

Post Conference Observations: Esther F. Lardent¹ Keynote Speaker

Trends: Pro Bono Down Under

As a long-time pro bono enthusiast, I have, for many years, enjoyed the considerable rewards of pro bono involvement - the opportunity to meet and work with the best, the brightest, and those with the biggest hearts, the intellectual challenge of constantly reinventing pro bono policies, directions, and support systems to meet the ever-changing needs of major law firms, the chance to identify and develop exciting new programs such as CorporateProBono.Org, and, most notably, the blessing of being able to make a difference, albeit indirectly, in people's lives, in our justice system, and in making the world a better place. In other words, I am involved with pro bono for the same reasons you are involved.

Given a career-long familiarity with pro bono, imagine my surprise when I discovered a new - and wonderful - dimension of pro bono participation - travel to great places! As pro bono has gone global, so has the work of the Pro Bono Institute. For the past several years, PBI has served as an informal advisor to key players in Australia seeking to establish a pro bono culture and infrastructure

¹ Esther F. Lardent is the founder and Chief Executive Officer of the Pro Bono Institute at Georgetown University Law Center. She may be reached at elardent@probonoinst.org.

in that nation, including David Weisbrot, Chair of Australia's National Task Force on Pro Bono Practice, Australia's then-Attorney General, Darryl Williams, and a number of key law firm leaders. That effort led in 2001 to the creation of a National Pro Bono Resource Centre.

To expand and enhance pro bono in Australia, the Resource Centre, in cooperation with the Victoria Law Foundation, successfully applied for a Fulbright Senior Specialist Fellowship, which I was awarded, to underwrite a four week visit to Australia, timed to coincide with the Resource Centre's sponsorship of the second national Australian pro bono conference. My visit in October, 2003, provided an extraordinary opportunity to gain in-depth knowledge of a legal system different in key respects from that of the United States, meet with key leaders of every segment of the Australian legal community, including judges, government officials, legal aid, community legal clinic, PILCH (public interest law clearinghouse) and other public interest lawyers, academics, law firm managing partners and pro bono coordinators, and corporate counsel. A hectic schedule included a keynote address at the national pro bono conference in Sydney and participation on four panel programs, an exhaustive two-day practicum, under the auspices of the Victoria Law Foundation, on pro bono and corporate social responsibility in Melbourne in conjunction with one of Australia's pioneers in CSR, Michael Liffman, director of the Asia-Pacific Centre for Philanthropy and Social Investment at Swinburne University, a meeting of law firm partners in

Melbourne, a gathering of in-house corporate leaders in Sydney, a presentation to the AGM (annual general meeting) of the Queensland PILCH in Brisbane, the provision of technical assistance to the National Pro Bono Resource Centre, a talk on pro bono to the faculty of the law school in New South Wales, attendance at the Freehills annual pro bono lunch, informal consultations with pro bono leaders at a number of law firms and corporate legal departments, a public lecture on the intersection of legal aid and pro bono in Melbourne (and, oh yes, an opportunity to snorkle off the Great Barrier Reef for a day or two; manta rays need pro bono too!)

What's Different

Australia and the U.S. share a common law tradition, but, within that tradition, a number of fascinating differences and striking similarities emerge. Like so many other nations (but, sadly, not the U.S.), there is a strong consensus in Australia that the government and the public have a fundamental responsibility to support and fund access to legal services for those unable to afford assistance. Although the level of public funding in Australia has declined in recent years under a more conservative government, leaving some legal needs unmet, the per capita funding is still dramatically higher than in the United States. While funding for legal services has become politicized to some extent, there is not the level of skepticism and suspicion concerning the government's role that exists in the U.S.

Unlike the United States, a substantial portion of government funding is used to pay private lawyers, at below-market rates, to provide representation. There is serious concern, in an era of declining funding for legal aid and clinics, that pro bono will be used as an excuse to further reduce funding levels. That worry creates some antipathy toward pro bono. To a far greater extent than in the United States, the vast majority of lawyers are clustered in a few urban areas, rendering the provision of legal services to those in rural and remote communities in a very large country, much of it sparsely populated, a real challenge.

Perhaps because of the relatively high levels of government funding until recently, pro bono, while it has existed, has been relatively ad hoc, with a far smaller number of public interest programs focused on screening, providing, and supporting pro bono opportunities and a surprisingly small number of matters placed with pro bono counsel through legal intermediaries. Pro bono obligations are not included in ethics codes or rules, and, to date, there has been no effort to articulate a common definition of pro bono; indeed, the notion of a pro bono definition or aspirational pro bono goals is quite controversial.

And, although the Australian Corporate Lawyers Association (the organization for in-house lawyers, including, in Australia, government counsel) is very interested

in pro bono, there has not yet been the dramatic increase in pro bono participation among in-house counsel that we have seen in the United States.

And What's Much the Same

Legal issues faced by the poor and disadvantaged seem, sadly, to be very alike the world over. Commonly encountered legal problems in Australia include family law, consumer matters, housing and homelessness, and the like.

Emerging issues include a wide range of civil liberties and civil rights concerns, including the special legal needs of aboriginal peoples, and, perhaps the fastest growing area where legal assistance is desperately needed, immigration matters (termed "migration" in Australia). During my stay, for example, cases involving conditions of detention for undocumented immigrants and the rights of unaccompanied minors in detention were very much in the news. Familiar ground indeed!

