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Pro Bono in Times of Crisis: Looking Forward by Looking Back

Cover Page Footnote

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PRO BONO IN TIMES OF CRISIS; LOOKING FORWARD BY LOOKING BACK

Deborah Rhode*

The 9/11 terrorist attacks revealed much that is best in the American people, and lawyers were no exception. As Justice Judith Kaye notes in her Forward to the report *Public Service in a Time of Crisis*, this was “the Bar at its finest . . . thousands of lawyers, paralegals and staff, hundreds of thousands of hours enthusiastically volunteered for the public good.”¹ Yet while the profession’s response offers much to celebrate, it also offers no grounds for complacency. What attorneys did—and equally to the point—did not accomplish points up the gap between our ideals and institutions. Thousands of New York lawyers gave generously at a time of crisis. Thousands more did not. Of those who did volunteer, the average time commitment was less than fifty hours—under an hour a week for the year.² The challenge remaining is to understand what accounts not just for the bar’s generous contributions, but also for their absence. Our goal must be to ensure that especially, but not only in times of crisis, the vast majority of attorneys see public service as a professional responsibility.

To that end, this essay puts the New York experience in a broader context. The discussion that follows draws on findings from my own recent study, *Pro Bono in Principle and in Practice*, which provides the first comprehensive national data on the forces that influence lawyers’ public service.³ Drawing on a sample of some 3,000 attorneys, the survey analyzes the workplace and law

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1. Hon. Judith S. Kaye, *Foreword*, in ASS’N OF THE BAR OF THE CITY OF NEW YORK FUND, INC., ET AL., *PUBLIC SERVICE IN A TIME OF CRISIS: A REPORT AND RETROSPECTIVE ON THE LEGAL COMMUNITY’S RESPONSE TO THE EVENTS OF SEPTEMBER 11, 2001*, at 5 (2004), reprinted in 31 *FORDHAM URB. L.J.* 831, 833 (2004).

2. ASS’N OF THE BAR OF THE CITY OF NEW YORK FUND, INC., ET AL., *PUBLIC SERVICE IN A TIME OF CRISIS: A REPORT AND RETROSPECTIVE ON THE LEGAL COMMUNITY’S RESPONSE TO THE EVENTS OF SEPTEMBER 11, 2001*, at 48 (2004), reprinted in 31 *FORDHAM URB. L.J.* 831 (2004) [hereinafter *ABCNY FUND ET AL.*].

3. Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 *J. LEGAL EDUC.* 413, 414 (2003), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=458360.

school experiences that affect pro bono contributions. Its findings generally are consistent with the New York case history. Taken together, these two studies offer useful insights about what motivates and sustains lawyers' public service. Moving forward generally requires looking back, and these reports help clarify the challenges we face.

I. LOOKING BACK

The 9/11 terrorist attacks left in their wake thousands of New Yorkers with obvious urgent needs. Many individuals who lost family members, housing, and employment required legal assistance as well as other social services. To meet those needs, lawyers established an impressive system for comprehensive representation described in the report.⁴ About 3000 attorneys who volunteered to help received training from the city bar; some estimates suggest two to three times that many practitioners may have volunteered through other organizations.⁵ Yet out of a state bar of some 60,000 lawyers, that participation rate leaves much to be desired. And we know regrettably little about those who served, and even less about those who did not. Only about ten percent of lawyer volunteers completed the bar's questionnaire on their experience, and no information is available concerning those who failed to respond to requests for assistance.⁶

Of the relatively small number of participants in the survey, most described their motivations for service in highly general terms. About four-fifths said that they "wanted to help"; slightly over half felt that it was the "right thing to do," or "the best way [they] could help."⁷ Only a small number cited less selfless motivations: sixteen percent said they were asked to serve; nine percent indicated that they wanted the experience; and seven percent acknowledged that "work was slow."⁸ What these responses fail to tell us is why *these* lawyers wanted to help while most of their colleagues did not. It is equally unclear what other factors in the volunteers' workplaces may have contributed to their willingness to serve, such as their firms' policies and practices concerning pro bono assistance.

4. See ABCNY FUND ET AL., *supra* note 2, at 840-68.

5. *Id.* at 840. Estimates of the total number of volunteers come from a telephone interview with Matt Moore, Consultant to the Bar Association of the City of New York, November 25, 2003, and email correspondence.

6. *Id.* at 912.

7. *Id.*

8. *Id.* at 913.

