



The Association of the Bar of the City of New York

**REPORT BY THE
COMMITTEE ON
INTER-AMERICAN AFFAIRS
ON THE BUENOS AIRES
CONFERENCE ON PRO BONO
AND ACCESS TO JUSTICE**

September 13-14, 2001 and November 29 and 30 and December 1, 2001

CO-SPONSORED BY:

**THE COLEGIO DE ABOGADOS DE LA CIUDAD DE BUENOS AIRES
THE UNIVERSITY OF PALERMO SCHOOL OF LAW AND
THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK**

On the eve of Argentina's ongoing economic and political crisis that has placed the plight of its poor in bold relief, a Conference entitled "Pro Bono and Access to Justice" was held in Buenos Aires, Argentina, co-sponsored by The Association of the Bar of the City of New York (the "Association"), its corresponding city bar organization in Buenos Aires, the Colegio de Abogados de la Ciudad de Buenos Aires (the "Colegio"), and the University of Palermo School of Law ("Palermo Law School"), in Buenos Aires. The Conference was organized in response to interest of the private bar and non-governmental organizations, or NGOs in Argentina, in institutionalizing pro bono efforts and promoting access to justice. It was well attended by representatives of many of the leading law firms and NGOs from Argentina as well as other countries.

In the view of many participants, including the Committee on Inter-American Affairs of the Association, the Conference suggested an emerging commitment to the provision of pro bono legal services by the private bar in Argentina and other countries in Latin America. Nascent efforts indicate willingness on the part of lawyers in other countries of the Americas to reexamine and enhance their commitment to provide free legal services to segments of populations currently underserved by the legal profession. Due to the Association's position as the bar association for the City of New York, the leading legal center in the Americas, and the Association's historical commitment to pro bono legal services, it is well-positioned to contribute to the efforts of our corresponding bar associations to enhance their own pro bono efforts.

1. Background for Conference.

The origins of the Conference can be traced to the International Conference on Crisis in Access to Justice hosted by the Association in 2000 under the leadership of its past-President Michael Cooper. At that conference, Joan Vermeulen, consultant to the Association and previously Executive Director of New York Lawyers for the Public Interest, and Martin Bohmer, Dean of the Palermo Law School, began to discuss ways to promote pro bono legal services in Argentina. These efforts coincided with an ongoing project of the Ford Foundation that targets NGOs and law schools in developing countries to encourage collaboration with the private bar in providing pro bono legal services. As a result, Dean Bohmer organized meetings in Argentina for Ms. Vermeulen to discuss the pro bono experience of the New York bar with representatives of law school, NGO and private bar communities.

As a partial result of these meetings, the Colegio in Buenos Aires organized a Pro Bono Commission with the stated objective of identifying and undertaking the representation of cases in the public interest. This Commission, initially chaired by Martin Zapiola, works closely with the leading law firms of Buenos Aires, representatives of which comprise its membership. In its first year of existence, it has already recorded some notable successes.

In Spring 2001, with the support of Evan Davis, then President of the Association, Ms. Vermeulen, on behalf of the Association, Dean Bohmer, on behalf of Palermo Law School, and representatives of the Colegio began to discuss the possibility of the Conference. The Committee on Inter-American Affairs of the Association was designated to assist Ms. Vermeulen in the coordination of the Association's participation. The Colegio was represented by Mr. Zapiola and Guillermo Walter Klein, who facilitated the organizational efforts through his participation in New York at several meetings. Hernan Slemenson, an Argentine lawyer and a member of the Committee on Inter-American Affairs also supported these efforts.

2. Pro Bono Legal Services in Latin America.

Members of the private bar in Argentina, as in most of Latin America, are not new to pro bono legal services. On the contrary, individual lawyers and firms have historically provided services on an ad hoc basis to institutions and needy persons. Indeed, many firms have longstanding relationships with leading charitable organizations, providing services on a pro bono or reduced fee basis. Nevertheless, institutionalized pro bono efforts within law firms are extremely limited. Similarly, Latin American bar associations and other bodies governing the conduct of lawyers have yet to include in their ethical rules or guidelines to the profession any guidance regarding the provision of pro bono legal services.