As in the U.S., larger law firms, and their attorneys, have an impact on the legal system disproportionate to their numbers. U.S. law firms that pride themselves on their cutting-edge pro bono programs may be surprised to learn that many of these innovations are well established in Australia as well; indeed, in some cases, Australian firms led the way. These include:

- Full-time pro bono coordinators or special counsel at major law firms.
Each of the “big five” Australian law firms has at least one - and often several regional - full-time pro bono administrators (these individuals may, in some instances, oversee the firm’s community service program as well), despite the fact that the firms are smaller than many of their U.S. counterparts. In addition, this pro bono staffing structure exists in several mid-sized firms and in a few relatively small Australian offices of U.S. firms, such as Baker & McKenzie and Coudert Brothers. The role of these special counsel and coordinators is very similar to their peers in U.S. law firms - coordination of the program, recruitment of volunteers and solicitation of pro bono matters, marketing, policy issues, etc.
- Transactional pro bono. In part, no doubt, because of the centrality of business practice at the Australian firms, the nation’s large law firms have a long-standing tradition of providing pro bono services, not only to individuals and families, but to a wide range of non-profit organizations, ranging from arts groups to advocacy organizations focused on mental health or aboriginal issues.
- Secondments. Rotation programs (also known as externships in New York City) are those in which a firm associate is detailed, on a full-time basis, for an extended period (typically 2-6 months) to work at a public

interest organization. First established in the late 1960's at a handful of law firms, the number of rotation programs has increased dramatically during the past few years in the United States. Secondments, as rotation programs are known in Australia, are widespread among Australian law firms, with many firms sponsoring multiple secondments to legal clinics, specialized public interest programs, rural and remote clinics, and other public interest organizations.

- Multi-tiered partnerships. As public interest organizations, law firms, and corporate legal departments in the United States and elsewhere begin to explore the creation of long-term, multi-layered relationships - by identifying appropriate and workable structures, areas of focus, and respective roles - they have much to learn from their colleagues in Australia. For a number of years, many of that nation's largest law firms have established in-depth, complex, and extremely successful partnerships with a wide range of public interest and community organizations - partnerships that not only generate satisfying and effective pro bono work, but also substantially advance the objectives and goals of the public interest partner.

My visit to Australia reinforced my belief that the expanded global interest in pro bono is a powerful development that will enrich and reinforce pro bono in all

nations. I was privileged to have the opportunity to communicate to our colleagues in Australia details of the extraordinarily creative and successful initiatives underway in U.S. firms and corporate legal departments, but also delighted to learn of their innovations and models that are ripe for replication in other countries. My thanks to the staff of the National Pro Bono Resource Centre and to the amazing Kathy Laster of the Victoria Law Foundation for being such wonderful and caring hosts and to the many law firms and lawyers in Australia who prove that pro bono is, truly, an international phenomenon.

Trends II: More Global Pro Bono

As pro bono becomes increasingly globalized, the Pro Bono Institute is initiating a number of projects that will enable U.S. law firms and legal departments with overseas offices, non-U.S. firms, and international public interest groups to expand and enhance pro bono in a variety of jurisdictions and nations. We are, of course, not alone in this effort. Several public interest organizations - including, but not limited to, CEELI, the International Senior Lawyers Project, and the Vance Center at the Association of the Bar of the City of New York - are identifying and providing global pro bono opportunities for U.S. lawyers.

PBI does not directly connect lawyers or legal institutions with global opportunities for pro bono service. Rather, our goal is to work with our key

constituencies - major law firms, corporate legal departments, and public interest organizations - to enhance their capacities to provide, establish, and enhance pro bono activities throughout the world. Toward that end, the Institute is currently initiating a number of long-term projects designed to promote global pro bono activities through technical assistance, training, publications, and other support vehicles. These activities include:

- The capacity to provide enhanced technical assistance to U.S. law firms and legal departments seeking to implement formal pro bono initiatives in non-U.S. offices. This service, available to all legal departments and to PBI Member Law Firms, is an increasingly important element of PBI's active consultative practice.
- The provision of consultation services to non-U.S. law firms shaping their pro bono programs. For the first time this year, PBI Member Law Firms include not only a number of British firms, but also law firms in Canada, Australia, and South America.
- Compilation of information and analysis on legal services and pro bono, on a nation by nation basis, throughout the world. The Institute is in the beginning stages of preparation of a global pro bono resource guide that

will provide updated snapshots of the culture, legal assistance network, and state of pro bono throughout the world.

- Training programs. Increasingly, participants at the Pro Bono Institute Annual Seminar include law firm, corporate, and public interest leaders from other nations. In addition, PBI staff now frequently serve as resource persons and trainers for pro bono programs in other nations, including Canada, the United Kingdom, Australia, and Chile and Brazil. Slated for the near future is a PBI seminar focused on pro bono in Europe.

While the vast majority of PBI's small staff and limited resources are focused on pro bono in the United States, the globalization of legal practice among large law firms and corporate legal departments requires that the Institute enhance its capacities to assist in the exciting, nascent efforts to create a worldwide pro bono movement.