PRO BONO WORK AND IMPROVING ACCESS TO JUSTICE

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Introduction

Good morning. It is my pleasure to be back here at Syracuse University to address the first-year class of the College of Law. The subject about which I came here to speak is “Pro Bono Work and Improving Access to Justice.” I’m very qualified to address that subject, given my past experiences, and given the facts that I’m a partner in the law firm of Arnold & Porter, which has a deep tradition in and commitment to pro bono work, and that I currently serve as President of the New York County Lawyers’ Association, which has as part of its mission statement “arranging for the provision by its members of free legal services for indigent, low income and other persons in need,” and “ensuring access to justice for all.”

I have a challenge for each of you today. When I addressed the members of NYCLA (that’s what we call the New York County Lawyers’ Association) as I was inducted as President this past May, standing in St. Paul’s Chapel, in the shadow of where the World Trade Center Towers once stood, I quoted the words of one of my heroes, Harry Chapin, who was a singer-songwriter-storyteller. Harry famously said, “When in doubt, do something.” After you obtain your law degree and get admitted to the bar, I challenge each of you to do something for the public good. Your admission to the bar will provide you with powerful tools to improve access to justice for those in need. For those of you who decide to go into public service or to act in the nonprofit sector, you will be fulfilling what I believe is your obligation to give back to society. For those of you, like me, who decide to go into private practice, you too should give back. In addition to doing work for paying clients, find something you’re passionate about and do your part.

My remarks this morning will be broken down into five parts. First, I’m going to say a few words about the College of Law. Next, I’ll address my personal history in pro bono work before I arrived at Arnold & Porter. Thereafter, I’ll discuss Arnold & Porter’s pro bono work, including its handling of the recent Troy Davis death penalty case. This will be followed by a discussion of NYCLA and its pro bono and access to justice initiatives. And, finally, I’ll provide some concluding remarks. I’ll also be sure to leave time to answer any questions that you may have.

Syracuse University College of Law

The College of Law has a long history of public service and pro bono work. As we all know, our country’s Vice President, Joe Biden, graduated from the College of Law, as did many others who went on to careers in the public sector, including former Senator Alphonse D’Amato
and Beau Biden, who currently serves as Attorney General of Delaware. Also, as you may know, on campus there is the Syracuse Public Interest Network, called SPIN, which is a student-run organization at the College of Law committed to fostering the careers of students who intend to advocate for the public interest. If a career in public service is in your future, this is a great organization in which to become involved.

I have personal experience with pro bono work at the College of Law. Back in the early 1980s, when I attended school here, I participated in one of the clinics that provided pro bono legal services to those in need. And I’m aware that the clinical program continues to be active today, operating clinics such as the Elder Law Clinic and the Low Income Taxpayer Clinic.

And I’m sure that most of you already are familiar with the College of Law’s Cold Case Initiative, which seeks justice for racially motivated murders during the Civil Rights era on behalf of the victims, their families, local communities and society at large. There are many other pro bono opportunities at the College of Law, including the Bankruptcy Project, the Food Stamp Project and the Unemployed Benefits Program.

Participating in pro bono work while you’re still law students provides excellent training for the work you will do after graduation, and is important for those in the Syracuse community. I encourage all of you to participate in some way, while you’re here on campus.

My pro bono work

My time at the College of Law instilled in me a desire to do pro bono work, which I started as a young associate. My pro bono work, however, would not have been possible without the encouragement and support of the senior partner with whom I worked out of law school. His name was Richard Bond, and he went by the name “Dick.” Dick Bond is another one of my heroes and he taught me the importance of giving back to society. As you start your legal careers, I can’t tell you how important it is for you to choose your future employers wisely. You’ll obviously want to work at a firm or in an organization that does good work and obeys the highest ethical standards. However, if you work outside the public sector, you’ll also want to be sure that you will be given the opportunity to do work for the public good.

I want to address two examples of my pro bono work before arriving at Arnold & Porter, and they are prisoners’ civil rights cases and Guantanamo Bay cases. First, with respect to the prisoners’ civil rights cases, the U.S. District Court for the Southern District of New York, like other federal courts, has a Pro Bono Panel through which counsel can volunteer to represent pro se parties in civil cases. Many of these cases are brought by inmates under 42 U.S.C. Section 1983 for deprivation of constitutional rights. Typically, these are cases where an prisoner claims that his civil rights were violated by a corrections officer during the course of an incident, such as the use of excessive force. These are difficult cases to bring to trial. Oftentimes, the jury must determine the credibility of your client-inmate who is incarcerated for committing a heinous crime, in contrast to the credibility of the corrections officers who lack any type of criminal record. You are in the position of arguing before a jury that your inmate-client did nothing to provoke the attack that led to his injuries. Needless to say, I didn’t win many of the trials. However, my pro bono work assured inmates that they would have their day in court.
And on the occasions where a jury ruled in my favor, or I achieved a favorable settlement, I cannot tell you how rewarding that felt. Pro bono work certainly is not about winning and losing, but is about giving those in need of legal services the opportunity to obtain justice -- to ensure that the halls of justice are open to them.

