

The Organized Bar and *Pro bono* - The City Bar Justice Center Experience¹

The Association of the Bar of the City of New York's ("City Bar's") contributions to the development of the ethos of *pro bono* service in the legal community are significant and enduring. The culture of *pro bono* service at the City Bar has long historical roots in public service but the rapid expansion of the notion that all lawyers should provide *pro bono* service did not begin until the 1960's. This article will discuss the involvement of the City Bar and its leadership in supporting the legal services movement and *pro bono* in the 1960's and 1970's; focus on the *pro bono* institution-building initiatives emanating from the City Bar since the 1970's; review the creation of programs at the City Bar in the 1980's and 1990's which were building blocks for the City Bar's extraordinary response to the World Trade Center attacks on 9/11, as well as creating the basic scaffolding for what became the City Bar Justice Center; and finally look at the current engagement of the bar in *pro bono* projects at the City Bar Justice Center. This article explores the promise of *pro bono* based on the City Bar Justice Center experience while also exploring significant challenges and tensions which must be surmounted to improve scale in meeting the growing demand for free legal assistance to low income New Yorkers.

Background

New York City has long had a large poor and working poor population and the unmet legal needs continue to be vast.² The availability of free civil legal services for the poor in New York began with the founding of The Legal Aid Society in 1876 to assist German immigrants,

¹ Executive Director, City Bar Justice Center, B.A. 1978 Mount Holyoke College, J.D. 1982 NYU. From 1999-2007 Executive Director, MFY Legal Services, Inc. I would like to thank Helen Poitra-Chalmers for her helpful research assistance and Barbara Berger Opatowsky, Alan Rothstein and Alice Morey for comments about drafts of this paper.

² See, e.g. EQUAL JUSTICE COMMISSION, EXPANDING ACCESS TO JUSTICE NEW YORK'S NEXT CHALLENGE 1 (2006). "New York is ... home to 2.8 million people – 14.9% of our state's population – living in poverty...fewer than 15% of the legal needs of low income New Yorkers were being met"; NEW YORK STATE BAR ASSOCIATION COMMITTEE ON LEGAL AID, THE NEW YORK LEGAL NEEDS STUDY xii (December 1993) States that 20.3% of the NYS population had incomes below 125% of poverty.

expanding in 1889 to serve all.³ The Legal Aid Society had a “virtual monopoly” over the representation of New York City’s poor until 1964 with the creation of the Mobilization for Youth legal unit that evolved into MFY Legal Services, Inc. and served as the model for storefront community based legal services.⁴ With the advent of the federal Legal Services Corporation in 1974 which funded community legal services programs throughout the nation, including Community Action for Legal Services (now Legal Services NYC), the backbone of the free civil delivery system in New York City was created. Unfortunately, the civil legal services sector in the United States has never been fully funded and many needy people must be turned away.⁵ While many worthwhile legal services programs have been created in New York to bridge the justice gap⁶ there remains a need for *pro bono* assistance.

Built on the foundations of previous successes in marshalling the impressive legal resources available to the City Bar through its membership of more than 23,000 attorneys, the City Bar Justice Center is the City Bar’s third institution building response to the legal needs of New York’s poor. The City Bar Justice Center is part of the Association of the Bar of the City of New York Fund, Inc., (“City Bar Fund”), the 501(c) (3) public service affiliate of the City Bar. The Justice Center assists more than 25,000 clients a year roughly half of whom receive no cost advice, brief services and tailored referrals through a civil legal hotline. The Justice Center recruits and matches *pro bono* volunteers with low income clients and provides direct services through its staff of 30. The current model reflects what the Justice Center has learned about best practices for *pro bono* in light of three major factors: first, the growth and institutionalization of

³ MARTHA F. DAVIS, BRUTAL NEED- LAWYERS AND THE WELFARE RIGHTS MOVEMENT 1960-1973 11 (1993).

⁴ *Id.* at 11, 27-35.

⁵ THE LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA 16 (September 2005). Estimating in 2000 that there was one legal aid attorney per 6,861 low-income people as compared to one private civil attorney per 525 people and the “difference between the level of resources available to the general population and those available to the low-income population is enormous.”

⁶ It is estimated that the number of civil attorneys working for nonprofit law firms and The Legal Aid Society Civil Division providing free legal services outside the LSC funded system in NYC is larger than the LSC funded system.

pro bono practice at the large law firms; second, the emergence of structured *pro bono* programs in corporate legal offices over the last five years; and third, the importance of training, mentoring and coaching in enabling attorneys from a broad range of practice backgrounds to successfully handle *pro bono* cases outside their usual areas of expertise.

The Growth of *Pro bono* in the 1960's and 70's

The City Bar was a local forum for major discussions about the obligation of lawyers to assist the poor and was an early supporter of government funded legal services. The City Bar supported the creation of neighborhood legal services in the mid-1960's, including the "highly unusual reprinting in the January 1965 *Record* [the Association's legal journal] of the seminal law review article written by Edgar S. and Jean C. Cahn which proposed neighborhood law firms."⁷ This thrust was part of the growing attention to poverty within the legal field as a whole. Morris notes "In the late 1960's, responding to pressures from associates and to the concerns of law students whom they were attempting to recruit, some of the large New York law firms began to provide legal services directly to nonpaying clients."⁸

As the legal profession responded to changes in the larger cultural and social framework that marked the 1960's and 70's, the City Bar underwent a shift away from its historical position as an elite professional association and towards the view that the profession should respond to unmet legal needs not only as advocates for the civil legal services movement but as providers of legal services. In 1969, the Council of New York Law Associates formed from a group of young attorneys for whom "the organized bar was too hesitant and conservative, too likely to place the profession's self-interest before the public interest, and not responsive enough to the

⁷ JEFFREY B. MORRIS, MAKING SURE WE ARE TRUE TO OUR FOUNDERS: THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 1970-1995, 106 (1997).

