

By Blaine H. Evanson  
and Vania M. Gauthreaux

## The Essential Role of New Lawyers in Pro Bono Work



Legal work that attorneys perform *pro bono publico* (for the public good) is the foundation of our legal system. Such work is routinely responsible for landmark legal decisions that have established the principles of our modern jurisprudence. Pro bono services also fill critically important needs by providing legal assistance to individuals facing extreme consequences. And for lawyers, performing services pro bono is more than just an obligation. New members of the bar will find that pro bono work affords important and enriching opportunities to participate in litigation in ways that traditional practice typically does not allow.

Pro bono legal representation is not a new concept. Aristocrats provided free legal advice in ancient Rome.<sup>1</sup> In medieval England, advocates were required by statute to serve the poor for free or face possible disbarment.<sup>2</sup> During the American colonial era, religious opposition to litigation led to restrictions on the practice of law, including a Virginia statute that

banned lawyers from charging a fee.<sup>3</sup> The Puritans and their ideal that all were “called to serve” contributed to a strong pro bono tradition in early America.<sup>4</sup>

Our modern legal culture has continued this tradition of supporting pro bono representation. For example, in 1974, Congress created the Legal Services Corporation, a nonprofit that serves as the single largest provider of civil legal aid for the poor in America.<sup>5</sup> The American Bar Association promotes the idea that every attorney has a duty to render services to the indigent and should aspire to at least 50 hours of service each year.

### Landmark Cases

Numerous examples throughout our nation’s history show how top lawyers have taken on the most difficult cases on behalf of individuals who could not afford to pay for their services. An early example is John Adams, who represented the British soldiers accused of perpetrating the Boston Massacre. Although

Blaine H. Evanson and Vania M. Gauthreaux are litigation associates in the Los Angeles office of Gibson, Dunn & Crutcher LLP.

Adams described the experience as “the most exhausting...causes I ever tried,” he wrote that “it was...one of the most gallant, generous...and disinterested actions of my whole Life, and one of the best pieces of service I ever rendered my country.”<sup>6</sup> As a volunteer attorney for the American Civil Liberties Union, Clarence Darrow represented the teacher accused of teaching evolution in the 1925 Scopes “monkey trial” case.<sup>7</sup> Chief Justice John Roberts and Justice Ruth Bader Ginsburg both engaged in significant pro bono work before they joined the bench.<sup>8</sup> Justice Ginsburg, in particular, was one of the nation’s leading advocates for gender equality during the 1970s.<sup>9</sup>

Many of the most fundamental legal decisions that have shaped American jurisprudence are the result of this rich tradition of pro bono representation. Indeed, constitutional law casebooks are full of cases brought by pro bono attorneys. Some of these landmark U.S. Supreme Court cases include:

- *Miranda v. Arizona*, which requires police to inform individuals of their rights before a custodial interrogation.<sup>10</sup>
- *Gideon v. Wainwright*, which establishes a Sixth Amendment right to counsel for serious state criminal offenses.<sup>11</sup>
- *R.A.V. v. St. Paul*, which declares that content-based distinctions in speech regulations aimed at unprotected speech violate the First Amendment except in limited circumstances.<sup>12</sup>
- *Loving v. Virginia*, which abolished laws prohibiting interracial marriage.<sup>13</sup>

Pro bono attorneys were also critical in helping then-lawyer Thurgood Marshall argue and win *Brown v. Board of Education of Topeka*, which struck down laws that established racially segregated schools.<sup>14</sup>

It is hard to imagine our legal system without these and myriad other important precedents that simply would not exist were it not for attorneys who agreed to represent individuals who lacked the resources to pay for litigation.

### The Pro Bono Crisis

Most attorneys will not have the opportunity to brief and argue a landmark Supreme Court case, but there are numerous areas of the law for which pro bono legal representation is urgent and essential. These opportunities give lawyers with any level of experience the chance to have an important impact.

As Samuel Johnson said, “A decent provi-

sion for the poor is the true test of civilization.”<sup>15</sup> And every day, low-income Americans face life-altering challenges such as deportation, eviction, foreclosure, unsafe housing, bankruptcy, domestic violence, and child custody disputes. The consequences of losing in these matters can be disastrous, including the breaking apart of families, loss of a home, serious injury, or even death. Individuals lacking resources at such critical moments in their lives simply cannot afford even basic legal representation, nor can they navigate the legal system without the aid of an attorney.

