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NEW YORK STATE UNIFIED COURT SYSTEM

**PRO BONO CONVOCATION:**  
WORKING TO DESIGN A PRO BONO SYSTEM *for* NEW YORK

ALBANY LAW SCHOOL • DEAN ALEXANDER MOOT COURTROOM  
80 NEW SCOTLAND AVENUE, ALBANY, NEW YORK

**PROGRAM**

REGISTRATION AND CONTINENTAL BREAKFAST

8:30 A.M. – 9:00 A.M.

OPENING REMARKS, KEYNOTE ADDRESS AND  
OVERVIEW OF A PRO BONO MODEL

9:00 A.M. – 10:00 A.M.

*Opening Remarks -*

Hon. Anthony V. Cardona, *Presiding Justice, Appellate Division Third Department*

*Keynote Speaker -*

Lorraine Power Sharp, Esq., *New York State Bar Association*

*Overview Presenter -*

Kent Spuhler, Esq., *Florida Legal Services*

WORKING GROUP SESSIONS

10:00 A.M. – 12:00 P.M.

*Small breakout sessions to discuss panel presentation and begin addressing Working Group topics*

I. Organizing a Statewide Pro Bono System: What Makes Sense for New York?

*FACILITATORS:* Kent Spuhler, Esq. and Dan Weitz, Esq.

II. Overcoming the Obstacles to Providing Pro Bono Services: What are the Elements of an Ideal Pro Bono System?

*FACILITATORS:* Hon. W. Dennis Duggan and Mark Collins

III. Facilitating Pro Bono Through Limited Representatio: How can this be Accomplished in New York?

*FACILITATOR:* Hon. Fern Fisher

BUFFET LUNCH

12:00 P.M. – 1:00 P.M.

WORKING GROUP SESSIONS (CONTINUED)

1:00 P.M. – 3:00 P.M.

REPORTS OF WORKING GROUPS AND CLOSING REMARKS

3:00 P.M. – 4:30 P.M.

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**Keynote Address of Lorraine Power Tharp, Esq.  
New York State Unified Court System Pro Bono Convocation  
Albany Law School, October 25, 2002**

On behalf of the New York State Bar Association, I am so pleased to be part of this convocation. I am passionate about pro bono, about helping attorneys fulfill their pro bono obligations – and, I might add, I am passionate about keeping pro bono voluntary. In addition to all of the above reasons for my “passion” let me add two others. Many of you have heard me speak about my father who was a country lawyer in Massena, New York. He did “pro bono” as part of his every day practice. He may not have called it pro bono, but what he did was to provide legal services to people regardless of their ability to pay. I recall one gentleman who was constantly getting into scrapes with the law, and who would call my father day and night. When my father became District Attorney, this gentleman did not understand why my father could no longer help him!

The second reason for my passion is something that the State Bar does that is quite wonderful. Each President-Elect in the year before becoming President, co-chairs the President’s Committee on Access to Justice. Even though as Bar leaders, we are sensitive to the issues of access to justice, pro bono and legal services providers more than most, it is not until you sit in these meetings and hear the statistics and the data and the politics that you really become involved.

As I contemplated the past, present and future of legal services and pro bono in New York, I thought of the current television commercial of the man who unearths a magic lamp while using his metal detector. The genie tells him three wishes will be granted. Upon production of the first wish – a snazzy automobile – the man drives off, leaving the genie in the dust and satisfied with only the realization of his initial dream.

So what wishes would I identify to facilitate legal services for those in need? If a regularized funding mechanism could be secured, I, too, would be tempted to rush off without waiting to make additional wishes. I would hurry to tell the legal services providers that they could now concentrate more fully on their mission of counseling the indigent on legal matters, rather than having to divert time and resources to seek funding year after year.

But until – and notice that I am saying “until” – *not* “if” – we realize a defined funding source, there is a vital component of these efforts for access to justice that must be preserved and indeed nurtured. This is the public-private partnership of dedicated and involved voluntary attorneys complementing staff attorneys in assuring that counsel is available for those in need.

This is this element that I believe has enabled us to do as much as we have in the face of enormous challenges of funding cutbacks and restrictions while caseloads grew in number and complexity. This is the key that I identified in speaking about New York’s legal services initiatives last week at a conference of bar leaders of the Mid-Atlantic states.

In calling for voluntary pro bono service and setting out concrete steps to enhance volunteerism, the Association’s 1989 report on the subject stated: “. . . the best, the strongest and the most effective volunteer efforts have evolved at a local level, when the local bar, paid legal services staff and the local judiciary have come together cooperatively to address the local need and to tailor a local solution.”