My own research concerning public service underscores the importance of both personal characteristics and external influences. An overview of studies on altruistic behavior suggests that two character traits appear most significant in motivating charitable activity: a capacity for empathy and a sense of human or group solidarity.⁹ Volunteers generally seem able to identify with others and to see themselves and those whom they help as part of a common social condition. Such feelings of responsibility and empathy are strongest among members of individuals' immediate community or groups with whom they share some key characteristic, such as race, ethnicity, religion, or sex.¹⁰ Lawyers who assist public interest organizations often report a feeling of responsibility to give something back to others, especially those united by some common bond or history of subordination.¹¹

So too, may a general sense of civic obligation, or a symbolic link between a particular needy group and broader national cause, widen an individuals' sense of moral community. For example, in Holland and Denmark during World War II, efforts to rescue the Jews from Nazi persecution came to seem emblematic of national resistance; many rescuers were motivated by a sense of patriotic duty and the need to protect national integrity from fascist oppression.¹²

Similar considerations were clearly at work in the aftermath of 9/11 terrorist attacks. The outpouring of assistance for victims by New York lawyers, as well as other local groups, was fueled partly by the proximity of tragedy, a sense of common identity, and a

9. NANCY EISENBERG, *ALTRUISTIC EMOTION, COGNITION, AND BEHAVIOR* 30-56 (1986); ALFIE KOHN, *THE BRIGHTER SIDE OF HUMAN NATURE: ALTRUISM AND EMPATHY IN EVERYDAY LIFE* 284-85 (1990); SAMUEL P. OLINER & PEARL M. OLINER, *THE ALTRUISTIC PERSONALITY: RESCUERS OF JEWS IN NAZI EUROPE* 165-67, 173-75, 228 (1988); Martin L. Hoffman, *Empathy and Prosocial Activism*, in *SOCIAL AND MORAL VALUES: INDIVIDUAL AND SOCIETAL PERSPECTIVES* 65-85 (Nancy Eisenberg et al. eds., 1989); Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 39 (Austin Sarat & Stuart Scheingold eds., 1998).

10. NANCY FOLBRE, *THE INVISIBLE HEART* 29 (2001); MICHAEL L. GROSS, *ETHICS AND ACTIVISM: THE THEORY AND PRACTICE OF POLITICAL MORALITY* 96, 129 (1997); KOHN, *supra* note 9, at 69; David Horton Smith, *Determinants of Voluntary Association Participation and Volunteering: A Literature Review*, 23 *NONPROFIT AND VOLUNTARY SEC. Q.* 243, 251-52 (1994).

11. David B. Wilkins, *Two Paths to the Mountain Top? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 *STAN. L. REV.* 1981, 1996-2002 (1993).

12. GROSS, *supra* note 10, at 132.

desire to demonstrate national strength and solidarity.¹³ It is noteworthy that a majority of the attorneys responding to the bar's survey reported little prior experience with pro bono work.¹⁴ As research from a wide variety of contexts makes clear, charitable assistance, particularly at a time of crisis, becomes a way to express deeply felt values; volunteers' self-esteem and moral identity often become bound up in helping others.¹⁵

Social influences are also important in shaping values and in encouraging or discouraging individuals to act on altruistic impulses. People pick up cues about appropriate behavior from moral reference groups, which are most often found in schools, workplaces, churches, communities, professional associations, volunteer organizations, and related social networks.¹⁶ Individuals vary considerably in terms of which groups are most critical and how much their approval matters. But as a general matter, giving behavior is often influenced by a desire to meet social expectations and conform to surrounding norms.¹⁷ Such norms and expectations also shape understandings of occupational roles. For many individuals, including lawyers, helping others is integrally bound up in a sense of professional, as well as personal identity.¹⁸ In my empirical survey, the most common motivations that lawyers cited for pro bono work

13. For an overview of lawyers' efforts, see the five part series in the New York Law Journal beginning on July 23, 2002, with Thomas Adcock, *After Sep. 11, Record Number of Lawyers Answer the Call to Take on Pro Bono*, N.Y. L.J., July 23, 2002, at 1.

14. ABCNY FUND ET AL., *supra* note 2, at 915.

15. Jerzy Karylowski, *Two Types of Altruistic Behavior: Doing Good to Feel Good or to Make The Other Feel Good*, in COOPERATION AND HELPING BEHAVIOR: THEORIES AND RESEARCH 397, 410 (Valerian J. Derlega & Janusz Grzelak eds., 1982); Janusz Reykowski, *Motivation of Prosocial Behavior*, in COOPERATION AND HELPING BEHAVIOR: THEORIES AND RESEARCH 358-63 (Valerian J. Derlega & Janusz Grzelak eds., 1982).