Those same considerations led me to undertake the representation of certain detainees held by the United States in Guantanamo Bay, Cuba. As many of you may know, Guantanamo Bay is located at the southern tip of the island of Cuba. The United States assumed territorial control over Guantanamo Bay under the 1903 Cuban-American Treaty, which granted it a perpetual lease of the area. The United States, by virtue of its complete jurisdiction and control, maintains de facto sovereignty over this territory, while Cuba retained ultimate sovereignty. The current government of Cuba regards the U.S. presence in Guantánamo Bay as illegal and insists the Cuban-American Treaty was obtained by threat of force in violation of international law. For those of you who are movie buffs, the fictional character, Colonel Jessup, played by Jack Nicholson in the film A Few Good Men, was the commander of the U.S. Naval Base in Guantánamo.

My prior law firm, Dorsey & Whitney, was contacted by a human rights organization to represent one of the groups of detainees, who were from the country of Bahrain. I volunteered as one of the lead partners on the matter. It was the position of the Justice Department that the Guantanamo Bay Detention Camp could be considered outside U.S. legal jurisdiction. And, captives from the Afghan War started to arrive at Guantanamo in January 2002. The Bush administration asserted that detainees were not entitled to any of the protections of the Geneva Conventions. Along with other law firms that represented other groups of detainees, we filed petitions for writs of habeas corpus to seek to obtain the release of the Bahraini detainees. The District of Columbia District Court ordered that the Justice Department provide us with access to our clients in Guantánamo. I had to obtain security clearance to make the trip. At the time I lived across the street from a recently installed federal judge. So, my neighbors who had visits from the FBI concerning the candidate for a lifetime federal appointment, also had visits from the FBI about me.

My trip to Guantánamo was one of the most interesting experiences of my life. I was required to sign an extensive confidentiality agreement in order to go to Guantánamo, and I am not at liberty to discuss much of what occurred there. However, others have written extensively about their experiences, if you would like to read about them. Due to conflicts that developed when I moved to Arnold & Porter in 2005, I needed to withdraw from the Guantánamo representation, but the Bahrainis were released and returned to their native country some time thereafter. This representation was not about winning or losing. And it certainly was not about my agreement with the religious or political beliefs of those incarcerated at Guantánamo. It was about access to justice and I was simply appalled that our country was seeking to deprive a class of persons held in custody by our armed forces from having access to our federal courts.

Arnold & Porter LLP

As I indicated earlier, I moved to my current law firm, Arnold & Porter, in 2005. Arnold & Porter has a substantial connection with the College of Law. I am the Administrative Partner
of Arnold & Porter in the New York office, and Richard Alexander, who graduated from the College of Law a year ahead of me in 1982, is the Managing Partner of the entire firm. Another one of our senior partners, Pat Doyle, is a Syracuse alumnus, and we have many associates who are Syracuse alumni.

One of the reasons why I was attracted to Arnold & Porter was its commitment to pro bono. Our pro bono work is the stuff of legends. Arnold, Fortas & Porter (as the firm was then known) was the only major law firm in the United States willing to represent the victims of McCarthyism. In 1950, Senator McCarthy made a false charge that an Asian affairs expert named Owen Lattimore was the “top Communist espionage agent” in the country, thus making Lattimore one of the most reviled men in the country. Within hours, future Supreme Court Justice Abe Fortas (soon joined by Thurman Arnold) signed on for a bitterly protracted legal battle, including the longest ever grilling of a single person by a congressional committee, as well as an indictment for perjury because Lattimore denied being a Communist “sympathizer.”

The firm ultimately defeated all of these charges, and its courage in taking Lattimore’s case brought numerous other victims of McCarthyism to our door. At their height, our lawyers were devoting approximately half of their working hours to such pro bono cases. Our founders’ stand for justice set a standard for commitment to public service that has been a core value of our firm ever since.