⁸ *Id.* at 107

widespread need for legal services.”⁹ This reflected a nationwide movement creating ‘counter’ bar associations “to express the reformist agenda of elite young lawyers.”¹⁰ One effect of this mobilization of younger lawyers was the first known contested election for the Executive Committee of the City Bar, in which three young associates broke into the ranks of the Bar’s leadership committee.¹¹

In a refreshing article entitled “‘The Council of New York Law Associates’ What Is It?” the Chairman of the Steering Committee of the Council described the 700 member Council’s founding by eight young lawyers from seven large law firms as follows:

There was nothing very extraordinary about the promises we made; revolutionary cabals do not generally emerge from associates in the Wall Street/Midtown firms. What we did promise was to seek out and publicize opportunities for truly interesting sorts of public service work suitable for an associate... Too often, the groups which seek volunteer legal help are insensitive to the value of an attorney’s time or the niceties of his ethical standards; by providing, where appropriate, some measure of central coordination we hope to minimize these problems... We hope that the firms will share our conviction that the Council may well help to fulfill a professional responsibility of the Bar efficiently enough to merit financial support and –no less important from any pragmatic viewpoint – that the Council may aid the firms in recruiting and keeping good young lawyers by making life more stimulating for associates in the larger New York law firms. If the firms prove as receptive to us as have the senior bar associations, we soon should be in sound financial shape.¹²

The concluding footnote to the article reads “The Association of the Bar will furnish the Council office space starting about May 18.”

The incorporation of the associates’ voices into the priorities of the City Bar led to new initiatives and fresh energy for the City Bar’s projects. The Council of New York Law Associates was both a useful source of volunteers and developed ideas which were helpful to the

⁹ MICHAEL L. POWELL, FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR ASSOCIATION 100 (1988).

¹⁰ POWELL *supra* at 100.

¹¹ *Id.* at 62.

¹² Neal Johnston, “The Council of New York Law Associates” *What Is It?* 25 THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 312, 313 – 315 (1970).

City Bar's initiatives.¹³ During this same period, the leadership at the City Bar continued public advocacy work on behalf of legal services to the poor as evidenced by President Orville H. Schell Jr.'s testimony to "the House Subcommittee on Equal Opportunities on behalf of creation of an independent legal services corporation to protect the ...[Neighborhood Legal Services] lawyers from retaliation" in February of 1973."¹⁴

Pro bono Institution-building in the 1970's and 80's

As the Council of New York Law Associations matured, the changes it advocated became ensconced in the larger City Bar.¹⁵ Younger City Bar members who also participated in the New York Council of Law Associates fomented serious debate with the suggestion "that the City Bar sponsor a public-interest law firm to be staffed with salaried attorneys and funded by levies drawn on the large firms."¹⁶ The proposal was addressed, in part, by the founding, in 1976, of a new organization called the New York Lawyers for the Public Interest (NYLPI) with three City Bar Presidents - Cyrus R. Vance (1974-76), Adrian W. Dewind (1976-1978) and Francis T.P. Plimpton (1968-70) - amongst its founders. NYLPI's stated goal was "increas[ing] legal services to the poor through screening and channeling public law opportunities to participating large law firms."¹⁷ Writing in the City Bar's 44th Street Notes on the occasion of NYLPI's Fifteenth Anniversary, City Bar President Conrad K. Harper (1990-92) noted NYLPI's success and commented "unlike prior efforts to enlist the private bar, NYLPI requires law firms

¹³ MORRIS *supra* at 39. This development is exemplified by the co-facilitated creation of the Committee on Demonstration Observation which "by 1974...had covered 208 demonstrations in three and a half years" and corresponded by a significant decrease in complaints about police activity."

¹⁴ *Id.* at 106.

¹⁵ POWELL *supra* at 162.

¹⁶ *Id.*

¹⁷ MORRIS *supra* at 107.

and corporate legal departments to join it as members, with the obligation both to accept matters on referral and to make financial contributions to the organization.”¹⁸

In the 1980’s the interest and commitment to *pro bono* at the City Bar accelerated.¹⁹ In 1984, under the leadership of City Bar President Louis A. Craco (1982-84) the City Bar created a second *pro bono* organization from the work of the Access to Legal Services Committee called the Volunteers of Legal Service (VOLS) in the face of “cuts made by the Reagan Administration in funding legal services for the poor.”²⁰ A founder and first President of VOLS was Sheldon Oliensis (City Bar President 1988-90) who also served on the NYLPI Board and as President of The Legal Aid Society.²¹ The VOLS model distinguished itself in three ways: it required a collective, formal agreement of twenty nine participating large law firms to “meet or exceed an annual goal of thirty hours of *pro bono* work per attorney” limited to low-income clients.²² It focused on addressing civil legal issues and it “match[ed] law firms with the poverty law offices of Legal Services.”²³ Within a year’s time VOLS “spun off as a separate not-for profit corporation... [and was] hugely successful in its efforts to recruit law firms...and corporations.”²⁴ By 1985 VOLS had recruited more than 60 law firms and 20 corporations into its program.²⁵ The incubation of two entirely new *pro bono* institutions out of the City Bar - NYLPI and VOLS - reflected the growing capacity of New York’s legal community to address the legal needs of low income New Yorkers in the face of limited government funding for civil representation.

