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Yvonee A. Tamayo

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Cover Page Footnote

Assistant Professor, Willamette University College of Law. J.D., Loyola University School of Law; B.S., Louisiana State University. I wish to thank Russell Pearce and Bruce Green for giving me the opportunity to present this essay at the 2001 Louis Stein Center Legal Profession Colloquium at the Fordham University School of Law. I also thank Steven Hobbs, Abbey Vanderbeek, and Ezra Van Negri for their support. Special thanks go to Meredith Merth for her valuable research assistance. Financial support for this research was provided by the Willamette University College of Law.

DOING GOOD WHILE DOING WELL IN THE TWENTY-FIRST CENTURY: ONE CUBAN'S PERSPECTIVE

Yvonne A. Tamayo*

What will it mean to practice law “in the interests of justice” in the twenty-first century? The interests of justice require that our profession perform more pro bono¹ services for those who cannot afford legal representation.² In this endeavor, lawyers must identify, for themselves, how they can do good while they do well.³ Clearly, one’s self-awareness and background is inextricable to this pursuit. For me, my immigrant status frames my perspective not only on doing good,⁴ but on doing well.⁵ A recent visit I made to Cuba confirmed this.

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1. I use the term “pro bono” throughout this essay to refer to the provision of legal resources to aid indigent persons. I exclude from this definition free legal work performed for family or friends and representation of religious, political, or civic groups that could otherwise afford legal services.

2. Studies have consistently shown that approximately three-fourths of the low-income population’s legal needs are not being met. In spite of this paucity of legal representation, nearly eighty percent of attorneys perform no pro bono work. See Tigran W. Eldred & Thomas Schoenherr, *The Lawyer’s Duty of Public Service: More Than Charity?*, 96 W. Va. L. Rev. 367, 389 n.93 (1993) (citing A.B.A. Consortium on Legal Services and the Public, 1990 Directory of Private Bar Involvement Programs 146-47 (1990)); see also Steven Wechsler, *Attorneys’ Attitudes Toward Mandatory Pro Bono*, 41 Syracuse L. Rev. 909, 913 (1990).

3. Deborah Rhode recently offered an insightful examination of the legal profession and called upon lawyers to improve the profession by increasing their pro bono commitments. See Deborah Rhode, *In the Interests of Justice: Reforming the Legal Profession* 48 (2000) [hereinafter Rhode, *Interests of Justice*]; see also Deborah L. Rhode, *The Pro Bono Responsibilities of Lawyers and Law Students*, 27 Wm. Mitchell L. Rev. 1201, 1202 (2000) (arguing that lawyers have a responsibility to meet indigent persons’ fundamental need for legal services).

4. By “doing good,” I mean using one’s legal skills to help those without access to the legal system obtain legal advice or representation.

5. I define “doing well” as an individual’s movement toward social and economic opportunities for herself, her community, and eventually other communities.

In this essay, I examine my cultural background and its role in shaping my perspective towards doing well. Next, I explore the ways in which my “cultural bilingualism” benefits, and impedes, my efforts at doing good. In conclusion, I suggest that increased self-identification and reflection on our individual commitment to pro bono work will enhance our collective efforts to serve the interests of justice.

At 10:15 p.m., March 17, 2001, Taca Airlines flight 8529 smoothly touched down at Jose Marti International Airport in Havana. I stepped from the plane onto the metal gangplank and inhaled deeply. The warm, humid air felt familiar, as if I had been away only a short time. Yet, I had not been on Cuban soil since my family’s hurried exit from Havana in 1960.

