

Notes from Santiago -- To Where From Here

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Before all else, I'd like to express my personal pleasure and that of my colleagues here from New York, some 17 persons, to be here with you in Chile. It has truly been and is, for us, a privilege. From my conversations with my colleagues in our New York delegation, I know that, for us, it has been a highly enriching experience.

For those fortunate to enjoy it, a good conference is like a multi-course, gourmet meal, as each panel or speech, like each course, offers something new, a novel taste or an idea that intrigues us while satisfying us and enhancing our expectation in the next course. I learned as a boy assisting my mother in the kitchen, that a good meal does not reach the table without a lot of effort. Having participated in the planning of this conference, I can assure you that the efforts of the "chefs" of this conference were not slight, to the contrary. I will leave to Juan Pablo Olmedo expressions of gratitude to his team, but wish to add the appreciation of the New York delegation for the tremendous efforts carried out here in Chile.

It was suggested that I address the topic of "to where from here," that is, to reflect upon what might be our next steps in this ongoing initiative to develop and promote pro bono work. This question presumes a degree of commitment from the auditor to this idea of pro bono, that is, to the provision of free legal services for the good of the public. Although all present are perhaps already converts, believers, if you will, in this idea, I would like to consider this idea for a moment through what we in English refer to as a "thought experiment."

Last week John Rawls passed away, a philosophy professor at Harvard, who was probably the greatest American philosopher of the second half of the Twentieth century, if not longer. Though some might say that an American philosopher is like an English cook, the ideas of John Rawls were of consequence both within and without my country in the restoration of the relevance of philosophy to normative political and legal debate. John Rawls proposed a thought experiment in which all of the participants go behind a veil of ignorance that impedes their knowing the position they will occupy in life, that is a veil that impedes their knowing whether they will be rich or poor, tenured academics or illiterate, law abiding citizens or criminals. From the initial position, behind this veil of ignorance, suggested Professor Rawls, we should design the rules for our society and, I would add, the rules for our profession.

Not knowing who we will be, I think we could all agree that there should be a legal and judicial system that is fair and effective. I suggest we could also conclude that the rules of society are not fair and effective unless the citizens are aware of those rules, that is, of their individuals and other rights, and enjoy an ability to make effective those rights that the society determines should exist: this is access to justice.

Focusing on our profession, I believe that, with the veil of ignorance in place and without knowing that we were to become lawyers, I suggest that we would conclude that our society would have an obligation to make effective the guaranties of justice. That is to say that society in general, or in its place, the profession to which is granted the privilege (and monopoly) of administering the rules of the society, should work to achieve, within the real limitations of our circumstance, what is necessary to assist the least favored of our society.

Perhaps the historical challenge of neo-liberal democracies, the challenge that will determine the persistence of this form of organizing the affairs of humanity, is the effectiveness of our legal systems in guarantying the rights of the poor. It is always thought-provoking to ask ourselves how our successors will see our society in one-hundred years, in two-hundred years, what errors and injustices of today will outrage them to which we were blind?

In a neo-liberal environment, in which government resources for the poor will always be limited, the will and effectiveness of response by the private sector to the unattended needs of the poor will be of paramount importance: and in the legal realm, the will and effectiveness of our profession's response.

In this environment, this pro bono initiative offers tremendous potential for two reasons:

1. It offers a potential multiplier effect. If a leader or group of leaders succeeds in achieving sustained progress in institutionalizing pro bono at a firm, in addition to the work of one, there will be many others who will do it. When one firm shows commitment to pro bono, others will follow suit. When firms are leaders and the bar association undertakes a dialogue about a lawyer's ethical obligations, articulating aspirations applicable to all, our friends here in Chile at the Fundacion Pro Bono will cry for mercy before such an avalanche of volunteers.

2. It offers the advantage of reintegrating a privileged profession in the reality of one's society. This is an unpredictable advantage, as unpredictable as human reactions of emotion, sympathy and solidarity when confronted with the needs of others. That is, participating as advocates on behalf of the poor, from here, we lawyers, confronted first hand with need, will become the founders of new NGOs to give services to the poor, lead in new initiatives to improve the functioning of the judiciary, and other efforts.