¹⁸ Conrad Harper, *President’s Column: The Association and the Fifteenth Anniversary of New York Lawyers for the Public Interest*, Vol. 7, 44TH STREET NOTES, January 1992, at 1.

¹⁹ MORRIS *supra* at 95

²⁰ *Id* at 108.

²¹ *Id* at 134.

²² *Id* at 105

²³ *Id* at 109

²⁴ Robert B. McKay, *Report of the President*, 40 THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 425, 430 (1985).

²⁵ *Id.* at 431.

Pro bono Building Blocks 1980's – 1990's

The interest in addressing problems facing the poor and providing *pro bono* legal services remained widespread at the City Bar past the creation of NYLPI and VOLS. The City Bar presidents over at least the last forty years have each held access to legal services for the poor as one of their highest priorities. Along with the leadership and permanent staff of the Bar, the City Bar's committees were a source of direct service ideas, trainings and guidance on substantive law and structuring of *pro bono* projects. Frequently the committees were also a source of volunteers.

Always a city of immigrants and increasingly a city of international law firms, New York City experienced increases in documented and undocumented immigration in the 1980's. The City Bar's Committee on Immigration and Nationality Law started a project to train and mobilize *pro bono* lawyers to assist on Haitian asylum claims. Then, following the 1986 amnesty law which provided for a one year window during which potentially 800,000 undocumented immigrants in New York City could apply to legalize their status, the City Bar Fund hired an attorney to coordinate a much larger *pro bono* response. At least five trainings for *pro bono* volunteers were held and several months into the process over 600 people had been helped.²⁶ Subsequent projects included assisting refugees from war wracked El Salvador and Guatemala with immigration claims. The City Bar mobilized volunteers to assist the Chinese smuggled by human traffickers aboard the Golden Venture which ran aground off of Queens in 1993.²⁷ The immigration *pro bono* projects were popular with the large law firms and young associates interested in international human rights as well as immigration specialists.

²⁶ *Amnesty Counseling Program*, Vol. 2, 44TH STREET NOTES, October 1987, at 2.

²⁷ MORRIS *supra* at 137.

In 1987, during City Bar President Robert M. Kaufman's tenure (1986-88), the City Bar created the Community Outreach Law Program ("COLP"), subsequently named for a former President, Robert B. McKay (City Bar President 1984-86). COLP won awards and became a model for bar association legal clinics nationally seeking to provide direct legal services to urban communities. COLP initiated many of the legal services projects operating at the City Bar Justice Center today. Many projects took on tough challenges. A "pilot *pro bono* project for the New York Housing Court," proposed by the Committee on Legal Assistance in response to a request by the court and with the assistance of the Executive Director of VOLS²⁸ demonstrated that it was effective and prevented homelessness to have *pro bono* counsel but raised questions on the efficiency of using *pro bono* attorneys from large firms on housing cases since 58 *pro bono* attorneys were only able to assist 158 tenants which was a tiny fraction of the need.²⁹

The COLP model strove to "focus upon a class of clients deprived of adequate legal services, then to structure a program to train volunteer lawyers... [who] are matched with clients seeking assistance to provide either counseling or direct representation."³⁰ COLP was considered a thoroughly community effort, focusing on providing "basic legal training to service professionals and dependent upon a corps of volunteers recruited from the ranks of attorneys, law students, recent graduates and paralegals."³¹ By providing training and responding to emergent areas of civil legal need, COLP was able to capitalize on its unique position within the City Bar Fund to develop its own brand of *pro bono* legal services.

In 1988 the Committee on Legal Problems of the Homeless, chaired by Robert P. Patterson, Jr. wrote a lengthy report calling for changes to reduce homelessness and in 1989 filed an amicus curiae brief in the successful *Jiggetts v. Grinker* appeal challenging the inadequacy of

²⁸ *Association Activities*, THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 42 1, 4-5 (1987)

²⁹ MORRIS *supra* at 137

³⁰ *Id.* at 136.

³¹ *Id.*

the public assistance shelter allowance.³² There was a sense that the leadership at the very top of the profession was grappling with hands-on direct services to the poor through the City Bar programs. In 1991, with the Project on the Homeless, COLP provided a coordinator and helped to create a weekly clinic to provide free onsite legal counseling to the homeless population. Nearly 2,000 cases were assigned to volunteers in a 15 month period of which three-quarters involved counseling and one quarter involved direct representation. Reflecting on his visit to the homeless clinic, City Bar President Conrad Harper (1990-92) wrote:

Seeing the homeless reminds us how vulnerable each of us is. No one has the absolute power against deprivation. In the long arc of life it is certain that we shall be touched as well by tragedy as by good fortune. We should help while we can before our own needs exceed our capacity to help others.³³

The City Bar also started Monday Night Law in 1991 with teams of volunteer attorneys counseling clients. That project continues to the present with 80-90 volunteers serving over 1,000 clients a year with a free in-person consultation with an attorney at the City Bar. Monday Night Law is now sponsored by the Moderate Means Committee and its volunteers must have at least two years of practice experience.³⁴ The City Bar Justice Center now certifies *pro bono* CLE credits for Monday Night Law volunteers and provides a bit of administrative support. Seventeen years after it started, Monday Night Law remains a successful, almost entirely volunteer-driven clinic.