16. GROSS, *supra* note 10, at 133-35; *see also* RICHARD J. BENTLEY & LUANA G. NISSAN, *ROOTS OF GIVING AND SERVING* 9, 33-36 (1996); FRANCES OSTROWER, *WHY THE WEALTHY GIVE: THE CULTURE OF ELITE PHILANTHROPY* 14-16, 33-38, 59, 133 (1995); Lori Versteegen Ryan & Mark A. Ciavarella, *Tapping the Source of Moral Approval: The Moral Referent Group*, 38 J. BUS. ETHICS 179 (2002); Jane J. Mansbridge, *On the Relation of Altruism and Self-Interest*, in BEYOND SELF-INTEREST 133, 133-34 (Jane J. Mansbridge ed., 1990).

17. KOHN, *supra* note 9, at 210; Mark Richard Templeman, *A Life History Study of Social, Psychological, and Structural Determinants of Extraordinary Altruistic Behavior* 2 (unpublished dissertation, Purdue University, on file with the author).

18. EVA FOGELMAN, *CONSCIENCE AND COURAGE: RESCUERS OF JEWS DURING THE HOLOCAUST* 155-60 (1994); *see also* BENTLEY & NISSAN, *supra* note 16, at 9; Menkel-Meadow, *supra* note 9, at 40.

were the satisfaction that came from such work and a sense of obligation to pursue it.¹⁹

Social practices not only influence altruistic values, they also affect responsiveness to opportunities for assistance. Individuals are much more likely to provide help if others do so first.²⁰ In the classic bystander intervention studies, individuals are less likely to assist someone in distress if others are present and fail to volunteer aid. Such indifference serves both to diffuse responsibility for the failure to intervene and to suggest that intervention may not be necessary or appropriate.²¹ Research on altruistic behavior also makes clear that the costs and rewards of service play a critical role. Volunteer work is especially attractive when it presents opportunities to gain knowledge, skills, and personal contacts, and to enhance participants' reputation with peers, employers, and community members.²² Individuals also are more likely to contribute if they feel competent to help, if they have sufficient time and resources, if the beneficiary's need is urgent, and if the assistance seems effective.²³ Those who receive a specific request for aid have much higher rates of participation than those who do not.²⁴ Conversely, participation is likely to decrease where costs are high in relation to benefits because of the time required or other adverse consequences of involvement.²⁵

Findings both from my national survey and from the New York bar study confirm the importance of such situational factors. The factors that lawyers in my study identified as most important in encouraging pro bono work were employer policies and encouragement, and professional benefits such as contacts, referrals,

19. Rhode, *supra* note 3, at 447.

20. ROBERT B. CIALDINI, *INFLUENCE: SCIENCE AND PRACTICE* (3d ed. 1993).

21. Over a hundred studies have analyzed this effect since the classic study by BIBB LATANE & JOHN M. DARLEY, *THE UNRESPONSIVE BYSTANDER: WHY DOESN'T HE HELP?* 38, 41, 90 (1970). See KOHN, *supra* note 9, at 68.

22. ROBERT COLES, *THE CALL OF SERVICE* 93-94 (1994); OSTROWER, *supra* note 16, at 14-16, 33-38, 59, 133; see also E. Gil Clary & Mark Snyder, *A Functional Analysis of Altruism and Prosocial Behavior: The Case of Volunteerism*, in *INTRODUCTION TO PROSOCIAL BEHAVIOR* 7, 119, 125 (Margaret S. Clark ed., 1991); Menkel-Meadow, *supra* note 9, at 59 n. 57; Smith, *supra* note 10, at 243, 251-52.

23. BENTLEY & NISSAN, *supra* note 16, at 8-9; EISENBERG, *supra* note 9, at 207; Pearl M. Oliner, *Legitimizing and Implementing Prosocial Education*, 13 *HUMBOLDT J. OF SOC. REL.* 391 (1985-86); Smith, *supra* note 10, at 251.

24. VIRGINIA A. HODGKINSON & MURRAY S. WEITZMAN, *GIVING AND VOLUNTEERING IN THE UNITED STATES* 44, 67, 109-10 (1996); see also BENTLEY & NISSAN, *supra* note 16, at 8-9; OLINER & OLINER, *supra* note 9, at 135-36; Smith, *supra* note 10, at 251.