The problem is that at least 80 percent of those who need civil legal assistance do not receive any.<sup>16</sup> One report concluded that “the number of free legal service needs per year in the United States could be as high as 150 million.”<sup>17</sup> These are startling figures that should motivate every new attorney to increase his or her commitment to serving those in need. According to a 2004 ABA survey, the average number of pro bono hours per year was 77, with 46 percent of attorneys providing 50 or more hours of pro bono service during the year.<sup>18</sup> This level of participation will need to rise substantially to even come close to filling the needs of individuals and families.

New lawyers are in perhaps the best position to help close the critical gap between the need for pro bono legal services and the availability of lawyers to perform the work. Pro bono work offers new lawyers critical litigation experience that helps them gain skills earlier in their careers than they might otherwise obtain from working on cases for paying clients.

The reason for this is not a mystery. Clients that spend hundreds of dollars per hour for their representation want experienced attorneys arguing motions, taking depositions, and examining witnesses. The learning curve for these tasks is steep, and clients do not want to spend money training the associates working on their matters. For example, clients want associates that have been previously trained on depositions in other cases to take the depositions in their cases—and understandably so.

What results is somewhat of a cycle for new attorneys. The oral arguments and depositions are given to more senior attorneys because the junior attorney lacks the experience. By missing out on the depositions that are passed up the seniority ladder, the junior attorney is denied the experience necessary to

be able to take the deposition in the next case.

Pro bono clients generally do not have the same demanding requirements as paying clients. They are usually thrilled to have legal representation and are willing to allow the attorneys taking their case to do some learning on the job. As a result, newer lawyers are able to take on far more significant roles in pro bono cases than they would in other similarly complex cases for paying clients. This allows attorneys to develop their skills and gain experience that transfers directly to their daily matters, because clients value experience, regardless of whether the work was for a paying client or a pro bono client.

The immediate need for pro bono services is clear and present. Our legal system needs lawyers to offer pro bono representation for the millions of individuals who are struggling through crises without any legal assistance. The lawyers who are willing to do so will benefit in several ways. In addition to fulfilling a key civic responsibility, new lawyers who perform pro bono work will gain experience far more rapidly than they otherwise would at their paying jobs.

Pro bono work is therefore not only a critical societal investment. It is also important for the development of a new attorney’s career. ♦

<sup>1</sup> Judith L. Maute, *Changing Conceptions of Lawyers’ Pro Bono Responsibilities: From Chance Noblesse Oblige to Stated Expectations*, 77 TUL. L. REV. 91, 97 (2002).

<sup>2</sup> *Id.* at 97-98.

<sup>3</sup> *Id.* at 98.

<sup>4</sup> *See id.* at 100-01.

<sup>5</sup> About LSC: What is LSC?, <http://www.lsc.gov/about/lsc.php> (last visited Feb. 22, 2011).

<sup>6</sup> Ted Frier, *Echoes of John Adams and the Boston Massacre, THEY GAVE US A REPUBLIC...*, Mar. 7, 2010, <http://www.theygaveusarepublic.com/diary/5094/echoes-of-john-adams-and-the-boston-massacre> (last visited Feb. 22, 2011).

<sup>7</sup> Bruce J. Ennis, *ACLU: 60 Years of Volunteer Lawyering*, 66 A.B.A. J. 1080, 1081 (1980).

<sup>8</sup> *See* Richard A. Serrano, *Roberts Donated Help to Gay Rights Case*, L.A. TIMES, Aug. 4, 2005, at A1; *see also* Ennis, *supra* note 7, at 1082.

<sup>9</sup> Ennis, *supra* note 7, at 1082.

<sup>10</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>11</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>12</sup> *R.A.V. v. St. Paul*, 505 U.S. 377 (1992).

<sup>13</sup> *Loving v. Virginia*, 388 U.S. 1 (1967).

<sup>14</sup> *Brown v. Board of Educ. of Topeka*, 347 U.S. 483 (1954).

<sup>15</sup> JAMES BOSWELL, *THE LIFE OF SAMUEL JOHNSON* 182 (1791).

<sup>16</sup> Evelyn Nieves, *80% of Poor Lack Civil Legal Aid, Study Says*, WASH. POST, Oct. 15, 2005, at A09.

<sup>17</sup> *See* Leslie Boyle, *Meeting the Demands of the Indigent Population: The Choice between Mandatory and Voluntary Pro Bono Requirements*, 20 GEO. J. LEGAL ETHICS 415, 417 (2007).

<sup>18</sup> ABA STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE, *SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS* 13 (2005).