During spring break, I—along with twenty-nine of our law school’s faculty, alumni, and friends—attended a seven-day educational program in Havana entitled “Cuba for Law Professionals.”⁶ Because we were permitted entry to Cuba pursuant to a U.S. Treasury Department license requiring the program to contain a strong educational component, we obtained the cooperation of the National Union of Cuban Jurists, Cuba’s loose equivalent of the American Bar Association. The Union is allegedly a non-governmental organization comprised of Cuban law professors, lawyers, judges, researchers, and consultants that conduct conferences and symposia to further the development of the legal profession.⁷

Over four days, the Union presented to our group seven three-hour lectures on the Cuban legal system.⁸ The presentations were held at the Union headquarters, a nondescript white 1950s stucco building located in Miramar, a residential area of Havana. Probably a former residence, its first floor contained a small interior courtyard where we took ten-minute breaks halfway through each lecture. The breaks

6. Professor Michael Wise and I, along with the Willamette University College of Law Alumni Director, conceptualized and developed this program.

7. We were given a promotional pamphlet which stated:

The National Union of Cuban Jurists (UNJC) is a non-profit and self-financed non-governmental organization of Law professionals with its own juridical personality and a scientific-professional profile An important role in the [Union’s] professional activity is played by its Scientific Societies, nationwide associations created with the common purpose of contributing to develop the Legal Sciences and practice Law, as well as the professional qualification of their membership, requested by and granted to those jurists who maintain a salient professional performance and meet the admission requirements.

Nat’l Union of Cuban Jurists, National Union of Cuban Jurists: Non-Governmental Organization with Consultative Status in the United Nations (2001) (on file with author).

8. Our lectures were entitled the following: Introduction to Cuban History and Geography; The Cuban Legal System: Constitution, Election System; The Cuban Constitution; The Cuban Legal System: Penal Legislation and Procedure; Cuban Law Studies; Helms-Burton: Background; and Cuba-U.S. Relations.

were accompanied by welcome offerings of thick, black *café cubano* in thimble-sized paper cups and little golden rectangular cakes topped with a clear, sweet syrup.

Each day, our group heard Union members' lectures on the Cuban judicial system, penal law, family law, and U.S.-Cuba relations. I listened with rapt attention as our hosts delivered long and winding discourses *desbordandose*, or overflowing, with unrelentingly rigid thinking and stale ideology. Questions from our group often sparked circuitous "answers" containing preordained rhetoric unresponsive to the inquiry, almost always ending with a reminder that Castro's Cubans enjoy a high literacy rate and widely accessible medical care.

I noted that not one of the speakers brought written notes to aid in their presentations. I wondered why—then decided that decades of repetition, without change or innovation, adhered their respective discourses to memory, rendering written notes superfluous. I also observed that for emphasis, Union members often shook their right-hand index fingers in an up-and-down motion, a gesture for which Fidel Castro is widely known. By the third day, my internal response to the lectures was consistent: I vacillated between incredulousness at the message, contempt for the messengers, and pity for the human beings. In their well-worn clothes and dusty shoes, the Cuban "jurists" resembled old, tired puppets defending a failed social experiment that forty-one years prior had driven my family out of the country.

While in Havana, I attempted to visit my family's house, where I spent the first five years of my life. A woman answered my knock on the front door. She seemed to be of middle-age, and had a pleasant face. Nervously, I greeted her with *hola*. I quickly explained that this had been my family's home until 1960 when we left Cuba, and asked her if I could view the inside of the house. "*Por favor*", I continued, "*quiziera poder contarle a mi padre en Miami que visite nuestra casa en Cuba.*"⁹ She smiled, hesitated, and without a word slowly but deliberately closed the door.¹⁰

I was born in Havana, Cuba. My family immigrated to the United States on April 26, 1960, fleeing Fidel Castro's regime. For the next three years, we lived in Puerto Rico, where the Spanish language was comfortingly familiar. Soon thereafter, my family moved to New Orleans. There, I attended St. Louis King of France catholic school. I was eight-years old, spoke no English, and entered the fourth grade as the only Latina in the school. I can still feel the depth of my bewilderment, feelings of alienation, and general confusion that my

9. "Please, I would like to tell my father in Miami about my visit to our home in Cuba."