25. See Mansbridge, *supra* note 16, 137.

training, trial experience, and involvement with clients.²⁶ The factors that were most significant in discouraging public service were employer practices concerning credit and support, a lack of personal interest or confidence in such work, a failure to see it as a professional responsibility, previous negative experiences with pro bono clients, a lack of opportunities in the lawyer's field of expertise, or financial and family constraints.²⁷

Although the New York survey data are more limited, they underscore the importance of similar influences on pro bono involvement. First, the bar's active recruitment efforts, as well as its comprehensive educational materials and support structures, encouraged lawyers to provide assistance, even in areas where they had no expertise.²⁸ Almost three quarters of those responding to the New York survey found it easy to volunteer.²⁹ The availability of a well-designed manual, backup assistance from experts and mentors, and Probono.net's on-line library and message board allowed volunteers to gain competence without undue time and effort.³⁰ So too, the bar's model retainer agreements removed potential obstacles to involvement by allowing lawyers to limit their representation and thus control their time commitments and minimize potential conflicts of interest.³¹

In fact, most volunteers' commitment was relatively modest. About 30 percent reported 1 to 15 hours of service and another 30 percent reported 16 to 50 hours.³² For those who had the time and interest, however, more sustained opportunities for assistance were readily available. About a fifth of surveyed lawyers reported commitments of 51 to 100 hours; another fifth reported 100-to 500 hours; and 2 percent recorded over 500 hours.³³ Unsurprisingly, those who made significant commitments generally found the experience rewarding. About two-thirds of those who volunteered over 10 hours were very satisfied, compared with 40 percent of those who volunteered 10 hours or less.³⁴

26. Rhode, *supra* note 3, at 445-46.

27. *Id.* at 447-48.

28. ABCNY FUND ET AL., *supra* note 2, at 847.

29. Survey respondents were asked to indicate their level of difficulty in finding volunteer opportunities. On a scale of 1 to 5, where 1 was "very easy" and 5 was "very difficult," 70 percent of lawyers gave a 1 or 2 rating. *Id.* at 913.

30. *Id.*

31. *Id.* at 854.

32. *Id.* at 916.

33. *Id.*

34. *Id.* at 921-22.

Regrettably, the New York bar was unable to obtain systematic information about what made the experience less than fully satisfying, and what prevented other lawyers from volunteering. Nor do the survey findings offer much insight about what could encourage further public service. When asked how their experience might affect future pro bono involvement, about 40 percent indicated that they were more motivated to serve, and most of the remainder indicated that their motivations remained changed.³⁵ Of the factors that might prevent future contributions, the primary reason was “too busy” (66 percent of firm lawyers and 44 percent of solo practitioners).³⁶ Other explanations were: “already perform a significant amount of pro bono work” (30 percent of firm lawyers; 17 percent of solo practitioners); “practice doesn’t lend itself to pro bono work” (17 percent of firm and solo practitioners); and “not valued by law firm or company” (20 percent).³⁷

Such reasons are as much rationalizations as explanations, and they by no means tell the full story. Most important pro bono work of the past century has been performed by lawyers who were “busy”—but who made the time for causes that they valued. Thousands of lawyers have volunteered, as did the 9/11 participants, in practice areas outside their specialities. Some attorneys who have been in organizations that do not value public service have changed those organizations, or left them for others. A lack of commitment to pro bono work reflects a lack of individual as well as institutional responsibility for the quality of justice that America delivers, or fails to deliver, for the have nots.

My study offers a more detailed picture of what influences lawyers’ participation and what matters most in fostering public service. When asked about strategies that might encourage pro bono work, most lawyers recommended changes in employer practices.³⁸ The reasons are self evident. Only a quarter of surveyed attorneys reported that they were in workplaces that fully counted unpaid public service toward billable hour requirements, and only a quarter believed that such service was positively valued in promotion and bonus decisions.³⁹ Only about half of the lawyers reported that their employer provided full support in terms of staff and expenses for pro bono work, and about half were dissatisfied with the

35. *Id.* at 924 (finding 42 percent more motivated and 56 percent unchanged).

36. *Id.*

37. *Id.*

38. Rhode, *supra* note 3, at 450.

39. *Id.* at 451.

kinds of cases that qualified for support and billable hour credit.⁴⁰ In many workplaces, what counted as “pro bono” were favors for clients, friends, or partners, the “pet causes” of certain powerful practitioners, or projects designed primarily to enhance the organization’s image.⁴¹ If more lawyers had been in workplaces with more supportive pro bono policies, the post 9/11 relief effort might have enlisted more participants and greater time commitments.

