Legal Services and the Importance of Its Relationships with the Bench and the Bar

Remarks made on May 29, 2003 by Judge Joy Flowers Conti at the Pennsylvania Legal Services Statewide Conference.

Good morning. It is a pleasure and a privilege to be with you today and to share with you a few insights on the relationships among legal services, the Bench and the Bar.

You will be considering a lot of ideas during the course of this conference. I will share with you a few of my insights gleaned from my service as one of the past co-chairs of the Pennsylvania Bar Association’s Task Force on The Delivery of Legal Services to the Needy, Part II. It is one thing to discuss new concepts and it is another to carry them out. From China comes a fable of a wise woman noted for her insight and ability to solve problems. One day a merchant came to her seeking advice for a problem in his accounting department. The merchant said: “I have 6 workers and 6 abacuses but my needs have expanded to the point where I need a 20% increase in output but cannot afford the capital investment of another person and another abacus. Even if I could, one person would not be enough and two people would be too much.” The wise woman pondered the problem for several days and finally summoned the merchant. She said: “The solution to your problem is simple, each of your present accounting staff must grow another finger on each hand – this will increase your abacus output exactly 20% and will solve your problem.” The merchant smiled – his problem was solved. He started to leave, paused, and looked at the old woman. “Old wise one,” he said, “you have truly given me the solution to my problem. But, how do I get my people to grow extra fingers?” The wise woman puffed on her pipe, “Hmm, that’s a good question – but alas I only make policy recommendations. The details of the execution are up to you.”

I often felt that when I was a member of the practicing bar and since I had never been a full-time legal services professional, that my role and the role of the bar by and large was one of making policy recommendations. The implementation and execution of those policies mainly falls to those professionals like you who are directly involved on a full time basis in legal services. I am sure there are many times when you feel you needed six fingers to address the needs of those you serve. So while I may make and provide insights to you I realize that there will be shortcomings in that policies can remain only something by which to be guided. Your role is to help the bar and bench adopt appropriate policies that can work – not ones that need six fingers rather than five – which we all know is an impossibility.

When the Task Force of which I was a co-chair was organized by the then president of the Pennsylvania Bar Association, Leslie Miller, we were charged with reviewing what the bar had done many years before in formulating a series of recommendations. We reviewed whether those recommendations had been implemented. If not implemented, we considered whether the recommendations should be pursued, changed, modified or abandoned. As a result of our Task Force there was a great deal of energy and enthusiastic support provided which resulted in a three-pronged approach. One was to focus on whether members of the bar should be required to
report on their pro bono services. Second, whether and how statewide participation by members of the practicing bar in pro bono programs could be advanced and third, whether alternative sources for funding legal services programs and pro bono programs could be structured either through contributions by the bar or legislation.

The first prong of the Task Force ultimately was not pursued. The second prong was aggressively pursued and as part of that effort the hiring of a Pro Bono Coordinator by the Pennsylvania Bar Association was achieved. David Trevaskis, the Pro Bono Coordinator, is here today. He is doing a remarkable job and needs to be commended for his efforts. Prior to his hiring, for a number of years, to my recollection, the position had not been filled. The second prong of the Task Force work is still a work in process. That task will be assumed by the Pennsylvania Bar Association’s Legal Services to the Public Committee.

The final prong of the Task Force was to look at funding mechanisms for legal services both for pro bono and for legal services organizations.

As president of the Allegheny County Bar Association in 1993, I had the task of continuing to implement a project to reach out to lawyers and establish a program under which they could volunteer their services to the poor. That program was known as “Project Challenge.” Unfortunately, it was a program that was started without a plan for financial implementation. As a result we had thousands of lawyers signed up to participate in pro bono programs but had a great deal of difficulty in establishing the structure for the program to work – meaning hiring persons to do intake, to do follow-up and to assure compliance with quality standards for the delivery of the pro bono services. As a result I, in my term as president, looked to various fundraising techniques, such as car raffles, a silent auction, and a variety of other mechanisms all of which required extensive commitment of time and resources by lawyers to raise the money rather than devoting their time and energy to providing pro bono services. While we met with some success with those fundraising endeavors, they were not consistent, dependable funding sources. Because of that experience when I agreed to serve on the Task Force I knew that for pro bono to work on a statewide basis, there needed to be some established mechanism for funding. As a result I agreed to head that prong of the endeavor.

We revisited what the original Task Force had recommended, which was a surcharge add-on to various filing fees. That kind of fee would provide a viable, repetitive source of funding to support programs on an on-going basis. In order to convince the legislature that that type of funding was important and that the bar recognized its importance, we recommended that there be a mandatory assessment on lawyers primarily to support pro bono services programs across the state. While the Supreme Court did not approve mandatory assessments, the court did permit voluntary contributions to be made by each licensed lawyer on an annual basis. Funds have been raised through that approach, although not in amounts which mandatory assessments would have achieved. The Access to Justice Act, providing a source of funding from certain filing fees, was a direct result from the combined initiatives of the Task Force and various legal services organizations across this state. I am sure you are aware of the law.
Looking back over the process of the Task Force we can ask ourselves, why did it work? It worked because there was a demonstrated need that was reflected in the Task Force’s report. To demonstrate the need, we reached out to people like Sam Milkes and Al Azen, who served on the Task Force, and others who were experienced in legal services throughout the state. They were able to document the need for legal services for the poor that were not being met. We also reached out on a local level to members of the bar. Each of the three co-chairs went and visited numerous local bar associations. We were geographically divided eastern, middle, and western part of the state. I had the western part of the state and personally called on and met with a number of local bar associations. Reaching out on the local level was extremely important to obtaining the support of the bar overall to recommend these measures as the policy of the Pennsylvania Bar Association. There was also a continuous commitment from bar leadership on both the state and local level. Finally, a crucial factor was knowing the legislative process and working the legislative process to achieve passage of the bill, which finally became the Access to Justice Act.