The needs for legal services to the poor have not been entirely neglected, however, in various Latin American jurisdictions, the response of bar associations and law schools has included the mandatory provision of pro bono legal services during one year of law school, mandatory internships in the public sector prior to admission to the bar, judicial authority to appoint counsel for indigent clients and bar association clinics open to the public free of charge. Unfortunately, though there are notable exceptions, these efforts

have generally suffered from the inexperience of the law students and lack of supervision (in the case of mandatory pro bono and internships), and from being vastly under-funded and under-sized relative to the dimensions of the need for legal services (in the case of judicially mandated and bar association efforts). Leaders of the bar in Argentina and several Latin American countries are increasingly aware that concerted efforts are required both to strengthen existing institutions and to develop new traditions, particularly within the private bar, for providing pro bono legal services.

Another important factor to the development of pro bono legal services in Latin America is the participation of local NGOs. In the United States, NGOs (including, for example, the Legal Aid Society, the American Civil Liberties Union, New York Lawyers for Public Interest, the Lawyers Committee for Human Rights and, more recently, Pro Bono Net) provide essential leadership and support to the private bar's pro bono efforts. Indeed, many of the more successful NGOs in New York were founded by members of the private bar, and most receive considerable financial and other support from the private bar.

In Latin America, the strength and variety of the NGO community varies significantly from country to country (with Brazil, for example, having a relatively strong NGO community). However, in all but a few instances, there is little contact between leading law firms and the NGO community. This lack of contact is partially due to the legacy of military dictatorships and periods of political fragmentation in which "establishment" law firms and NGOs were generally on opposite sides. Some who lived through periods of military rule are burdened with a residue of mistrust that complicates collaboration between some NGOs and leading law firms. Even so, many in the NGO community and leading law firms now recognize that, by working together, they can potentially perform complementary roles for the betterment of their societies.

For example, several junior partners from leading Chilean law firms have formed Fundación Pro Bono in Santiago, Chile, for promoting pro bono legal services in Chile and other countries in the region. This NGO, which already has a full-time staff, and has been active in identifying potential pro bono matters and obtaining counsel. Fundación Pro Bono is currently developing an aspirational statement regarding pro bono services to which it expects leading law firms in Santiago to subscribe.

3. The Conference.

The Conference, scheduled to occur September 13-15, 2001, was originally organized as a joint meeting of both the leading law firms and principal NGOs of Buenos Aires. Also participating were representatives of NGOs from Australia, Chile, South Africa and the United Kingdom and from three Chilean law firms. Funding was provided by the Ford Foundation, and the U.S. Government, as well as from the private bar in Buenos Aires and New York.

Notwithstanding the tragic events of September 11, 2001, the NGO portion of the conference went forward as originally scheduled because most NGO participants from the United States, Australia and South Africa were already in Buenos Aires. The private bar portion of the conference had to be postponed because the U.S. delegation was unable to leave New York due to airport closures and the dimensions of the tragedy suffered. Accordingly, a decision was made to hold the private bar portion of the conference during November 29 and 30 and December 1, 2001.

The Conference participants, listed in Annex I to this Report, included 18 Buenos Aires law firms and 17 NGO or other organizations from Argentina, as well as law firms and NGOs from outside of Argentina.

A. The NGO Conference.

At this session, held on September 13 and 14, 2001, NGO leaders from Argentina, Australia, Chile, South Africa, the United Kingdom and the United States discussed unmet needs for legal services in each of their countries, and the importance of developing close relations between law firms and NGOs.

By virtue of the monopoly accorded lawyers' sole access to the representation of clients in court?participants agreed that lawyers have a professional responsibility to ensure that the legal system is accessible to poor people. In the United States, this responsibility is set forth in aspirational statements, such as the Code of Professional Responsibility in New York which states that "A lawyer has an obligation to render public interest and pro bono legal work." The American Bar Association has urged all lawyers to provide at least 50 hours of pro bono services annually. Some NGO participants suggested that a moral obligation for

undertaking pro bono work also exists, arising from the injunction in the world's religions and secular philosophies to assist people in need.

It was noted that pro bono work takes different forms, such as individual representation on basic issues like housing and social benefits, and impact litigation relating to policy matters. Pro bono opportunities exist for litigators and transactional lawyers. Indeed, every part of the legal profession has the opportunity to undertake pro bono work and has a contribution to make.

