

Overcoming the Barriers to International Pro Bono

**Annual Conference
International Bar Association**

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3:00 p.m. – 6:00 p.m.

Madrid, Spain

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Overcoming the Barriers to International Pro Bono

This program has evolved over a five year period, and in a sense represents the coalescence of developments in law firm practices, social awareness and technology. It is like nothing ever attempted within the framework of an International Bar Association Annual Conference. We invite you to join in this participatory enterprise.

At a lively and sometimes confrontational meeting during the Prague Conference in 2005, a few presentations on pro bono yielded to a series of speakers from the floor on the subject of the proper role of the Association itself in this field. A small but vocal contingent argued that, through the Human Rights Institute or otherwise, the Association should take on a much broader range of individual pro bono projects. The reality of the cost and staff entailed in such an undertaking soon became apparent. Even the less ambitious goal of some form of “clearing house” posed demands which seemed unrealistic for staff to assume. But most present were unwilling to allow the status quo to continue, and over the months to come a consensus gradually emerged: the Association, as the largest organization in the world of lawyers, firms and bar associations from every country, had an opportunity – and an obligation – to lead the way in the rapidly evolving field of international pro bono.

I use the word “consensus” with full cognizance that it did not reflect unanimity.

- Some felt that only the fringes of the membership would be interested, the majority of members valuing the Association for the networking opportunities it affords or the honing of professional skills it makes possible.
- Some were troubled that the effort would interfere with the fledgling pro bono facet of the new “Member Firm” project.
- Some were concerned that this was largely a matter of interest to very large law firms, especially multinationals, and therefore inescapably disproportionately slanted toward the United States and the United Kingdom.
- Some questioned the very terminology, asking whether assistance to governments, for example, ought to be viewed as some sort of “technical aid.”
- And others, quite reasonably, asked whether “international” meant exclusively “cross-border”; or, whether member firms and lawyers in one country would also be interested in the conduct of purely “domestic” pro bono in another country.

What emerged was the notion of an exchange of “best practices” (that much overused term) to take place at Annual Conferences. In the months preceding the next three conferences, a process ensued: identifying, exploring and researching “The Best of International Pro Bono”, and programs under that name were conducted in Chicago, Singapore and Buenos Aires.

In the year since the Buenos Aires Conference, discussions with law firms, nongovernmental organizations and others engaged in the field produced an ever-growing litany of assertions which were made by a large and varied cast of characters, as to why international pro bono

couldn't be done. Here's a very small sampling, which could be categorized somewhat simplistically into "Economic Barriers", "Administrative Barriers" and "Cultural Barriers":

IMPEDIMENTS TO INTERNATIONAL PRO BONO

ECONOMIC IMPEDIMENTS

Senior Partner:

We represent the establishment - the largest companies, the most established institutions. This might end up being adverse to our clients' interests.

We can't afford to take on the government of this country!

I'm retired and willing, but I can't pay the additional expenses involved out of my own pocket - clerical support, transportation, communications and other costs.

Managing Partner:

Pro Bono reduces our margins. In this economy we need every billable hour we can get.

Apart from billable hours, factor in cost of interpreters, translators, court-related expenses, disbursements, and travel expenses.

International Pro Bono is for the large international law firm - its impossible for a small, single-country law firm like ours.

Corporate Counsel:

We have corporate social responsibility initiatives within the corporation, but our budget is too stretched to take on outside pro bono projects ourselves.

Our in-house staffs are small, and our flexibility is less than most lawyers in private practice.

We have additional unauthorized practice of law issues than outside counsel.

We are unsuited and unskilled at taking on contentious matters because they are not our usual area of practice.

Associate/Young Lawyer:

If I do non-billable work, guess who will get laid off in the next round of cuts?

Some day I want to make partner - every hour I spend on pro bono reduces my chances of getting there sooner.

I've got law school debt to pay off - if I am not bringing in fees, I am falling behind.

ADMINISTRATIVE IMPEDIMENTS

Senior Partner:

Litigators have plenty of opportunity for pro bono work, but there's not much call for the services of a...

- ...transactional lawyer
- ...real estate specialist
- ...corporate tax attorney
- ...financial analyst like me.

There are serious problems with accessibility due to transportation and communications infrastructure.

How do we find out what kind of assistance is needed, and who needs it? And how do we match supply and demand?

Mandatory pro bono is not feasible for a small firm like ours. If we are busy doing pro bono work and an attractive paying case comes along, we might lose out.

Local Authorities/Ethics Counselor/Insurance Company:

Certain types of pro bono activities are prohibited by law in our country.

Lawyers who work for companies or government agencies may not participate in actions against them.

Government lawyers will be prohibited from using public funds and public utilities while performing the work.

