



DATE DOWNLOADED: Sat Apr 6 21:54:29 2024

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Bluebook 21st ed.

Sandra Day O'Connor, Meeting the Demand for Pro Bono Services, 2 B.U. PUB. INT. L.J. 1 (1992).

ALWD 7th ed.

Sandra Day O'Connor, Meeting the Demand for Pro Bono Services, 2 B.U. Pub. Int. L.J. 1 (1992).

APA 7th ed.

O'Connor, Sandra Day. (1992). Meeting the Demand for Pro Bono Services. Boston University Public Interest Law Journal, 2, 1-6.

Chicago 17th ed.

Sandra Day O'Connor, "Meeting the Demand for Pro Bono Services," Boston University Public Interest Law Journal 2 (1992): 1-6

McGill Guide 9th ed.

Sandra Day O'Connor, "Meeting the Demand for Pro Bono Services" (1992) 2 BU Pub Int LJ 1.

AGLC 4th ed.

Sandra Day O'Connor, 'Meeting the Demand for Pro Bono Services' (1992) 2 Boston University Public Interest Law Journal 1

MLA 9th ed.

O'Connor, Sandra Day. "Meeting the Demand for Pro Bono Services." Boston University Public Interest Law Journal, 2, 1992, pp. 1-6. HeinOnline.

OSCOLA 4th ed.

Sandra Day O'Connor, 'Meeting the Demand for Pro Bono Services' (1992) 2 BU Pub Int LJ 1

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Provided by:

Fineman & Pappas Law Libraries

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

# MEETING THE DEMAND FOR PRO BONO SERVICES\*

BY  
SANDRA DAY O'CONNOR†

While lawyers have much we can be proud of, we also have a great deal to be ashamed of in terms of how we are responding to the needs of people who can't afford to pay for our services. On the one hand, there is probably more innovative pro bono work being done right now than at any time in our history; on the other hand, there has probably never been a wider gulf between the need for legal services and the availability of legal services. That sounds like a paradox, but if you'll bear with me for a little while, I hope I can make you see that it isn't.

The American Bar Foundation has estimated that nearly one quarter of all poor people each year have a civil legal problem deserving a lawyer's attention.<sup>1</sup> But publicly funded attorneys can handle only twelve percent of the load.<sup>2</sup> According to the ABA, eighty percent of poor people's civil legal needs go unmet.<sup>3</sup> In big cities, the problem is even worse. In Los Angeles, for example, there are more than 750,000 people each year who need legal services but cannot afford them.<sup>4</sup>

These numbers are disturbing enough in themselves, but the reality behind the numbers is even more shocking. The legal needs of poor people involve the most basic necessities of life, needs like food and shelter. For example, every day many tenants are evicted from their apartments because they are unable to pay the rent. One can only imagine how often an eviction is the trigger for the homelessness problem we're all familiar with. Yet a study at the University of Maryland found that a majority of inner city tenants actually have meritorious defenses to eviction. Over fifty percent of inner city tenants could avoid being homeless if they only knew how. But tenants actually use their defenses less than two percent of the time, because no lawyer has told them the defenses exist.<sup>5</sup> As the study concluded, "millions of American citizens

---

\* 1991 American Bar Association Annual Meeting, Pro Bono Awards Luncheon in Atlanta, Georgia, August 12, 1991

† Associate Justice of the Supreme Court of the United States

<sup>1</sup> Roger C. Cramton, *Crisis in Legal Services for the Poor*, 26 VILL. L. REV. 521, 530 (1981).

<sup>2</sup> *Id.*

<sup>3</sup> Cameron Barr, *Doers and Talkers*, AM. LAW., July-Aug. 1990, at 51, 51.

<sup>4</sup> Charles F. Palmer & Mark N. Aaronson, *Placing Pro Bono Publico in the National Legal Services Strategy*, 66 A.B.A. J. 851, 852 (1980).