The most famous chapter in our pro bono history soon followed. In the early 1960s, the Supreme Court appointed Abe Fortas to represent a poor drifter named Clarence Earl Gideon, who had been convicted of burglary after his request for a court-appointed lawyer was denied. After hearing what Justice Black later said was the greatest oral argument he ever heard, the Supreme Court issued its historic decision in Gideon v. Wainwright, creating an important right that all Americans now recognize — the right of all persons accused of serious crimes to be represented by counsel.

I’ve been involved with a number of pro bono matters at Arnold & Porter, including, for example, supervising teams of associates prosecuting prisoners’ civil rights trials. In 2006, I led a team of Arnold & Porter lawyers that provided assistance to the Commission on Safety and Abuse in America’s Prisons in the preparation of a comprehensive report regarding prison conditions. An Arnold & Porter case that I wanted to highlight for you is the Troy Davis case.

Troy Davis is the inmate who was executed by the State of Georgia earlier this month. I suspect that most of you have heard the facts. Let me provide you with a brief summary that was prepared by Phil Horton, one of my partners, who was part of the legal team that handled the case:

There was no physical evidence. None. Seven out of nine eyewitnesses recanted their testimony — leaving only one witness who has disappeared and the state’s star witness who cannot recant without confessing to murder. A new eyewitness came forward in 2010 and identified the alternative suspect — a member of his own family. Since that time, the new eyewitness has been disowned by his family for coming forward. The prosecution relied on bogus forensic evidence that was later discredited. And then there was the tragically botched
police investigation. It goes on and on. Within the last few years, multiple jurors on Mr. Davis’ original trial — the same ones who sentenced Mr. Davis — pleaded with the State of Georgia to grant clemency and commute Mr. Davis’ execution.

I can assure you that the Arnold & Porter team never forgot about the victim of the terrible crime that occurred more than twenty years ago, for which Troy Davis was wrongfully convicted. Officer Mark MacPhail — a 27 year-old police officer and father of two — who was shot dead while going to the aid of a homeless man he never knew.

I’m sure by now, you all know how the case came out. We had been successful in an initial appeal to the Supreme Court two years ago because the Court ordered the District Judge to hold a hearing with respect to the new exculpatory evidence that had been uncovered. But the District Judge refused to alter the result, and all later appeals were unsuccessful. The Georgia Board of Pardons and Paroles held a secret vote, where we thought we had a chance of having Troy Davis’ death sentence commuted to life imprisonment. There were reports that the voting was 3-to-2 against us — one vote short of saving Mr. Davis’ life. Then, there was a last-ditch final appeal to the U.S. Supreme Court, to no avail — although the Court waited four hours before rejecting it, an unusually long time based upon prior practice.

In an email sent by my partner Phil Horton, after Troy Davis was executed, he quoted from Theodore Roosevelt’s famous “Man in the Arena” speech about the work of the Arnold & Porter team:

“\textquote{The credit belongs to the man in the arena, whose face is marred by dust and sweat and blood; who strives valiantly, who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at best knows in the end the triumph of high achievement, and who at worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat.”}\textquoteend

I am so proud of the work done by my partners and colleagues on the Troy Davis case, and so proud to be a member of a law firm that took on such a case — and will continue to seek access to justice for those wrongfully accused and convicted.

Now, on to NYCLA. The reason that I was able to take on the responsibilities as NYCLA President is because of the support of Arnold & Porter. NYCLA and I are very appreciative of that support.

NYCLA

Located in lower Manhattan with a membership of more than 9,000 lawyers, judges, academics and law students, NYCLA was founded in 1908 as one of the first major bar associations open to all lawyers, without regard to religion, race, gender or ethnicity, and with a mission to reform our legal system and expand access to justice.
Since its inception, NYCLA has championed the causes of many who have been denied such access. NYCLA operates numerous pro bono programs offering legal advice and representation to low-income persons and advocating for adequate government funding for legal services for the poor in both criminal and civil matters.

Before discussing NYCLA’s pro bono programs, I’d like to share some alarming statistics I read in The New York Times (on September 22, 2011) regarding the poverty rate of New Yorkers. First, I’d like to ask you: What do you think is the federal poverty threshold for a family of three? According to the Census Bureau, the 2010 federal poverty threshold for a family that size is $18,310.

Now, according to the Times article about the Census Bureau’s 2010 American Community Survey, “From 2009 to 2010, 75,000 New York City residents were pushed into poverty, increasing the poor population to more than 1.6 million and raising the percentage of New Yorkers living below the official federal poverty line to 20.1 percent, the highest level since 2000... The 1.4-percentage-point annual increase in the poverty rate appeared to be the largest jump in nearly two decades.” The study also reported that poverty among children under 18 rose 2.9 percentage points, to 30 percent. All told, in 2010, more New Yorkers depended on some form of public assistance than in 2009, and a record 1.8 million residents — nearly one in five households — are now relying on food stamps.

