the smaller firm and perhaps even the

beleaguered solo practitioner.

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Apart from the first set of opportunities, those of the Challenge Project when the first reports come in, the salient question is: who will bell the cat? It is my hope that somehow, from the network of interested people gathered here today, there will develop a leadership which will pick up the ends left loose by The Law Firm and the Public Good and keep on knitting.

If this is done, if this institution -- the law firm -- can raise its own sights and lift its own standards of civic duty, it will be a beacon for others in an era when faith in institutions, public and private, is at a disturbingly low ebb. A high level of general intelligence in the law firm community, an already impressive experience-based know-how, and material capability are all at hand. What remains to be added is that catalytic agent, our collective will.