<sup>5</sup> Michael Millemann, *Mandatory Pro Bono in Civil Cases: A Partial Answer to the Right Question*, 49 MD. L. REV. 18, 26 n. 49, 27 (1990).

. . . live in a form of domestic exile from the law."<sup>6</sup>

The same is true everywhere: all over the country, people are being forced into the street for lack of a lawyer. In eviction cases in San Francisco, the tenant doesn't even show up in court eighty-five percent of the time.<sup>7</sup> Yet studies reveal that, when a tenant has a lawyer to contest the eviction, the tenant keeps possession nearly half the time.<sup>8</sup> Many people are pushed over the brink into homelessness every year for no other reason than their inability to afford basic legal services.

Consider another picture that is just as bleak. The Aid to Families With Dependent Children program is the only source of income for many small children and their single mothers. Cut off AFDC benefits and there is no money to buy food and clothing for the children. That's exactly what happens to a great number of recipients. AFDC is administered on a huge scale through enormous government agencies, and the steady percentage of inevitable mistakes adds up to a very large number of people whose AFDC benefits are incorrectly terminated or denied. Believe it or not, people who appeal from the termination or denial of AFDC benefits win their cases over two-thirds of the time.<sup>9</sup> In the State of New York, the figure is even more startling: eighty percent of issues decided on appeal are resolved in favor of the person denied benefits.<sup>10</sup> Yet less than one out of fifty cases gets appealed in the first place,<sup>11</sup> because most claimants don't know how to go about it, and there is no one to offer advice.<sup>12</sup> We're talking about a vast, uncounted number of meritorious cases that never get appealed for want of an attorney, and behind each one lies a family, with small children, that must scramble each day for the most basic necessities of life.

How can this be? On the one hand, the spirit of public service is flourishing; on the other, the gap between the demand and the supply of legal services for

<sup>6</sup> *Id.* at 27.

<sup>7</sup> Ben H. Logan III & John J. Sabl, Note, *The Great Green Hope: The Implied Warranty of Habitability in Practice*, 28 STAN. L. REV. 729, 740 (1976).

<sup>8</sup> See Anthony J. Fusco, Jr. et al., *Chicago's Eviction Court: A Tenant's Court of No Resort*, 17 URB. L. ANN. 93, 114-15 (1979) (where tenant is represented, tenant is awarded possession in 13.3% of the cases and obtains a continuance in 34.7% of the cases; in contrast, unrepresented tenants lost possession in 84.2% of all cases); see also Victor Marrero, *Committee to Improve the Availability of Legal Services — Final Report to the Chief Judge of the State of New York*, 19 HOFSTRA L. REV. 755, 773 (1991) ("[T]he report discloses that, in project cases handled by pro bono attorneys, none resulted in eviction. The mere presence of counsel for the tenant shifts the balance in the Housing Court and significantly enhances poor litigants' chances of retaining access to their homes and avoiding homelessness.").

<sup>9</sup> William H. Simon, *The Rule of Law and the Two Realms of Welfare Administration*, 56 BROOK. L. REV. 777, 785 n. 30 (1990).

<sup>10</sup> Cesar A. Perales, *The Fair Hearings Process: Guardian of the Social Service System*, 56 BROOK. L. REV. 889, 892 (1990).

<sup>11</sup> Simon, *supra* note 7, at 786.

<sup>12</sup> See *id.*

the poor has probably never been wider. Perhaps it can be explained.

Now, more than ever, access to the most basic things in life requires an understanding of the law. As a nation, we can be proud that over the last two generations we have made progress in removing serious injustices that were once commonplace. We have enacted legislation that should make it impossible, for instance, for someone to be evicted from his apartment because he is not white, or, as a hypothetical example, for a graduate of a good law school to be denied employment because she is not male. But we all know that the law is absolutely useless unless it is enforced. Without knowledge of the law, and without an understanding of how to use that knowledge, all the laws in the world won't help you a bit.