How are our fellow New Yorkers coping? Not very well, I’m afraid. As poverty levels rise, consumer debt cases are on the rise as well and overwhelming court dockets. In fact, the New York City Civil Court has reported that these cases now exceed landlord/tenant cases – a first-time development. Moreover, the vast majority of debtor-defendants cannot afford representation and legal services organizations have limited capacity to assist them. Some advocates estimate that over 95 percent of consumers defend themselves in Civil Court debt-collection cases. What has the organized bar done to assist these litigants?

Let’s take a look at NYCLA’s pro bono programs, which, for more than 20 years, have provided access to justice to low-income New Yorkers. This past year, I’m happy to report, our dedicated group of volunteer attorneys have assisted more than 1,200 individuals.

One pro bono program, Manhattan CLARO, which is an acronym for Civil Legal Advice and Resource Office, addresses the problem New Yorkers are having with consumer debt issues. Volunteer attorneys from NYCLA provide advice to these litigants and, to make themselves more readily accessible, they meet with litigants in lower Manhattan’s New York Civil Court.

In addition, one of our most popular programs and our oldest one is the Legal Counseling Clinic. Since 1997, volunteer attorneys have provided counseling to clients in the areas of family, employment, consumer bankruptcy and landlord/tenant law. Clinics are held from October through May, four times a month. Mentors, who are experienced in the four practice areas, are available by telephone on each clinic night to assist volunteer attorneys.
Finally, our most unique program is Project Restore. I say “unique” because it provides representation to individuals with misdemeanor or felony convictions who have been denied vocational licenses by the New York Department of State.

One of the things that our members find valuable is that those who’d like to volunteer in any of these programs can receive free training. This gives attorneys an opportunity to learn about an area of the law he or she may be unfamiliar with and, at the same time, assist individuals who have nowhere else to turn.

Since becoming NYCLA’s President in May, I’ve created two task forces – one is in the process of investigating the effect judicial budget cuts have had on the administration of justice. The other task force is gearing up to provide members with the opportunity to represent the indigent and disadvantaged who are seeking representation in civil cases.

The first one, the Task Force on Judicial Budget Cuts, has been looking into the impact of the current fiscal year’s $170 million in judicial budget cuts has had on the court system. This Task Force has already released two well received reports, both of which have concluded that the administration of justice has been detrimentally affected by the budget cuts, despite the best efforts of able and dedicated court administrators and staff. While there are savings from the cuts, they clearly carry increased financial and other costs to the public. Undoubtedly, the price for access to justice has increased. The Task Force will conduct a more in-depth and comprehensive investigation over the next several months, which will include a public hearing at NYCLA in December and the preparation of a more comprehensive report on the impact of the budget cuts after more time has passed and the longer-term impact can be more fully assessed.

The second task force, the Task Force on Unemployed and Transitioning Lawyers, will train unemployed lawyers. We’ll offer them opportunities to handle cases and the idea is (and I know this is going to be difficult and it’s not going to happen overnight) to have NYCLA lawyers supervise the unemployed lawyers in trying cases. We want these lawyers to go out there and help the needy in representations before courts and other tribunals. This program, which in effect will be a civil Gideon program, provide valuable experience to unemployed lawyers and assist them in procuring employment. It also will assist the courts and obviously be very useful for the unrepresented.

Conclusion

In conclusion, it is critically important for the sake of our democracy that prospective attorneys like all of you make a commitment to do pro bono work and to improve access to justice. There is another excerpt from Teddy Roosevelt’s “Man in the Arena” speech that is apt here:

“You and those like you have received special advantages; you have all of you had the opportunity for mental training; …. To you and your kind much has been given, and from you much should be expected.”
As I challenged you at the beginning of my remarks, “When in doubt, do something.” Whether you’re seeking to protect environmental rights, gay rights or veteran’s rights, do something. Whether you’re representing an elderly person in preparing a Will or a tenant being evicted from her apartment, do something. And whether you’re representing an accused in a misdemeanor theft case or an inmate on death row, do something.

Unfortunately, there are more Troy Davises out there. Maybe next time the deciding vote in the parole board will be to spare an innocent life. Maybe next time the Supreme Court will step in and halt — not merely delay — an execution.

You are the future of our legal profession. Please make the College of Law proud. Thank you for your time and attention.