10. Our tour guide explained that Castro has frightened much of the Cuban population by "warning" them about an alleged plot by the U.S. government and exiled Cubans to reclaim the exiles' homes and evict the present occupants.

“outsider” status engendered during my first year in an American school.

In the United States, I was taught that acculturation and education were the key to doing well. The process of acculturation began with obtaining not only linguistic fluency but a broader “cultural bilingualism”¹¹ requiring immersion into the Anglo culture. Thereafter, I studied my classmates’ “American” ways: the girls’ hairstyles, the color and shapes of their backpacks, and the lunches contained in their brown paper bags. To the best of my ability, I mimicked them, hoping that their “American-ness” would envelop me until I emerged, masked behind my newly re-configured identity.¹²

My story is not unique. Numerous legal scholars of minority backgrounds have written about transcending, and integrating, their native identities within the linguistic, social, and legal culture of mainstream Anglo-America.¹³ Alice Abreu, a Cuban-born law professor, has vividly described the linguistic see-saw of her childhood as follows:

My parents valued bilingualism and figured that part of the silver lining borne by the Castro cloud would be that their children would become bilingual. My brother and I learned quickly, since we were forbidden to speak Spanish at home and had to make do with signs and Anglified approximations of Spanish words. As soon as we had mastered English, however, my parents changed the rules and English became the forbidden language at home so that we would not lose our fluency in Spanish. Later, when we lived in other countries, the pattern continued. If Spanish was the language we spoke at school, as it was in El Salvador and Argentina, we had to speak English at home. When we spoke English at school, as we did in Aruba, the rule was that we had to speak Spanish at home. At the time, I thought it was perverse that my parents denied me the

11. Other authors have written about “cultural bilingualism” in similar contexts. See, e.g., Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *Women’s Rts. L. Rep.* 7, 8 (1989) (examining how women and people of color navigate inside and outside the legal system); Shauna Van Praagh, *Stories in Law School: An Essay on Language, Participation, and the Power of Legal Education*, 2 *Colum. J. Gender & L.* 111, 141 (1992) (advocating “cultural bilingualism” in dealing with one’s “outsider” identity).

12. I borrow the “mask” metaphor from the work of Margaret Montoya. See Margaret Montoya, *Mascaras, Trenzas, y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 *Harv. Women’s L.J.* 185 (1994) (examining the role of cultural “masks” in “outsider” subordination); see also Leslie G. Espinoza, *Masks and Other Disguises: Exposing Legal Academia*, 103 *Harv. L. Rev.* 1878 (1990).

13. See, e.g., Espinoza, *supra* note 12; Leslie G. Espinoza, *Multi-Identity: Community and Culture*, 2 *Va. J. Soc. Pol’y & L.* 23 (1994) (critiquing legal language and its lack of accommodation for multi-identity speakers); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 *Minn. L. Rev.* 269 (1992) (analyzing the tension between cultural pluralism and “American” identity).

ability to speak in whatever language seemed easier. Now that I also value bilingualism, I know differently.¹⁴

Linguistic and cultural bilingualism has a powerful influence on many immigrants like myself and Professor Abreu. On this subject, I have noted:

[A]s a result of carrying two languages with and within me, different aspects of my self are fueled by internal correspondences rooted in my Cuban and American cultures. Although my transplantation from my native land forced me to create a new identity, the two languages within me cannot exist one without the other. Every day, they actively influence and shape my communication with the exterior world.¹⁵

Our stories reflect diverse experiences and varied backgrounds; however, immigrant lawyers' linguistic and cultural fluency consistently display perspectives influenced by navigating between two cultures: our own and that of mainstream Anglo society. During my visit to Cuba, I gained a more profound appreciation for the ways in which experience informs individual perspective. First, I realized that the dispensation by the Cuban "jurists" of seemingly endless rhetoric was, for many members of our group, mere political ideology. For me, it represented much more. In fact, the regime that gave birth to those political beliefs took my parents' home, and our lives, away forty years prior. Second, being denied entry into what was once my family's home symbolized a broader "outsider" experience: it cemented the notion that I could never return "home." Clearly, my perspective informs the meaning of doing well. As a result, I do well so that I may never lose another home.