As COLP was expanded, targeted projects were proposed that provided trainings by experts on specific legal areas so that the volunteers could be recruited from any practice background or corporate legal departments therefore expanding the pool of potential *pro bono* attorneys. Between 1991 and 1992, 1,001 lawyers were trained by COLP and expected to take at

³² *Id.* at 166.

³³ Conrad Harper, *President's Column: Homelessness*, Vol. 7, 44TH STREET NOTES, March 1992, at 2.

³⁴ Interview with Russell Bleemer, Co-founder of Monday Night Law and Member of the Legal Services for Persons of Moderate Means Committee, in New York, NY (April 25, 2008).

least one *pro bono* case in return.³⁵ As new projects started, often in coordination with City Bar committees or under the leadership of a President, they targeted unmet needs or responded to emergent civil legal problems. These early COLP projects included: Housing Court Summer Associates, Domestic Violence Summer Associates, Guardian Ad Litem, AIDS Counseling, Domestic Violence, Bellevue Hospital, Hostos Center for Women's and Immigrants' Rights, Matrimonial, Bankruptcy, Homeless, Cancer, Elder Law, Public Benefits, Law Related Education, Adoption and Children's Rights.³⁶ City Bar President Conrad Harper voiced the broad commitment of the City Bar to *pro bono* in his Farewell Address stating "If our heart as an association is in the profession, our soul is in *pro bono* work."³⁷

The City Bar Fund's *pro bono* services project development built on the lessons learned from prior projects. One notable example is the Legal Hotline, which at its inception was conceptualized as a low income client parallel to the Legal Referral Service with a mission of identifying clients legal problems and matching them with appropriate *pro bono* programs and attorneys as well as answering general civil legal questions and serving as an intake source for the *pro bono* projects.³⁸ The SHIELD (Self-Help Information, Education and Legal Defense) Hotline started in 1997 with funding from the Interest on Lawyers Account Fund of the State of New York (IOLA) and the New York Community Trust.³⁹ SHIELD also provided *pro bono* assistance on family cases as many legal services programs in New York City had retreated from divorce work given the increase in housing cases and homelessness. The City Bar Fund continued through the decade of the 1990's to create innovative client outreach and delivery models through COLP and to train volunteer lawyers to address the needs. City Bar President

³⁵ MORRIS *supra* at 138.

³⁶ *Id.* at 138-9

³⁷ *Id.* at 139

³⁸ Report from Michael A. Cardozo, President of the Association of the Bar of the City of New York to the City Bar Fund Board of Directors 2 (Sept. 24, 1996) (on file in City Bar Justice Center).

³⁹ *Id.*

Barbara Paul Robinson (1994-96) voiced the City Bar's commitment in strong terms. "We, as a bar association, are totally committed to community outreach, at both the policy and [the] advocacy levels, as well as to providing direct services to the disadvantaged through our volunteers."⁴⁰

From The World Trade Center Disaster Response to the Present

Prior to 2001, no portion of the low income civil justice sector in New York City, including the City Bar Fund, was experienced in mobilizing volunteer resources on a massive scale. However, the attacks on the World Trade Center on September 11, 2001 presented an unprecedented and urgent civic challenge to the organized bar. More than three thousand office workers in New York City had perished in one day and their coworkers were injured, traumatized, and in the case of the restaurant workers, security guards and others, out of work. The families of those killed were in shock and needed immediate legal help to obtain expedited death certificates, file health and life insurance claims, obtain Social Security and other survivors' benefits, workers compensation and navigate Surrogates' Court. In the aftermath, all of Lower Manhattan from Wall Street to Chinatown had been evacuated, many downtown law firm and legal services offices were directly affected and the courts were shut down.

The urgency of September 11 and the scope of the legal problems posed a real challenge to the existing models of *pro bono* which tended to specialize in a single issue. With strong leadership, all segments of the legal profession in New York came together, coordinated by the City Bar under City Bar President Evan Davis (2000-02), City Bar Fund Executive Director Maria Imperial, City Bar Executive Director Barbara Berger Opatowsky, Chief Judge Judith Kaye of the New York State courts, leaders of nonprofit and legal services organizations, and

⁴⁰ MORRIS *supra* at 165

other NY bar associations and forged a new coordinated mass disaster legal response model.⁴¹

The City Bar's experience leading disaster relief after 9/11 both changed outside perceptions about the ability of the City Bar Fund to deliver direct services and proved that there was a void which the City Bar Fund was able to fill as an organizing center in mobilizing a mass *pro bono* response across the entire New York City legal profession.