One final limitation of that effort also bears emphasis: the lack of systematic quality control and evaluation of lawyer assistance. My point is not to criticize those who gave generously of their own limited time and resources to prepare this report, but it is to draw attention to a monitoring problem that is characteristic of many pro bono programs, including the 9/11 project. As the New York bar report acknowledges, “[i]t would have been valuable to have a system for obtaining feedback from clients concerning the effectiveness of the legal relief programs and the legal representation that they received.”⁴² The inadequacy of evaluation is typical—and for obvious reasons. Pro bono programs generally have resources that are far too limited to meet the need for assistance, and participants are often understandably reluctant to divert scarce time and funding to evaluation rather than direct service.⁴³ Moreover, many administrators have relatively little incentive to expose negative client experiences. Because the beneficiaries are not paying for assistance, and the demand for assistance vastly exceeds the supply, providers need not be especially concerned about encouraging repeat use or ensuring favorable recommendations to other potential clients.⁴⁴ And to the extent that pro bono programs are aimed at improving the public image of lawyers or the sponsoring organization, its leadership may see little reason to collect information that may undermine that effort.

So too, pro bono programs organized during times of crisis face special obstacles in establishing effective oversight and evaluation structures. The lack of time for planning, the need to focus on meeting urgent needs, the difficulties of locating displaced clients later, and the reluctance to intrude on the privacy of victims all compound the disincentives to monitoring services.⁴⁵ Yet in the

40. *Id.*

41. *See id.* at 453.

42. ABCNY FUND ET AL., *supra* note 2, at 938.

43. *Id.*

44. *Id.*

45. Telephone Interview with Carol Bockner and Maria Imperial, Bar Association of the City of New York (Nov. 25, 2003); *see also* Moore, *supra* note 5.

long run, ensuring the most cost-effective use of limited pro bono resources requires more systematic information about the experience of those who provide and receive assistance.

II. LOOKING FORWARD

Both the New York report and my own study conclude with detailed recommendations. Taken together, they provide a comprehensive set of best practices for providing pro bono assistance. Although a crisis setting poses some unique challenges, most of the effective responses are generalizable to other public service programs.

The first point that bears emphasis is the importance of collaborative efforts. In the 9/11 context, the success of the profession's efforts depended on close cooperation by bar associations, leading law firms, pro bono, public interest, and legal services organizations, community groups, and other social service providers.⁴⁶

Although the report does not showcase the role of law schools, they were, and should be, participants in relief efforts. While involvement of students may not seem a priority in times of crisis, the 9/11 experience demonstrates their value.⁴⁷ Many will need no more training than lawyers who lack expertise in the relevant specialties. Moreover, as my own study suggests, giving prospective lawyers a sense of the obligations and opportunities of public service should be a central priority of the legal profession.⁴⁸ Times of crisis offer a unique opportunity to engage students, and to provide the kind of pro bono experiences that will encourage future involvement. The same is true of law faculty. As legal ethics experts have often noted, professors can play a crucial role in inspiring service through their teaching, research, and community service.⁴⁹ Yet most legal academics fail to take that role seriously. Few law schools require or reward pro bono work by their faculty.⁵⁰ Fewer still insure that it is included in the curriculum. In my own study,

46. ABCNY FUND ET AL., *supra* note 2, at 931-32.

47. The role of the Pace Law School's relief effort was profiled at the AALS Section of Pro Bono and Public Service annual meeting in Washington in January, 2002.

48. See Rhode, *supra* note 3

49. See *id.*; see also David Luban, *Faculty Pro Bono and the Question of Identity*, 49 J. LEGAL EDUC. 58 (1999); Deborah L. Rhode, *The Professional Responsibilities of Professors*, 51 J. LEGAL EDUC. 158 (2001). For an argument about the importance of faculty attention to issues of professional responsibility generally, see David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76 (1999).