Every day, all over the country, people lose their homes or apartments when the law says they should keep them, and people can't feed their children when the law says they should be able to feed them. People don't know the rights they have, and even if they know the rights they have, they don't know how to enforce them. And it all has one cause — many people desperately need legal services, but can't afford to pay.

There's more than a little irony to this conclusion. We are hardly suffering from a shortage of lawyers. In Washington, D.C. where I live, there may actually be more lawyers than people. But we have an acute shortage of lawyers who are willing to help clients too poor to pay the bill.

We have built a legal framework to protect the poor, and it's a structure in which we can take pride. But it has a gate in the front, and lawyers hold the keys. Unless we're willing to unlock the gate for those who can't afford a key of their own, and let them into the shelter we've built for their protection, we might as well not have built it at all.

We've had a lot of talk recently about requiring lawyers to perform a minimum amount of *pro bono* work as a condition of bar membership. I think this is a bad idea, because it sounds to me like a recipe for malpractice. Some kinds of work can be made compulsory without suffering that much: if you force someone to dig a ditch, for instance, you might not get a perfectly round ditch, but you'll get a ditch not much different from any other. But legal advice is not like ditch-digging. Force a distinguished lawyer to research potential defenses to a summary eviction proceeding, and I suspect you'll have an unhappy client living on the street. I worry that the problem of quality control will plague any program of mandatory *pro bono* work.

Instead, I think the solution lies in a three-part approach. This may not be surprising to hear from a judge — after all, we are famous for our three-prong tests, and the three levels of scrutiny that we apply to most anything that crosses our desks. The three things I'm talking about are all forms of education, but directed at three different audiences: law students, clients, and lawyers.

First, the law students. A few law schools have made providing legal ser-

vices for the poor a mandatory part of the curriculum.<sup>13</sup> This is a wonderful idea, because it benefits everyone involved. The law students are awakened to the sense of personal satisfaction that comes from helping people, a feeling they are not likely to learn about in their other classes. Every year, my law clerks tell me about the experiences they had in clinical programs in law school. They describe the thrill of being able to take the skills they are learning and to put them into practice in a way that makes a huge difference in someone's life. Law school experiences like this stick with the students throughout their careers. As my former clerks describe it, once they are in private practice, they miss the feeling of personal connection they got out of their clinical work in school. They recapture that feeling by taking on a steady stream of pro bono clients, which in turn benefits all of us.

Law students gain from clinical work in a more indirect sense as well, and again, we all gain as a result. Many students go through college and law school without any exposure to poverty, without any understanding of what it is like to be poor. Clinical programs fill this gap, and that's important, because these same law students will be our judges and government leaders in the future. We all benefit when our leaders have a sense of what life is like for *all* sectors of the population.

Mandatory law school clinical programs could take a big bite out of the legal services shortage. There are over 130,000 law students in the country right now.<sup>14</sup> If each could assist one client a year, it would have quite an impact. And if the students could be supervised by their professors, we would avoid the quality control problems I discussed a minute ago.

The second group we need to educate is the potential clients themselves. Many of the problems that are usually classified as legal problems, and that I have been describing as legal problems, don't really need a lawyer at all. Often, knowing where to go, who to talk to, and which documents to bring will enable someone to solve their problem without the assistance of an attorney. But our legislation has outpaced our education. Many recipients of public benefits, for example, could contest an improper termination themselves, if they had been taught how.

This sort of education will have a payoff many times larger than traditional legal services. A single lawyer who organizes a few classes can enable hundreds of potential clients to handle their legal problems themselves. This is the kind of project local bar associations are well-placed to organize. I urge bar associations to give serious thought to setting up these kinds of educational programs.

The third group of people we should be educating, and the most important group, is ourselves. Right now there are more than 750,000 practicing lawyers in the country. If we could get a significant percentage of our colleagues to take on pro bono work as a regular part of their practice, we would be mobil-

---

<sup>13</sup> Ken Meyers, *Law Schools*, NAT'L L. J., Feb. 18, 1991, at 4, 4.