More than 4,000 individuals affected by the 9/11 disaster were represented on a *pro bono* basis by volunteer lawyers⁴². Individual lawyers from all practice areas and from firms of all sizes poured forth to offer *pro bono* services. In order to coordinate the response, the City Bar took the lead in organizing the relief effort. Approximately 3,000 attorneys received training through the City Bar and in-house law firm programs using City Bar resources. A "facilitator model" was developed so that the clients could have all their legal needs identified and managed by one attorney, as opposed to the dominant mode of *pro bono* with volunteers specializing in one area. More than 800 attorneys took a three hour facilitator course to learn how to conduct a legal inventory, prioritize client needs, act as a problem solver or refer the client in an expeditious manner and find other experts to assist on special legal needs.⁴³

The bar groups agreed to specialize in different areas at the outset which made it easier to sort volunteers and cases. The Legal Aid Society and Legal Services New York City provided direct representation to clients and trained and advised volunteer lawyers from the private sector. Other legal services providers handled particular issues or populations. Law firms were the largest source of volunteer attorneys and the preexisting *pro bono* structures at the largest law firms made it easier to organize volunteers and match cases. Probono.net provided online

⁴¹ ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK FUND, INC., ET AL., PUBLIC SERVICE IN A TIME OF CRISIS, A REPORT AND RETROSPECTIVE ON THE LEGAL COMMUNITY'S RESPONSE TO THE EVENTS OF SEPTEMBER 11, 2001 *passim* (2004).

⁴² *Id.* at 8.

⁴³ *Id.* at 8-12.

information, communication and resources to all enrolled volunteers. Large law firms were able to dedicate staff to the effort and several sent multiple attorneys on secondment to the City Bar for a number of months to help organize the response while continuing to be paid by their law firms. The City Bar was able to mobilize its existing Legal Referral Service for intake of victims needing legal assistance and lawyers seeking to volunteer. The LRS handles 100,000 callers annually and its phone number was widely publicized as the number to call for help and to volunteer.⁴⁴ This allowed the City Bar to rapidly expand capacity to help clients.

Since 9/11, the City Bar's *pro bono* services model has grown into the City Bar Justice Center by merging the resources of the City Bar Fund's two direct legal services *pro bono* programs - COLP and SHIELD. At the December 2002 meeting of the City Bar Fund Board, the directors discussed the challenge of developing a cohesive focus for the Fund's legal services. The success of the City Bar Fund at responding to the September 11, 2001 attacks illustrated the clout and organizing power of the organization in responding to crisis.⁴⁵ After substantial research and discussion, the City Bar Fund Board's Special Branding Committee presented an action plan which suggested that "the programs at the City Bar Fund which serve to increase access to justice become known as the "City Bar Justice Center"⁴⁶. It was decided that "the mission of the City Bar Fund...have two distinct parts, one relating to supporting the Association and the second relating to the activities of the new City Bar Justice Center, the arm of the Fund that is committed to providing access to justice."⁴⁷

⁴⁴ *Id.* at 13.

⁴⁵ City Bar Fund Board Meeting Minutes 4 (Dec. 18, 2002) (on file in City Bar Justice Center). Additionally, the scope of the Bar Fund was evolving through the addition of the Cyrus Vance Center for International Justice Initiatives having commenced in the previous year.

⁴⁶ City Bar Fund Board Meeting Minutes, City Bar Fund Action Plan 2 (Dec. 15, 2004) (on file in City Bar Justice Center)

⁴⁷ *Id.* at 5. It was further specified at the meeting what the roles of the previously segregated projects would now be: "We recommend that the COLP and SHIELD hotline programs be simply the community outreach and legal hotline programs, respectively, of the City Bar Justice Center...[and that] the City Bar Public Service network and the Vance Center for International Justice Initiatives keep their existing names."

Since 9/11, the *pro bono* disaster response model was tested a second time on a much smaller scale by Hurricane Katrina when the City Bar Justice Center recruited and trained *pro bono* attorneys to assist Katrina victims who were relocated to New York City from New Orleans. The City Bar Justice Center's role as an essential part of the safety net in the event of a disaster has been recognized by the New York City Office of Emergency Management which includes the Justice Center as part of its response listing.⁴⁸

The A-List

No discussion of creating a *pro bono* culture in New York City would be complete without acknowledging that the "A-List" of The American Lawyer has been a large motivator. Large firm culture is competitive and the City Bar Justice Center experience has been that the firms have largely risen to the challenge of trying to increase *pro bono* hours and improve position on the A-List. After remaining at a standstill in the late nineties, average *pro bono* hours at the Am Law 100 firms have more than doubled since 2000.⁴⁹ The A List was created in 2001 to distinguish the top 10% of the 200 top firms listed in American Lawyer. Since 2001, there has been widespread hiring of fulltime *pro bono* coordinators in order to increase the volume of *pro bono* work. In turn, the *pro bono* programs have become more structured in order to try to ramp up the amount of *pro bono* work. While successful in increasing volume at the largest firms, the new structure has affected the nature of the *pro bono* work that is done.

Last year, the Am Law 200 reported a record amount of volunteer legal service, 4,842,063 hours. At a blended rate of \$300 an hour, that means the large firms contributed an estimated \$1.45 billion in *pro bono* time⁵⁰. Perhaps most importantly, the firms reported that

⁴⁸ Interview with Carol Bockner, Director of Pro Bono Initiatives, City Bar Justice Center, in New York, NY (Oct. 14, 2008).

⁴⁹ Nate Raymond, *A Silver Lining*, THE AMERICAN LAWYER, July 2008, at 100, 102.

⁵⁰ Aric Press, *In-House at The American Lawyer*, THE AMERICAN LAWYER, July 2008, at 13.

42.3% of their lawyers performed at least 20 hours of *pro bono* work, a 12% increase reaching an unprecedented rate of *pro bono* service.⁵¹

Institutionalization of *pro bono* has led to *pro bono* surveys, strategic plans, best practices, written goals, full time *pro bono* coordinators, committees, kick-off luncheons, and reporting/accountability. *Pro bono* coordinators have privately described the A-List as "an arms race". The beneficiaries have been the *pro bono* projects seeking to enlist large law firm support and the clients receiving the services.