Participants agreed that in each of their countries, relations between NGOs and the private bar need to be closer. NGOs, with small staffs and small budgets, need to draw on the legal resources that law firms can provide. Law firms need the expertise of NGOs in helping to identify appropriate cases and to provide assistance to the firms' lawyers, through training and mentoring, on legal matters in areas with which they may initially be unfamiliar.

Conference participants agreed that bar associations, like the Colegio and the Association, can perform an important role in helping the private bar and NGOs work closely together. Law schools, like the University of Palermo School of Law, can perform an important role in instilling the pro bono ethos in law students, an ethos that will remain with many lawyers as they pursue their careers in the law.

B. The Private Bar Conference.

The private bar conference was held in Buenos Aires, November 29 and 30 and December 1, 2001.

Argentine constitutional reforms, since Argentina's return to democracy, have included the incorporation of rights created by international treaties, the enumeration of domestic constitutional rights and the establishment of explicit constitutional causes of action for private citizens and NGOs. These reforms have facilitated public interest litigation in Argentina. For example, during the Conference, in response to a lawsuit undertaken by the Colegio's pro bono commission and filed on a pro bono basis by a Buenos Aires law firm working in close collaboration with a prominent NGO, a trial court mandated public disclosure of financial reports by members of Congress.

Not unlike in the United States, there is a substantial unsatisfied need for legal services in Argentina. Public defenders in criminal matters are over-burdened with staggering caseloads. Court-appointed attorneys cannot hope to serve effectively all of the clients seeking their help. Although the public bar association requires new members to provide legal services to the indigent, those efforts are also insufficient. Accordingly, private law firms can play an important role in the provision of pro bono services. The critical importance of an effective and independent judiciary was discussed with special attention to the role that bar associations can play in promoting judicial independence, the rule of law and the delivery of pro bono legal services in Argentina.

In addition to the Conference itself, members of the Association's delegation visited groups of lawyers from nine different Buenos Aires law firms. These meetings were intended to encourage interested attorneys at leading law firms to undertake pro bono work and to answer questions about how U.S. firms structure and promote their pro bono programs.

Sessions were held regarding structuring a pro bono program in a law firm, including building consensus for it within the firm, formulating a written pro bono policy, securing participation in pro bono cases by the firm's attorneys, and increasing pro bono activity as the firm's program gains momentum. Participants also noted the interdependent relationships of law firms, bar associations, NGOs and law schools in delivering pro bono legal services. Whereas law firms can bring substantial resources to bear on cases and represent a significant potential source of financial support to NGOs, they, in turn, frequently rely upon NGOs for referrals of pre-screened pro bono clients and specialized expertise in poverty law or other areas of law to assist in the representation. The participants stressed the need for communication and interaction among these interested groups to create a foundation of trust that allows effective collaboration.

A hypothetical environmental case was used to review the management of pro bono cases in law firms, including screening for substantive conflicts, staffing and supervision, handling press inquiries would be handled.

Participants discussed technology's potential to empower lawyers to provide legal services they may have previously shied away from due to a lack of expertise or information.

The conference concluded with an open discussion of the participants regarding how best to develop and strengthen law firm pro bono efforts in Argentina and other Latin American countries. Several of the Argentine participants noted the relative lack of trust that persists between NGOs and private law firms, which arises in part from prior periods of military rule. Conference participants from the United States observed that, although the circumstances were different, there was a similar history of distrust between members of civil rights and civil liberties organizations and many private law firms in the U.S. during the 1950s and 1960s, but that this distrust gradually diminished as societal mores shifted in favor of civil rights, diversity and access to justice. Participants from Argentina expressed their hope that similar relationships will develop over time between NGOs and private law firms in their country.

Participants generally agreed that private bar initiatives to enhance pro bono efforts should include:

- Leadership: The leadership of prominent lawyers in the bar and senior partners within the firms in defining and promoting pro bono legal services as an important component of a bar association's or a law firm's culture;
- Structure: The development of institutional structures within bar associations and law firms to facilitate the rendering of pro bono legal services and recognizing their efforts;
- Links to NGOs: Closer links between the private bar and NGOs or law schools for support private bar pro bono efforts must be developed; and
- Information: Distribution of information about potential matters and cases, taking advantage of technology to achieve this on a low cost basis.