We are pleased that the view of private attorneys as “important partners” and “vital allies” to staff programs is reiterated in the newly prepared Plan for Justice of the New York State Planning Steering Committee.

This is the formula that the Association has stressed over the years. It is an approach that we must continue to embrace. Despite the economic boom of the 1990s, the percentage of poor persons in New York increased from 13 to 14.6 percent. That simply stated fact and figure translates into some 2.7 million citizens, including 535,935 families, living in poverty.

It is a fact that must weigh on us today as fiscal conditions crumble, all around us, as government resources and other funding become harder to grasp for staffed programs, and as the demands on practitioners leave little time for other activities, no matter how altruistic. These tight conditions provide another reason why public and private legal services attorneys need each other and why neither public nor private programs should go it alone. These programs should be structured to tap into the expertise and efforts of both staff and volunteers.

Bill Dean of the Volunteers of Legal Service has aptly pointed out that effective use of pro bono service is not without cost but necessitates support to identify, screen, match cases with volunteers, and provide training, mentoring and backup. As such, government officials must recognize that reducing funding for legal services programs also unravels the valuable work of pro bono partners. And they also must comprehend that while the Bar will continue its professional responsibility to assist in assuring the availability of legal counsel, the profession cannot and should not fully shoulder what is truly a societal concern.

As proposals are shaped for a statewide pro bono structure, such a movement should not abandon the involvement of bar associations and other entities that have toiled for so long in the vineyards of access to justice.

The bar and other organizations have developed experience and connections in working with practitioners in outreach and training. As observed by the Steering Committee, bar associations and others are invaluable allies in advocacy in the Legislature, in the media, at public forums, and in discussions with community and business leaders, in addition to providing legal counsel. I am pleased to report to you that the State Bar Association is taking action to deliver its message to lawmakers and the public by concerted, coordinated, and multi-faceted means. We plan to take every opportunity to raise our voice.

Communicating the critical need to do more to assure practical access to justice is a top priority for us. It is a message describing why this is a societal concern, not a singular problem to be worked out by the profession. And it is a message explaining why these services must be provided through stable staffed programs, complemented by private practitioners assisting on a *volunteer* basis, not a mandatory one, in order to be truly effective.

We also will be depicting the faces behind this need, showing the impact on the individual citizen living in poverty, on the community, and on the state and describing the ultimate price that is paid by shortchanging justice. We welcome the opportunity to partner with you in this communication.

As we seek to promote and leverage pro bono service and foster public-private alliances, I suggest that we look back a half century and listen to the access to justice advocates when the concept of staffed legal services, coupled with volunteer service, began to take root across the state and country. We can take a cue from their vision and from their message to colleagues, lawmakers and the public.

“It may seem curious that a Legal Aid organization actually helps the private lawyer, but that is the overwhelming consensus,” reported Orison S. Marden, a New York practitioner and extraordinary bar leader, known as “Mr. Legal Aid” for his devotion to hands-on volunteer service throughout his career.

“The establishment of Legal Aid takes a great load from those members of the profession who give so generously of their time in helping people who cannot afford to pay a fee,” Mr. Marden said, pointing out that the public-private approach saves time and money, in addition to being more efficient and effective. Further, he noted the valuable training and experience gained by young attorneys who participate on staff or as volunteers.

Mr. Marden also cited the benefit of legal assistance to social services agencies, by bringing legal counsel to bear in calling for necessary remedial legislation and in relieving these agencies of problems of a legal nature. He added that a well-publicized Legal Aid program fosters goodwill for the profession by spreading the word that lawyers are people who can provide help for problems and prevent difficulties. This initiative demonstrates that justice is accessible for those without means, with this awareness building the public’s understanding of the law and promoting respect in the process.

Each of these points has currency and each is worth retelling practitioners and bar and community leaders. In today’s parlance, it resonates.

And we can continue to identify with the faces painted by Attorney General Katzenbach in his discussions when civil legal services were initiated in the War on Poverty. “Too often,” he said, “the poor man sees the law only as something which garnishes his salary; which repossesses his refrigerator; which evicts him from his house; which cancels his welfare; which binds him to usury; or which deprives him of his liberty because he cannot afford bail. The adversary system on which our courts are based fails whenever one side goes unrepresented and judgment is entered by default.”

We are engaged in a fight against such failure. It is a struggle that will take the tremendous talent, dedication and perseverance gathered in this room today. It will take all of us, working together. There is no cause more critical. Thank you for inviting me to join you and we look forward to pursuing this dialogue and the development of solutions beyond today’s proceedings.

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