The result of increased planning and structure however, is increasing specialization characterizing many large law firm *pro bono* projects and in some cases the adoption of signature projects or cases⁵² generating many hours and focusing on one area or issue with broad appeal. While there is competition for some projects, other important needs continue to be unmet and cases that cannot be readily "packaged" may not be accepted by more organized *pro bono* programs at firms. One commentator noted that "*pro bono* works like a well-oiled machine...The firms generally expect the public interest providers to present packaged, clear projects with a set scope and time frame. Firms will go far for the most desirable cases..."⁵³

Law students express concern over low *pro bono* hours and the requirement some firms have that *pro bono* be done on top of billable hour requirements. On the website for Law Students Building a Better Legal Profession based at Stanford Law School students write "A shockingly low percentage of attorneys meet the ABA's expected guidelines for annual *pro bono* commitment. Billable hours reinforce the idea that all time should be spent producing revenues

⁵¹ *Id.*

⁵² See e.g. Daphne Eviatar, *Pro bono Pros*, THE AMERICAN LAWYER, July 2008 at 104, 106; Ben Hallman, *Pro bono Starts at the Top*, Law.com, The American Lawyer (July 2, 2008) <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=900005556042>. In discussing why one firm slid in the rankings, the firm chairman explained that in 2007 the lawyers devoted 75,000 hours to a class action suing a state over access to educational resources. Three other firms ascending up the rankings acknowledged that it was due to big initiatives they have undertaken.

⁵³ Lisa Lerer *O Lawyer, Where Art Thou?* 2 SLATE (July 6, 2007) <<http://www.slate.com/id/2169850/>>.

for clients. Even firms that count *pro bono* hours toward billable requirements often expect the *pro bono* to be done on top of 2000-2400 revenue-producing billable hours." Students with leverage in the recruitment process, namely those from the nation's top law schools, do ask about a firm's *pro bono* commitment when interviewing and it has become an issue in recruitment. Increased attention to *pro bono* at the law school level has kept the issue on the front burner for law students.

The City Bar Justice Center's *Pro bono* Model

The Justice Center has grown to 30 fulltime equivalent staff with more than 20 lawyers on staff. The Justice Center's current projects are organized into four areas and several special projects and the Cyrus R. Vance Center for International Justice is also housed within the City Bar Fund with a mission of expanding access to justice around the globe. The Justice Center's basic model with a few variations, is for *pro bono* projects to address a specific area of unmet need and be staffed by a Director with expertise in the area to train and mentor and a Coordinator to help administer the project. The Director is available to discuss case strategy, practical tips to settle cases, to share best practices in particular fora, and to moot volunteers prior to hearings and trials. Form pleadings and memoranda are available as well. This model permits attorneys from any practice background to handle, for example, a welfare hearing for a homeless family.

a. Hotline: The Legal Hotline offers information, referrals, legal advice, and brief services to low-income New Yorkers through a hotline and a variety of brief services/pro se projects. The hotline is open weekdays from 9 a.m. – 1 p.m. and on Tuesday and Thursdays from 4 -7 p.m. The primary areas of assistance are family, matrimonial, consumer, housing, government benefits and employment law. Hotline staff screen each call to determine the appropriate course of action and refer callers to the specific projects that may be able to assist them. The Hotline is currently piloting using volunteer attorneys on the Hotline.

b. Economic Justice:

The City Bar Justice Center has several initiatives in the foreclosure area. The Lawyers Foreclosure Intervention Network (LFIN), co-sponsored by the Federal Reserve Bank of New York and the City Bar Justice Center, is a response to the dramatic increase in home foreclosures related to the subprime lending market. The project provides legal assistance to low-income homeowners facing foreclosure, with the goal of keeping people in their homes. Volunteer lawyers negotiate workout arrangements with lenders and, where appropriate, represent the homeowner in litigation. The Justice Center is also coordinating a local bar association network to share best practices and resources on training and litigation support for volunteer attorneys and working with the court system to implement new changes in law. With support from the NYS Banking Department the Justice Center is hiring an additional attorney to work with volunteers on Chapter 13 bankruptcy cases as a remedy for some homeowners facing foreclosure.

The Veterans Assistance Project provides *pro bono* assistance to veterans in connection with the filing of disability benefit claims before the New York City Regional Office of the Department of Veteran Affairs. Veterans who have legal assistance filling out their initial benefits claims upon discharge are more likely to receive the benefits to which they are entitled, and are less likely to need to appeal in the future. This project is run by volunteers and administered by the Director of *Pro bono* Initiatives.

The Cancer Advocacy Project, established in 1994, is directed by a social worker and provides cancer patients, cancer survivors and their families with legal information and counseling through *pro bono* volunteers and *pro bono* legal assistance on issues relating to discrimination in the workplace, health law, insurance issues, access to public benefits and wills.

