

At Issue:

Should lawyers be required to perform free work for the poor?



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Former President Jimmy Carter was close to the truth in 1977, when he said, "Ninety percent of our lawyers serve 10 percent of our people. We are over-lawyered and under-represented." Yet that is still true today. If each law firm was required to spend 40 hours a year per lawyer to serve the needs of people who otherwise would not be represented, our society might still be over-lawyered, but we would no longer be under-represented.

This idea is hardly new. The American Bar Association even has a rule strongly suggesting it. But that is not enough to get the job done.

Most lawyers agree that pro bono work (literally "for the good," and thus unpaid) should not be mandatory. They argue, typically, that volunteer legal aid for the poor is an admirable goal that they personally intend to meet. But, they argue, being forced to do it amounts to indentured servitude and provides those in need with unwilling, and thus substandard, counsel.

This argument is disingenuous and self-serving. Practicing law is not a right, but the privilege of a regulated profession. If bars can require continuing education, they can also insist that lawyers spend 3 percent of their time doing free work. Despite widespread support for the pro bono concept, in actuality not nearly enough lawyers participate.

The objections from the pro bono/legal services world are more serious. Esther Lardent and others, including the late Tanya Neiman, who ran the San Francisco Bar Association's noted Volunteer Legal Services Program for almost 25 years, have argued tellingly that they have been better off without the "indentured servants" who don't want to participate. But I believe that these respected views are short-sighted.

Once lawyers are used to the idea, their pride and ego will cause them to do the job well. And historically, lawyers have come to treasure this work, on behalf of real people with real problems, as among their most rewarding experiences.

Doing this might make one generation of lawyers very unhappy. But once they got used to it, at 40 hours a year and 1 million lawyers in the country, 40 million hours of legal service would become available, enough to provide access to all those without the wealth to currently have full access to the legal system.

Again, this is a complicated issue. But the basic principle should become a requirement. We ought to put our money — and time — where our mouths are.



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We are experiencing the worst justice crisis in memory. Several factors have profoundly undermined the goal of "equal justice for all," including the increasing number of laws and regulations affecting the poor and disadvantaged, the deep reductions in funding for legal services and public-interest programs, the steep growth in the number of those living in profound poverty and beleaguered courts and administrative agencies.

The United States has more than 1 million lawyers. It is not surprising, therefore, that in searching for a viable answer to the justice crisis, some propose that all lawyers be mandated to provide legal assistance on a pro bono (i.e., free) basis to those unable to secure assistance to deal with critical life problems that could be resolved in the legal system. Mandatory pro bono, to be clear, means that a lawyer's license would be contingent upon the fulfillment of a quantifiable public service obligation and would require a reporting requirement and an enforcement mechanism.

Many who propose mandatory pro bono point out that lawyers in the United States have a monopoly on legal practice. While I strongly support the concept that every lawyer should do pro bono, I am opposed to the idea that every lawyer is required to do pro bono. My reasons include:

- **Mandatory pro bono is administratively unworkable.** Existing mechanisms for matching clients in need of service with lawyers serving pro bono would be swamped if the number of lawyers volunteering increased by a factor of 10 or more. Investigating and disciplining lawyers who do not comply with mandatory requirements would overwhelm an already overburdened disciplinary system.
- **Mandatory pro bono is bad for clients.** How much will poor clients benefit from the efforts of coerced and disgruntled attorneys?
- **Mandatory pro bono is politically infeasible.** The fate of previous mandatory pro bono proposals is instructive. In every instance, the proposal has created a firestorm of controversy and a backlash against pro bono.
- **Access to justice is a public obligation.** The legal profession has unique skills and a special obligation to make the legal system available to all, but access to justice is and must be a concern and priority of government as a whole.

For all these reasons, we need to work to make voluntary pro bono systems function effectively, rather than scrapping them for a mandatory pro bono system that offers an illusory promise of greater good.