There will be a permit required for that type of work. The permit will not be forthcoming.

When calculating insurance premiums we cannot factor in the added risks involved in high-conflict cases, unless the lawyers themselves assume that risk. Personal Indemnity coverage may be denied.

CULTURAL IMPEDIMENTS

Senior Partner:

In our culture, pro bono does not gain us recognition or goodwill with our clients or government. In fact it is considered tasteless and inappropriate at best, criminal at worst.

Pro Bono is still identified as charity and given little attention in my country.

Pro Bono in my country has the stigma of working "for the government."

Pro Bono in my country has the stigma of working "against the government."

There are major discrepancies in existing legal systems affected by such factors as common vs. civil law, religion, and customs or practices.

Bar Association:

We don't encourage lawyers in our country to provide service at no cost or lower cost. That leads to competition with lawyers who need to make a living in this field.

This is an imported concept from the United States and UK and is alien to our legal tradition. We have our own ancient and honorable pro bono tradition, and will develop models of services that suit our own cultures to meet our own needs.

The state provides everything that is needed for its citizens.

You may provide assistance but you cannot...
...contact organizations, only individuals
...contact individuals, only organizations
...contact anyone but official spokespersons
...pursue sensitive legal matters

You cannot provide us with pro bono assistance because...
...it's an unauthorized practice of law
...your firm doesn't have an office here
...you are a foreigner
...your client is a non-citizen

Non-Government Organization:

We will lose our government funding if they think we are being helped by you for free. Government can make our lives very difficult with excessive regulation and operational difficulties. If they perceive us working with international lawyers, government officials will react negatively.

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More important, however, is what also emerged: story after story of how those barriers were in fact being overcome. Thus, the framework of this year's program.

During these years, and as law firms were inexorably moving toward the conclusion that pro bono was in their own enlightened self interest as well as a necessary obligation of good citizenship, a parallel development was taking place in the technology available to serve those interested in the field. For most of the history of mankind, "written" communication was a slow and "consecutive" process, and the transmission of information a series of monologues. With the advent of the Internet, of course, all that changed. But only in recent years have lawyers begun to realize its benefits. The Public and Professional Interest Division responded to a request to recognize the value of a real-time exchange of experiences in international pro bono by funding the creation of internationalprobono.com, the first website exclusively devoted to international pro bono. It will be a repository for the most important writing on the subject, and will serve as a vehicle for those interested in the field to communicate with one another in a fashion previously not possible.

But another structural flaw remained to be addressed. Conferences like those sponsored by the Association are conducted today much as they were in the earliest days of the Association, a half century ago: Large numbers of promotional materials are mailed in advance (or, today, transmitted electronically). A relatively small percentage of recipients, weighing the benefits of attendance against the cost and lost time, decide to attend. At any given timeslot, prospective attendees must choose among competing programs (and the attractions of the city where the conference is held). Inevitably, the efforts of the organizers and speakers are devoted to a comparatively small number of beneficiaries.

Posting the prepared remarks on internationalprobono.com spreads those materials to a larger number of people, of course. But what about the interchanges, sometimes the most valuable part of the program? And, more important, what about the contributions which could have been made by others who could not be present in Madrid, or could not be accommodated as speakers?

Our program addresses that final flaw as well. A talented team of editors and filmmakers¹ have essentially volunteered their time to –

- Edit a wide range of materials (written, pictorial and video) which we have solicited from some of the best known firms and legal services organizations in the world;
- Film the proceedings; and
- Edit the contributed materials in such a fashion that, in distant places and for an extended period of time, the community of international pro bono practitioners can range at will across perhaps the most extensive collection of such experiences ever gathered, and participate in the electronic dialogue to follow.

Join us in this groundbreaking enterprise.

For a taste of what you will experience join us in Madrid as well – and for those who can't, check out the brief video presentation posted on internationalprobono.com.

Philip F. Zeidman (philip.zeidman@dlapiper.com) is a member of the Council of the International Bar Association and has been elected an Honorary Life Member of the Association. He conceived of and moderated the “Best of International Pro Bono” programs at the Chicago, Singapore and Buenos Aires Conferences, and the “Overcoming the Barriers to International Pro Bono” program in Madrid. A partner in the Washington DC office of DLA Piper, he has been named Global Franchise Lawyer of the Year in each of the last five years by An International Who's Who of Business Lawyers.

¹ Catherine Beck Shoup is an Emmy Award-winning video producer and communications specialist with expertise in legal communications, especially related to international pro bono issues.

Brooks Moore (brooks@bonnemaison.com) has 20 years of experience in the domestic and international production of feature films, documentaries and television programs. He has filmed air and underwater expeditions and narrated Discovery Channel programs. His production facility has expertise in high-definition video, film and web content.