I had the pleasure of participating in the 2001 Buenos Aires conference on Pro Bono and Access to Justice as chair of the Pro Bono Sub-Committee of the Committee on Inter-American Affairs of the City Bar, committee chaired by my friend Jeff Gracer, who participated in one of this afternoon's panels. This year I was privileged to work with Fundacion Pro Bono in the organization of this conference both representing the Committee on Inter-American Affairs and in my capacity as chairman of advisory committee of the Vance Center for International Justice Initiatives, a committee so new that I am chairman of a committee of one. The Vance Center was created this year by the City Bar and dedicated in honor of Cyrus Vance, former Secretary of State of the United States and former President of the City Bar. Secretary Vance,

who was a long-time partner at my firm, combined an exacting vision of the obligations of our profession to the least fortunate in our society with a similar commitment to human rights in our country's international relationships. Joan Vermeulen, who has led our New York efforts relating to this conference, will be Executive Director of the Vance Center.

I mention the Vance Center because it is evidence of the ongoing commitment of the Bar Association of the City of New York with this labor of promoting pro bono legal services in the Americas and in other areas around the world. For the Vance Center, and for the City Bar and its Committee on Inter-American Affairs, this effort will continue to be a priority.

In this voyage, however, we are but another sailor in a vessel captained by persons and organizations here in Santiago, in Buenos Aires, in Sao Paulo, in Lima and in other cities where individuals have personally undertaken to promote this initiative. Specifically, in Santiago, the leaders of Fundacion Pro Bono, in Buenos Aires, the members of the Pro Bono Commission of the Colegio de Abogados de la Ciudad de Buenos Aires (the Buenos Aires private bar), and, in Brazil, the leaders of Instituto Pro Bono. These persons deserve our gratitude and require our support as they carry forward these efforts. It is not easy to take ideas that are dancing in the air, however good they might be, to the reality of a conference accomplished, of cases for clients successfully prosecuted, of the public interest advanced.

Looking to the future, in view of the topic given for this talk, I would like to suggest a few concrete steps to advance the pro bono initiative internationally:

1. Move forward through "partnerships" among organizations to mutually support one another.
2. Privilege contacts between the private sector, NGOs and law schools – this is the "pro bono chain" that we have discussed.
3. Stimulate a discussion within and among bar associations regarding the nature of lawyers' obligations to society, a dialogue that should perhaps also be advanced at the international level combining internal dialogue with an enriching exchange of ideas with other countries.
4. Promote this dialogue through conferences in other countries like this one and more frequent tele-conferencing or telephonic conference calls. In this regard, Instituto Pro Bono from Brazil will be hosting a conference in Sao Paulo one year from now in December 2003 and [] from Australia will be hosting a conference in Sidney during the fall of 2003.
5. Democratize pro bono work by decentralizing the promotion of pro bono work and by empowering personal initiative within the firms.
6. Make concrete the intellectual and personal commitment that could emerge from this conference by creating internal policies at law firms and leading through personal example. We must materialize our aspirations in the flesh, bone and sweat of human reality.

Thirteen years ago, I spent a few months in Brazil assisting on some human rights legal matters. While there, to improve my Portuguese, I read a very simple book by Paulo Coelho, entitled The Alchemist, subsequently translated into the principal modern languages. In this book there is a story with which I would like to conclude.

A young man travels the known world in search for a wise man, who, it is said, knows the secret to happiness. After much effort, the young man finds himself in an oasis in the middle of the Sahara Desert. The wise man receives the young man in his palace. The young man asks that the wise man instruct him in the secret to happiness. The wise man rises and gives the young man a spoon, which he fills with golden virgin olive oil. He asks the young man, with the spoon in hand, and without spilling the spoon's contents, to wander through his palace to enjoy its wonders. For an hour the young man traverses the palace, intently focused on the spoon. When the wise man returns, he asks the young man if he enjoyed the cedar columns from Lebanon, the marble from Italy, the carpets from Persia or the glass from Venice. The young man confesses that he had seen none of these. The wise man asks that he continue to wander through the palace. An hour later they meet again with the young man overflowing with enthusiasm for what he had seen, admiring the marvels gathered by the wise man in his palace. The wise man hears the young man and then kindly asks him what has happened to the olive oil in the spoon. The young man looks at his hand and sees that it has spilled. The wise man looks at him and tells him, the secret to happiness is to know how to attend to our daily obligations without forgetting to enjoy the wonders of life that surround us.

Today the lesson of the wise man does not end there. Lawyers who are blessed with happiness are indeed those who have learned not to spill the olive oil, that is, to fail to attend to the obligations of our profession, while enjoying the marvels of the world, that is, our families, the people and objects that give us pleasure. However, as lawyers, we have another obligation, the obligation to tear the veil of ignorance that separates us from the injustices hidden behind the columns of cedar, the Italian marble and the Persian carpets. And then to respond to what we see.