Some participants urged future consideration of a task force to develop a common statement of principles regarding pro bono legal services. It was suggested that the process of discussing and negotiating a text among various bar associations or law firms could help focus attention on the pro bono issue. Other participants felt it was more important to focus energies and resources on creating structures and undertaking representations.

At the conclusion of the Conference, Juan Pablo Olmedo, from Fundación Pro Bono in Chile, invited the participants to meet in Santiago, Chile for a follow-up conference. The invitation was well received. On Saturday morning, several U.S. delegates met with members of prominent NGOs in Argentina to discuss how NGOs might work with members of the private bar in public interest litigation. Many expressed the hope that NGOs and the private bar will find common ground on issues of shared concern.

4. Conclusion.

Even as the Conference concluded, withdrawals from bank accounts in Argentina were restricted, ushering in an economic and political crisis that has already increased the ranks of and exacerbated the plight of Argentina's poor. As one conference participant noted, the need for pro bono efforts by private law firms in Argentina literally intensified during the course of the Conference.

Although the reasons for Argentina's current crisis are multiple and complex, this crisis places in stark relief the critical importance of good government and the proper functioning of civil society in underpinning the economic and social stability that modern societies require to prosper. Lawyers are uniquely empowered by education and position to address these challenges. Pro bono legal efforts, including both service to the poor and high impact litigation, promise that through more active participation in civil society, individual lawyers, law firms and NGOs can act positively to help bring about both incremental and more dramatic societal improvements.

The Association has agreed to co-sponsor, with Fundación Pro Bono in Chile, a pro bono conference to be held in Santiago, Chile in December 2002. In Argentina, meanwhile, the Association continues to support pro bono efforts that are already beginning to deliver results.

New York, New York
February 2002

LIST OF PARTICIPANTS IN BUENOS AIRES CONFERENCENew York Participants

Association of the Bar of the City of New York	Simpson Thacher & Bartlett
Cleary, Gottlieb, Steen & Hamilton	Skadden, Arps, Slate, Meagher & Flom
Fordham Law School	Sullivan & Cromwell
JPMorgan Chase Bank	Torys
New York Lawyers for Public Interest	Volunteers of Legal Service
Pro Bono Net	

Participating Argentine Law Firms

Allende & Brea	Klein & Franco
Baker & McKenzie	Le Pera & Lessa - Abogados
Cabanellas, Etchebane & Kelly	Llerena & Asociados Abogados
Cárdenas, Cassagne & Asociados	Marval, O' Farrell & Mairal
Estudio Beccar Varela	M. & M. Bomchill
Estudio Binstein	Negri, Teijeiro & Incera
Estudio Lago	Perez Alati, Grondona, Benites, Arntsen,
Estudio Moltedo	Martinez de Hoz (h)
Estudio O'Farrell	Petersen & Zapiola Guerrico
Hope, Duggan & Silva	

Other Participating Argentine Organizations

Asociacion por los Derechos Civiles	Federación Argentina de Colegios de
[CEADEL]	Abogados
Centro de Estudios Legales y Sociales	Fundación Ambiente y Recursos
[CIPPEC]	Naturales
Colegio de Abogados de la Ciudad de Buenos Aires	Fundación Cambio Democrático
Colegio Público de Abogados de la Capital Federal	Fundación Poder Ciudadano
Comunidad Homosexual Argentina	Fundación Rumbos Redi
Consumidores Activos	INECIP
Defensoría del Pueblo de la Ciudad de Buenos Aires	Public Interest Law Clinic of the
	University of Palermo
	Universidad de Buenos Aires

Participating Organizations from Outside of Argentina and New YorkAustralia:

Public Interest Advocacy Centre

Chile:

Fundación Pro Bono

Philippi Yrarrazaval Pulido & Brunner

Prieto & Cía

South America:

Lawyers for Human Rights

Legal Aid Board

Legal Resources Centre

University of Witwatersrand Law School

United Kingdom:

Dexter Montague & Partners