

FOR THE PUBLIC GOOD Many Lawyers in the city are donating their talents but the need for more is growing

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Abstract:

It's a sign that many large firms continue to tolerate pro bono work, despite competitive pressures to trim staffs and otherwise buttress the bottom line. On the other hand, the large firms' 423,418 pro bono hours represent a decline from a record 449,000 in 1992, and a separate study shows that roughly half of New York State lawyers do no pro bono work at all.

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1) Newsday Cover Photo by Oliver Morris- Trademark and copyright lawyer Georges Nahitchevansky has helped Chinese refugees with immigration problems. 2) Newsday Photo by Susan Farley - Michael Lissner helps Basya Rokhkind with her will. Lissner makes house calls to elderly clients. 3) Newsday Photo by Susan Farley- Volunteers of Legal Service executive director [Bill Dean] says the demand for pro bono services is growing. 4) [Robert Sullivan], left, won an acquittal for convicted arsonist [Eric Jackson-Knight] - for free Newsday Chart by Linda McKenney-Holding the Line: New York's largest law firms are trying to maintain a commitment to pro bono work, of free representation of the poor. However, the number of hours they've donated has dropped slightly in recent years (see microfilm). 2) Chart-The Volunteers of Legal Service AIDS project operates at 19 sites, with large law firms paired with a given site. Some examples (see microfilm)

Full Text:

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HIS PERSONAL injury practice has made him famous and made him rich, so it came as something of a surprise when lawyer Robert Sullivan marched into criminal court to defend a client in a difficult case, and for free.

Sullivan believed the client, Eric Jackson-Knight, had been railroaded for a crime he didn't commit: torching a Brooklyn Waldbaum's in which six firefighters died. Sullivan came to that conclusion while researching the widows' claims against Waldbaum's, which were settled out of court for \$13.5 million.

"The guy was a scapegoat serving 158 years," Sullivan, his voice tinged with indignation, said of Jackson-Knight. Sullivan didn't trust anyone else with the work. The Brooklyn district attorney's office "wanted him bad," Sullivan said. "They would have walked all over another court-appointed lawyer."

So Sullivan sifted through crates of documents, weighed evidence, grilled experts, boned up on criminal law, re-tried the case - and won an acquittal. He devoted about 2,000 billable hours to the case, he said, plus roughly \$5,000 in expenses. Thus, at an hourly rate of "\$500, easy," Jackson-Knight was treated to a \$1 million defense. For free.

Sullivan's energetic lawyering on Jackson-Knight's behalf falls under the rubric pro bono publico, a Latin phrase meaning "for the public good." It's the noble concept in which lawyers, as a privileged class, plead the case of impoverished clients without charge.

Exact numbers are hard to come by, but a survey by Volunteers of Legal Service shows that lawyers at 27 large Manhattan firms donated 423,418 pro bono hours in civil cases in 1993, some going so far as to make house calls to AIDS patients and the elderly poor.

It's a sign that many large firms continue to tolerate pro bono work, despite competitive pressures to trim staffs and otherwise buttress the bottom line. On the other hand, the large firms' 423,418 pro bono hours represent a decline from a record 449,000 in 1992, and a separate study shows that roughly half of New York State lawyers do no pro bono work at all.

Despite unprecedented arm-twisting on behalf of the legally underserved, the statewide number of lawyers

performing pro bono work over the last three years has hovered around 47 percent.

Given the lax response, there is concern that the number may never clear the 50percent hurdle.

"We may have topped out in terms of lawyers who participate in pro bono work," warned Alexander Forger, former chairman of Milbank, Tweed, Hadley & McCloy and now president of the Legal Services Corp. "This comes at a time that the gap continues to widen between the number of people who need legal help and those who are there to give it."

Bill Dean, VOLS executive director, agrees.

"The needs are growing because poverty is growing," he said. The number of people on welfare in New York City has increased by 327,000 in the last five years, for example.

A strong pro bono undertow tugs at all lawyers, who are supposed to "aspire to render at least 50 hours of pro bono publico services per year," or less than an hour a week, according to an American Bar Association rule of professional conduct.

In 1990, New York Chief Justice Sol Wachtler wanted Bar members to perform at least 20 hours of pro bono work per year. If things didn't improve fast, Wachtler warned in 1990, pro bono work might be made mandatory.

He was reacting to a study that showed that only about 14 percent of the civil legal needs of the poor were being met. In fact, the Pro Bono Review Committee, a statewide study group that grew out of Wachtler's dissatisfaction with pro bono participation, recommended that pro bono work be a mandatory 40 hours every two years.

While the statewide numbers may be static, the unprecedented pressure has had some impact in New York City, where more than 1.7 million residents, or one in four, fall under the federal definition of poverty.

In the last three years, for example, the Brooklyn Bar Association mobilized 500 lawyers to provide free legal services in civil cases.

"The numbers may look startling, because we're new," said Ellen Mishkin, director of the Volunteer Lawyers Project Inc. of the Brooklyn Bar Association.

The numbers may look startling for another reason: The legal landscape in Brooklyn is notably different from that of Manhattan, which is larded with 100-plus law firms and, even in these economizing times, equally large support staffs.

In Brooklyn, "almost everyone is a solo practitioner or in a two-person office, and they don't have a lot of office support," Mishkin said.

The New York County Lawyers' Association has seen an uptick in interest in pro bono work as well. The NYCLA Consumer Bankruptcy project, for example, began in 1991 with 40 lawyers assisting 52 clients. By the end of 1993, 280 lawyers had been trained and 254 people assisted in filing for personal bankruptcy.