<sup>14</sup> *A Review of Legal Education in the United States*, A.B.A. Sec. Legal Educ. & Admissions to the Bar, Fall 1990, at 65.

izing an enormous workforce. There is a vast pool of talent out there. All we have to do is point it in the right direction.

Every one of us is familiar with our profession's tradition of public service. I am certain that, with very few exceptions, every one of us wants to do *pro bono* work, somewhere in the back of our mind. I suspect that most lawyers think: "One of these days I really want to get involved, but I don't know anyone who needs my services," or "I'd like to help someone who can't afford a lawyer, but only litigators can do that; my corporate expertise (or my tax expertise, or whatever) won't be of any help to the poor."

These are common trains of thought, but the first is easily cured, and the second is dead wrong. We are not doing enough to spread the word about opportunities to help. If we kept all lawyers regularly informed about *pro bono* opportunities, lawyers would all know how to go about donating their services. Even better, simply seeing the needs to be fulfilled might spark some interest where none existed before. This is another role that local bar groups are well-equipped to play. If every local bar organization would maintain and circulate a list of specific *pro bono* needs, the information problem would disappear.

A barrier that is probably even more common is the double-sided misperception, first that only litigators have the skills to help the poor, and second that *pro bono* work requires specialized expertise beyond the training of most lawyers. There's *some* truth to these statements — *some pro bono* matters need a litigator, and *some* need expertise in a specific field. But many of the legal problems faced by poor people don't need the skills of a litigator. In fact, many of them require the same sorts of skills that private sector lawyers put to use for paying clients every day.

This is another problem that can be solved through publicity and education. All over the country, lawyers in every practice area you can name are using their specialized knowledge to help people who can't afford to pay. Let me give you some examples.

— In Boston, real estate lawyers are helping develop shelters and low-income housing by making use of the same skills they use for paying clients. Lawyers donate their time to put together financing, to negotiate with public agencies, and to offer tax advice. One associate summed it up best when he said: "I never realized I'd do this much. I thought the only real estate *pro bono* stuff would be landlord-tenant things. I never realized the complexity, the challenge it could present."<sup>15</sup>

— In New York, banking lawyers are using their expertise in a highly specialized field — international sovereign debt — to arrange complex transactions that benefit nonprofit organizations like CARE and Save the Children.

These are just a couple of examples, but they demonstrate that, with a little imagination, lawyers in even the most arcane fields of practice have something to offer. There is a nearly infinite spectrum of opportunities for lawyers who

---

<sup>15</sup> Karen Dillon, *Crusading for the Homeless in Boston — And Beyond*, AM. LAW., Oct. 1990, at 86, 88.

don't want to venture near a courtroom.

Not only that, but many opportunities for public service that *sound* like they require specialized expertise really don't require much more than a quick training session. Even as we speak, volunteer lawyers are helping political refugees seek asylum; these are lawyers whose background in immigration law consists of a single two-hour lecture. Lawyers in all different areas of practice are drafting wills for people dying of AIDS; these are lawyers who have never drafted a will before, but have taken a two-hour course one night after work. In New York, attorneys with no criminal experience can represent indigent prisoners on appeal, with the supervision of local defense organizations.

These examples prove that *any* lawyer is qualified to donate his or her services. If anyone out there has ever felt too inadequate to spend some time serving the public good, I'm telling you right now that you are far too modest. The world desperately needs your time and your skills. If anyone has been putting off *pro bono* work for later, I urge you to pick up the telephone and find out how you can help, because you're needed and you're needed now.

Last but certainly not least, I encourage lawyers who have been offering their services for the public good — lawyers like the ones we are honoring today — to blow your own horns. There is a spirit of public service hibernating within each of us, a spirit that can be roused if we poke it and prod it and shout at it to wake up. We should all be telling our friends what we are doing. I have a feeling that many more of our colleagues will get going and put their skills to work if they are reminded of how simple it is, of how rewarding it is, and of how important it is.