Similarly, my perspective towards doing good is influenced, both positively and negatively, by my immigrant experiences.¹⁶ Cultural bilingualism has enhanced my ability to hear, see, speak, and touch the context of cultures other than my own.¹⁷ It has given me resilience, adaptability, and transcultural "flow," allowing me to better

14. Alice G. Abreu, *Lessons from LatCrit: Insiders and Outsiders, All at the Same Time*, 53 U. Miami L. Rev. 787, 790 (1999).

15. Yvonne A. Tamayo, "Official Language" Legislation: *Literal Silencing/Silenciando La Lengua*, 13 Harv. Blackletter L.J. 107, 121 (1997).

16. On the subject of how doing well limits lawyers' ability to do good, Deborah Rhode has observed: "Most lawyers want not only a comfortable lifestyle but also a supportive practice environment and socially useful work. Ironically enough, attorneys' success in achieving the first objective has limited their ability to achieve the others." Rhode, *Interests of Justice*, *supra* note 3, at 48.

17. For insightful discussions on "contextual lawyering," see Steven H. Hobbs and Fay Wilson Hobbs, *The Ethical Management of Assets for Elder Clients: A Context, Role, and Law Approach*, 62 Fordham L. Rev. 1411 (1994) (discussing elder law within the broader spectrum of aging, family, and community); Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 Cardozo L. Rev. 1613 (1993) (examining the influence of religious and ethical precepts on Jewish lawyers).

understand the social and cultural framework within which an indigent client's need for legal help arises.

Despite my ability to work with pro bono clients, I don't do enough of it. Why don't I perform more pro bono work? I could respond by citing my rigorous work schedule that requires balancing with an already-full personal life. The answer, however, is more complex. Pro bono work brings me face-to-face with persons that are not only "outside" the legal system in their inability to pay for legal representation but who are marginalized by their lack of financial, professional, educational, and social resources. Although I did not grow up poor, I deeply understand some of the hardships that indigent persons endure, particularly when they involve overcoming cultural barriers such as English language deficiency.¹⁸ As a result, pro bono representation is not just an abstract exercise in "helping poor people." For me, it is a vivid reminder of personal struggles that I would rather forget.

Recently, Professor Bruce Green opined that the bar should stop imposing on lawyers a fixed and universal notion of "professionalism."¹⁹ Instead, lawyers should be encouraged to act according to individualized professionalism codes.²⁰ Specifically, he suggested that a lawyer should answer, for himself, the question of what it means to conduct law practice in a highly professional manner.²¹ Because most lawyers agree on the importance of behaving "professionally," Professor Green suggested a lawyer should act according to his own individual standards of professionalism.²² One's own "moral compass," he concluded, is more effective in guiding professional behavior than institutionally-dictated professional values with which a lawyer may not identify.²³

I agree with Professor Green, and would apply his individualized notion of professionalism to lawyering in the interests of justice. Individualized commitment to pro bono work, however, can only result from self-examination of the reasons underlying why lawyers do not engage in more pro bono activity. In my case, pro bono clients mirror the struggles of my past. Identifying this inhibition enables me to confront my personal obstacles to pro bono work and strive to enhance my commitment. For all lawyers, understanding one's individual reasons for avoiding pro bono work requires such

18. See, e.g., Tamayo, *supra* note 15, at 107 (arguing that linguistic "silencing" results in oppression of immigrant groups).

19. Bruce A. Green, *Public Declarations of Professionalism*, 52 S.C. L. Rev. 729, 744 (2001).

20. *Id.*

21. *Id.* at 733.

22. *Id.*

23. *Id.*

introspection and self-reflection. Only then can we all enhance our collective efforts to do good while doing well.

Notes & Observations