The Consumer Bankruptcy Project was established in 2004 to meet the ever-increasing requests for assistance from debt burdened low-income New York City residents. The Project

recruits, trains and mentors volunteer attorneys to advise low-income consumers of their rights and responsibilities regarding outstanding debts. Where appropriate, volunteers prepare the forms and schedules necessary for debtors to file pro se Chapter 7 cases. This Project allows clients who would otherwise be unable to file, due to an inability to retain counsel, to reorder their finances and obtain an economic “fresh start.” The Project Director serves as the co-administrator for the Bankruptcy *Pro bono* Panel which was set up by the Southern and Eastern Districts of New York to assist low income pro se debtors to obtain *pro bono* representation on litigated matters.. The Consumer Bankruptcy Project and the City Bar Committee on Bankruptcy and Corporate Reorganization publish a highly regarded manual, “Personal Bankruptcy: Is It Right for You?” available in English and Spanish and distributed free in the bankruptcy and district courts as well as through the City Bar.

The Elderlaw Project provides training for volunteer attorneys to counsel and represent elderly New Yorkers in a variety of areas including wills, living wills, health care proxies, powers of attorney, government benefits, consumer issues, and more. In addition, the project collaborates with the Veterans Advocacy Project on cases involving elderly veterans seeking benefits.

The Legal Clinic for the Homeless: This program reaches out to individuals and families through legal clinics held at homeless shelters and drop-in centers and through presentations to community groups and to staff and residents of shelters. Staff and volunteer attorneys offer advice, advocacy and representation on issues such as accessing and challenging denials of public benefits, including public assistance, Medicaid, food stamps, public housing and public housing subsidies.

The Neighborhood Entrepreneur Law Project provides free legal assistance to low-income micro-entrepreneurs within New York City. The project matches microentrepreneurs

who are in the initial stages of structuring a company or hoping to strengthen an existing business with a volunteer attorney who has expertise in the relevant areas of law. Project volunteers handle issues related to business structure, tax law, commercial lease negotiations, and employment contracts as well as trademark and copyright law. The Project also offers presentations and legal clinics on issues of concern to microentrepreneurs at community-based organizations.

The Reentry Law Project provides legal services to victims of the hidden and collateral consequences of having a criminal record, including reviewing and cleaning up rap sheets, assisting with filing for Certificates of Relief from Disabilities (CRD) or Certificates of Good Conduct (CGC), and representing clients at hearings challenging denials of occupational licenses and public housing applications based on past criminal convictions.

The City Bar Justice Center is partnering in 2008-09 with the Housing Court to provide a part-time lawyer directing the Volunteer Lawyer for a Day program in the Housing Court.

c. Immigrant Justice: The City Bar Justice Center's immigration work has expanded and is the most popular area with both large law firms and new members. Large firms view it as an area with no ethical conflicts, no positional conflicts and only occasionally a negative public relations concern. Solo and small firm practitioners view it as a specialty area they would like to learn in order to build a practice. It is the highest *pro bono* interest area of new City Bar members who fill out a volunteer form. It is also an area of great need. Second Circuit Judge Robert A. Katzmann has called for greater *pro bono* representation of immigrants and noted the importance of quality legal work in the immigration field.⁵⁴

The Immigrant Women and Children Project assists survivors of violence, abuse and human trafficking in legalizing their immigration status. The Project recruits, trains and mentors

⁵⁴ Robert A. Katzman, The Legal Profession and the Unmet Needs of the Immigrant Poor, Orison S. Marden Lecture (Feb. 28, 2007) in 63 THE RECORD 287, 288 (2007).

volunteer attorneys to assist clients in preparing immigration applications such as Violence Against Women Act self-petitions, U visas or T visas and helps clients with employment authorization and public benefits issues. Staff and volunteers also train law enforcement, community-based organizations and NGOs about the legal remedies available to these crime victims.

The Refugee Assistance Project represents individuals who have suffered torture and other forms of persecution in their home countries and who are seeking asylum in the U.S. The Project recruits, trains and supervises volunteer attorneys for *pro bono* asylum representation in affirmative and defensive immigration proceedings. Staff and volunteers also assist clients in filing relative petitions and obtaining asylum-related benefits such as employment authorization, refugee travel documents and green cards.

The Immigrant Outreach Project provides accurate information about immigrant rights and options, as well as assistance in the preparation of naturalization applications through regular immigration clinics.

d. Family Justice: The Uncontested Divorce Project assists divorce seekers with completing the necessary court paperwork to obtain an uncontested divorce in New York City and the volunteers do not appear in court on the cases. The Contested Divorce Clinic provides free consultations with experienced volunteer matrimonial practitioners for self-represented litigants embroiled in contested divorce cases. The Child Support Advocacy Clinic assists persons with child support issues in collecting the correct amount of child support. Traditionally an attractive area for firms because of minimal conflicts, firms have been most attracted to unbundled and packaged cases particularly in the domestic violence area. It has been difficult to get *pro bono* attorneys to handle the cases holistically, for example, doing the contested divorce for a woman represented on an order of protection. Family cases that appear

simple and uncontested can become messy and time consuming. The Family Court itself is a busy court and volunteer attorneys bemoan waiting for cases to be called.

e. Special Projects and Partner Organizations:

LawHelp.org/NY is a website designed to improve access to legal resources for low-income New Yorkers. The site combines a comprehensive database of legal-services providers with customized search engines for quick, accurate referrals and easy-to-understand legal information. The Project is a collaborative effort of the City Bar Justice Center, Legal Services for New York City, The Legal Aid Society of New York, the Greater Upstate Law Project, The Legal Aid Society of Northeastern New York, Probono.Net, the New York State Bar Association and Volunteers of Legal Service.