All this is in keeping with another code that calls for every lawyer, regardless of workload, to "find time to participate in serving the disadvantaged."

Partners aren't supposed to be exempt, though it's almost always the junior associates who perform most of the pro bono work.

One notable exception was Milbank, Tweed's Forger, who wrote wills and otherwise counseled impoverished AIDS patients in Brooklyn. He did this work while chairman of the venerable white-shoe firm, whose roots date

to 1860. Forger, a well-known trusts and estates lawyer who is co-executor of Jackie Kennedy Onassis' estate, shrugs off the suggestion that such grass-roots volunteerism is rare for someone of his stature. "I did what I thought was right as a professional. It's important that there be models for younger lawyers."

It helps immeasurably when a partner takes a high-profile interest in pro bono affairs, says Georges Nahitchevansky, a trademark and copyright lawyer who represents six teenaged boys who were aboard the Golden Venture, the refugee-filled Chinese freighter that ran aground near Queens in 1993.

"A lot of firms say, go ahead and do pro bono work, but you still have to have a certain threshold of billable hours," Nahitchevansky says. "Some will give you credit for the pro bono work you do. But if you're spending 400 hours on pro bono, someone probably will talk to you about it - unless a partner assigned you to it."

Nahitchevansky figures he devoted about 400 hours to his Golden Venture clients in one year, but Maurice Nessen, a partner at Kramer, Levin, Naftalis, Nessen, Kamin & Frankel, looked favorably on pro bono work and wanted the firm to do something for the Lawyers Committee on Human Rights.

Of Nahitchevansky's teenaged Golden Venture clients, five have their green cards. Nahitchevansky now is with another firm, Weiss Dawid Fross Zelnick and Lehrman PC, where he also finds a friendly climate for pro bono work.

Says VOLS' Dean: "We're constantly trying to encourage partners to become involved. It sends a powerful message."

He said that pro bono is an especially challenging concept in the '90s, a decade that has evolved as a sharp counterpoint to the high-billing, money-is-no object '80s. Slimmed-down New York law firms are laying off associates and, in a few notorious cases, shutting down altogether. So a logical corollary might be that pro bono work is given low priority.

It depends on whether the firm has a culture that encourages pro bono work.

Despite the numbers, when all the rhetoric and self-congratulation is swept aside, "Few firms have that culture," said one lawyer with an insider's familiarity with large New York firms.

Today's freshlyminted lawyers tend to be narrow-minded, narrow-focused specialists with far less time to think about the poor, said the lawyer, who agreed to speak candidly in exchange for anonymity.

"We can get out there and cheer and wave flags and talk about justice and the code of professional responsibility," the lawyer said, "but by and large, the large firms are not encouraging pro bono."

But Dean points out, "It's not an all-or-nothing situation. A lot of firms are not having problems." Some, he believes, accept their pro bono duty.

Every Tuesday night, for example, a team of 23 lawyers from the New York office of Hunton & Williams provide free legal help to the poor through the St. Agnes Drop-In Center, which serves the homeless around Grand Central Terminal.

LeBoeuf, Lamb, Greene & MacRae had John M. Aerni working full time for four months at South Brooklyn Legal Services. Wilkie Farr lent associate Arlene Sanders to the Grand Street Office of MFY Legal Services, also for four months.

And small-firm lawyers like Michael Lissner, who specializes in trusts and estates and who practices with his wife, Barbara, is among those who figures he has a moral duty to perform pro bono work.

He's among those who make house calls, in his case to elderly clients for estate planning. Asked if the firm gets any payback, he said no; it's more of a humanitarian duty to help the needy.

Why don't more lawyers do it?

"Law is a business," Lissner explained. The way some see it, giving away legal advice is a like a widget company giving away widgets.

In this era of gleeful lawyer-bashing, however, pro bono work is one means of helping repair the profession's battered public image, so that phrases like "altruistic lawyer" don't have the ring of an oxymoron. Judith Kaye, chief judge of the New York Court of Appeals is among those who see it as a tool for public relations.

She noted that negativism and cynicism toward lawyers persist. Kaye, who still gets calls from pro bono clients she represented 20 years ago, also said, "It's clear to anyone who works in the field that the needs have not begun to be met."

Recognizing that, the American Bar Association in April, 1993, instituted the Law Firm Pro Bono Challenge, in which the ABA asked the nation's 500 largest law firms to commit 3 percent to 5 percent of their billable hours to pro bono work. Only 171 have accepted the challenge.

"It's a bit disappointing," said Jim Jones, chair of the project and a partner at the Washington, D.C., firm of Arnold & Porter.

Three firms out-and-out refused, quarreling with the project's definition of pro bono. It doesn't include such things as serving on the board of directors of a symphony orchestra, for example.

Jones adds that some cities, such as San Francisco and Washington, D.C., have strong pro bono traditions, "but it's a tradition that's not nearly so alive and well in Los Angeles, and it's been difficult to penetrate very deeply in Cleveland. And Texas has not been terribly good."

For some, the pro bono push begins in law school. Columbia, for example, now requires students to perform 40 hours of pro bono work before they graduate.

To bridge the gap between those who need legal services and lawyers who can provide them, Milbank, Tweed's Forger is among those who support the idea of mandatory pro bono, though many lawyers consider it a long shot.

One of them is Sullivan, the personal injury lawyer who successfully defended Jackson-Knight, the arson suspect. Sullivan pauses, reflecting on the hundreds of uncompensated hours he spent on the criminal case.

"I'm in favor of mandatory pro bono," he finally said. "But I've done all mine."

[Illustration]

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