50. See Rhode, *supra* note 3; see also LEARNING TO SERVE: A SUMMARY OF THE FINDINGS AND RECOMMENDATIONS OF THE ASSOCIATION OF AMERICAN LAW

involving graduates of six law schools with different policies toward pro bono work, only one percent of responding lawyers reported that pro bono issues received coverage in orientation programs or professional responsibility courses.⁵¹ Nor did the vast majority of faculty convey significant support for pro bono work; only three percent of graduates observed a visible commitment.⁵² And none of the graduates reported awards for outstanding pro bono work, externship programs with adequate public interest placements, or visible dean and administrative support for public interest work.⁵³

Legal educators could and should do more. If faculty treat pro bono service as someone else's responsibility, they encourage future practitioners to do the same. For law schools committed to improvement, the 9/11 report is useful in several respects. Its description of bar efforts could make an inspiring case history for curricular coverage or orientation programs. The report could also suggest expanded public service opportunities and research topics. For example, faculty could help compile educational materials and conduct evaluations of pro bono programs. They could also supervise students and integrate pro bono placements into their existing courses.

Such opportunities are not limited to times of crisis on the scale of 9/11. The nation's legal aid systems are in a perennial state of crisis. Civil legal services programs can meet less than a fifth of the needs of eligible clients and less than one percent of the nation's law-related expenditures help the one-seventh of the population that is poor enough to qualify for assistance.⁵⁴ What passes for effective assistance of counsel in many grossly underfunded indigent criminal defense systems is a national disgrace. Crushing caseloads

SCHOOLS COMMISSION ON PRO BONO AND PUBLIC SERVICE OPPORTUNITIES (1998), available at <http://www.aals.org/probono/report2.html#programs>.

51. Rhode, *supra* note 3, at 457.

52. *Id.*

53. *Id.*

54. DEBORAH L. RHODE, ACCESS TO JUSTICE (Oxford University Press, forthcoming, 2004) [hereinafter RHODE, ACCESS TO JUSTICE]; Deborah L. Rhode, *Access to Justice*, 69 FORD. L. REV. 1785, 1785 (2001). For civil legal aid expenditures, see Alan W. Houseman, *Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward*, 29 FORD. URB. L. J. 1213, 1233 (2002). For figures used to calculate the federal legal aid budget per person in poverty, see U.S. CENSUS BUREAU, INCOME IN THE UNITED STATES 2002 (Washington, D.C., U.S. Dep't of Commerce, 2003) and OFFICE OF MANAGEMENT AND BUDGET, ANALYTICAL PERSPECTIVES: BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2003, at 680 (2003).

routinely prevent adequate investigation or trial preparation.⁵⁵ “Meet em, greet em, and plead em” is all too standard practice. It is a shameful irony that the nation with the world’s highest concentration of lawyers does so little to ensure that their services are available for those who need them most. The bench, the bar, and the law schools all need to collaborate more effectively in addressing the legal problems of those unable to afford assistance. It should not take a national tragedy to galvanize collective action.

Yet as the 9/11 campaign demonstrates, such tragedies can provide especially effective opportunities for mobilizing the bar, not simply to meet the urgent needs of the moment, but also to lay the foundations for broader change. This crisis, and the publications that have followed, invite our focus on the strategies necessary to engage greater numbers of lawyers in public service on a sustained basis. When overwhelming needs arise, a corps of committed volunteers and adequate support structures should already be in place. Comparable resources must also be available for the more routine but equally urgent daily needs of the poor. That, in turn, will require fundamental changes in the policies and reward structures of lawyers’ workplaces. More legal employers need to ensure that pro bono is a rewarding and rewarded experience.

Although we can be proud of the dedication of 9/11 volunteers, the bar’s overall record of service gives no grounds for complacency. The best available evidence indicates that the average pro bono contribution for the profession as a whole is about half an hour a week and half a dollar a day.⁵⁶ The New York experience invites a renewed commitment to do better. When asked why he volunteered to work on behalf of victims of 9/11, one volunteer responded, “[h]ow could [I] not?”⁵⁷ More lawyers need to ask themselves that question, and more bar efforts must focus on inspiring the same answer.

55. Alan Berlow, *Requiem for a Public Defender*, AM. PROSPECT, June 5, 2000, 28. For private practitioners, see DAVID COLE, NO EQUAL JUSTICE 83-85 (1999); JIM DWYER, ET AL., ACTUAL INNOCENCE 204 (2000); Marcia Coyle, *Hoping for \$75 an Hour*, NAT’L L. J., June 7, 1999, at 1, 18; Bob Herbert, *Cheap Justice in America*, N.Y. TIMES, March 1, 1998, at 15.

56. RHODE, ACCESS TO JUSTICE, *supra* note 54.

57. Findings from the Bar Survey Report, on file with the author.