The City Bar Public Service Network assists lawyers who are looking to volunteer in identifying and matching with nonprofit legal and non-legal organizations. This Project was created by past City Bar President John D. Feerick (1992-94) to match lawyers in transition and retired lawyers with opportunities. Projects are tailored to match the interests of the volunteer and the needs of the organization.

The Cyrus R. Vance Center for International Justice is under the City Bar Fund and operates as a sister program to the City Bar Justice Center. Vance works with bar associations, law schools, law firms, social justice activists and non-governmental organizations (NGOs) in countries that have emerged from a period of authoritarian government to promote an ethic of societal responsibility in the legal profession; access to justice; access to opportunity in the legal profession; and the rule of law.

Pro bono Challenges

The existence of staffed *pro bono* programs such as the City Bar Justice Center is plainly not a substitute for a civil right to counsel or an adequately funded civil legal services system.

However, until there is a civil right to government funded counsel, and perhaps afterwards if the underfunded criminal justice system is replicated, there is an important role for *pro bono* to play in increasing access to justice. The City Bar Justice Center's *pro bono* experience with New York's legal community has shown many strengths. For example, the ability to mobilize *pro bono* attorney volunteers across the profession in response to mass disasters such as 9/11; innovating new *pro bono* projects to respond to emerging legal needs such as the Amnesty Project and the Veterans Assistance Project; attracting prominent partners such as the Federal Reserve Bank of New York on the Lawyers Foreclosure Intervention Project; narrowing and packaging *pro bono* projects so that firms can specialize, for example, in veterans disability cases at the Veterans Administration; the creation of immigration projects that appeal to attorneys yearning for international human rights work and serve clients without legal immigration status who cannot be represented by the federally funded legal services programs; and creating attractive opportunities for corporate counsel and transactional attorneys such as the Neighborhood Entrepreneur Law Project.

At the same time, there are tensions and challenges that must be surmounted in order to ensure that the next generation of *pro bono* fulfills its promise to help ease the denial of justice to the poor. First, the increasing structure and institutionalization of *pro bono* has overlooked and threatens to wipe out any small scale or holistic *pro bono* in favor of structured, pre-packaged and specialized products that can ensure a large law firm vast hours towards the A-List. A legal problem that doesn't fall into a pre-packaged project is now less likely to be picked up by a *pro bono* attorney at a large law firm in part because the *Pro bono* Coordinator is a gatekeeper as well as a facilitator. The Clinic model is one possible solution to this challenge as the firm can be assured of a set number of hours per week or month at the Clinic regardless of the issues encountered. The City Bar Justice Center's Homeless Clinic, Veterans Assistance Project,

Divorce Projects and the Elderly Project operate on a Clinic model. There is, however, a reluctance to handle broader questions that arise at clinics when the attorneys have been trained in one or two specialized areas. Unfortunately most low income clients do not have only one kind of legal problem

Second, the foremost tension limiting scaling-up of the City Bar *pro bono* model is the business or positional conflict which makes it difficult to recruit large law firm *pro bono* attorneys for cases that involve topics with a financial or business entity on the other side such as employment law, consumer credit or bankruptcy. As commentators have noted “Because it shuns corporate challenges, *pro bono* is not a complete substitute for the legal services program it eclipses.”⁵⁵ The response to this tension is to recruit more broadly from the smaller firms which are more likely to have resource limitations. An example is the Lawyers Foreclosure Intervention Network which recruited and trained in its inaugural session more than 100 volunteer attorneys to handle foreclosure cases where the other side is a financial institution. Many of the volunteers are from solo and small firms and some government, nonprofit and corporate law departments. Many large law firms have insisted on waiver letters from their financial institution clients before taking a case and those waiver letters do not extend beyond negotiations to cover litigation. As a financial center, New York City’s large law firm legal market can be expected to present challenges on accepting *pro bono* assignments where a financial institution is the adverse party.

Third, there are some sectors of the profession with room for growth in participation in *pro bono* at the City Bar Justice Center with mid-sized firms, corporate legal departments and the much sought after retired lawyers in short supply. Recent participation in the City Bar Justice Center’s Projects show nearly 70% of the volunteers are from large firms, 13% are solo

⁵⁵ Scott L. Cummings, *The Politics of Pro bono*, 52 UCLA L. REV. 1, 35 (2004).

practitioners followed by medium and small firms. The rest are from the corporate community, government, nonprofits and academia. Very few of the City Bar Justice Center volunteers are retired lawyers although those that volunteer tend to create long-lasting and productive relationships. Mobilizing these segments of the profession will be one of the challenges for future growth.

Conclusion

The *pro bono* cause benefited tremendously from the leadership of City Bar Presidents from the 1960's onward who have supported free legal services for the poor, created successful and lasting *pro bono* institutions, and believed there was a professional obligation to provide *pro bono* counsel to the poor. The next generation of challenges for the City Bar Justice Center will include encouraging large law firms that have embraced *pro bono* as part of the American Lawyer's A-List to not overly specialize in ways that overlook low income clients with basic legal problems such as contested divorce, consumer debt, public assistance denials, foreclosure and eviction. On the positive side, the increasing interest in global human rights and the lack of conflicts for large firms has fueled interest in handling immigration cases and this promises to be an expanding area of *pro bono* supply. Reaching out to corporate legal departments, medium sized law firms and retired attorneys to encourage their contributions to the *pro bono* cause also holds promise for growing participation in *pro bono*.