It will be up to legal services and the bar in the future to meet the challenge of continuing to demonstrate the need, to reach out on a local level, to maintain commitment from bar leadership and to continue to understand and be involved in the legislative process. For future success there are three “Bs” you have to be mindful of as a professional involved in legal services. The “Bs” are matters of common sense and will be a key to success for maintaining current funding and for obtaining additional funding so that the poor in this commonwealth will have access to legal services. What are those three “Bs”?

First, you must “be” visible. Being visible means being visible in your legal community and in your public community. People need to know that you exist and what you do. They can only know that if you are visible.

Second, you must “be” supportive. Being supportive means that you must support your local and your state bar. Being supportive also means that you have to work in concert with the bar so that as the professional providers of legal services you assist those attorneys who want to fulfill their professional responsibility to provide pro bono services.

The third “B” is that you must “be” involved. You need to be involved on the local and state level with organized bar associations in other than pro bono activities. If you are, the bar and bench will know who you are, they will know what you do and you will be making contributions beyond legal services. There are many fine examples of involvement in the room here today. Bob Racunas from Pittsburgh and Cathy Carr from Philadelphia are prime examples of legal services professionals who are involved in bar association activities. People in their local legal communities are aware of what they do in legal services and their involvement in the bar makes it easier to obtain the commitment from bar leaders and the bar in general for the support of legal services organizations.

One other concept that I suggest be discussed – is the holistic movement for the providing of legal services on a pro bono basis. The need for a holistic approach is captured in a selection
from *A Patriot's Handbook*, which contains songs, poems, stories and speeches selected and introduced by Caroline Kennedy. The selection is from a ten-year-old boy, David Bright. In 1986 he wrote the following:

My name is David Bright. I am ten years old. I am homeless. I am often hungry. Right now I live in the Martinique Hotel. The Martinique is a mad house. The hallways are dangerous. Many things could happen to you while you’re in the hallways. Like you could be shot or raped. The roaches and rats are a big problem too. But being raped is worse. There are people who rape little boys in the hallways.

I am often hungry because I don’t get enough to eat. Homeless kids are taken to schools far away. When the bus comes late I can’t even get breakfast at school. When I arrive the bell rings, then breakfast just stops. I just can’t think in school when I’m hungry. My mind just stops thinking and this can’t go on forever. That’s because I want to learn. I want to get a good education. Learning is fun for me.

There are too many little kids in the hotel who never go to school. There just is not enough room in the schools for them. Just like there’s not enough homes for poor children and not enough food.

When I grow up I will be the President of the United States. When I am the President every American will have a home. Every American will have something to eat every day. Everyone in America will have a little money in his pocket. When I am President no ten-year-old boy like me will have to put his head down on the desk at school because it hurts to be hungry.

Many of the clients you represent may face situations like that faced by David Bright and his family. While he wrote about becoming the President of the United States and solving the problems of his world, it is actually lawyers and legal professionals like you in legal services who help the poor deal with problems faced by David Bright, such as housing, support, income maintenance, health and individual rights. David Bright’s aspiration to help the poor could be fulfilled if he became a legal services professional.

Tanya Neiman is the Director of the Volunteer Legal Services Program of the Bar Association of San Francisco. In 1988, two years after David Bright wrote about his situation as a homeless child she is reported to have founded the Homeless Advocacy Project. Ms. Neiman, trained as a lawyer, realized that legal solutions were not the total answers typically needed by homeless people and thus believed the holistic approach to legal services for the poor needed to be implemented. Her clients needed food stamps and other programs to address the root causes of their problems. Therefore, she knew that delivery of non-legal services may sometimes be necessary in order to reach those root causes. It does not mean that the lawyer provides the
service, but rather the lawyer works in concert with social service agencies and directs the client to the service providers who can help them.

An attorney at Strook & Strook & Lavan who headed that firm’s pro bono efforts and used the holistic approach said that his firm modeled its pro bono program on its commercial practice. The firm takes a 360° view of the client and tries to meet all of the client’s needs. It takes the same kind of approach to pro bono services – striving to help the client meet all his or her needs. That kind of approach might be helpful to solving problems faced by the poor such as David Bright. Certainly as a provider of legal services you cannot do it all and you cannot do it alone. What will help is a combination of your services and when you cannot provide the legal services, the pro bono services of the volunteer lawyers, and the services of social services providers. Working together with social service providers may make a difference in a lot of lives. I am sure that many of you already use the holistic approach. The education of the bench and the bar about the approach, however, is needed. That is a challenge to be met and I encourage you to think about whether such an approach might be beneficial and how it can be implemented in Pennsylvania.

Finally, now that I have become a judge, I need to ask: What can a judge do? Given the ethical limitations on a judge being able to provide legal services, the role of the judge should be at least to respond to requests to speak at occasions like your conference. A judge cannot compel attorneys to provide services and cannot order the legislature to appropriate funds, but a judge can give consideration to the pressures that pro bono lawyers have. Judges may support the work of legal services by contributing money, by attending award receptions, teaching at training seminars, and also by saying thank you. That’s what I am here to say to you today. Thank you for your services. Your contributions reflect one of the highest callings in the practice of law. You devote yourself to helping those who cannot afford counsel. Thank you for the privilege to address you today and most of all thank you for all you do. God bless you.