

**UH Law Center/UH Writing Center Partnership:
Writing Diagnostic Assessment, Project 1
Reading, Fall 2008**

The readings attached will be used for the timed writing assessment you will take during Orientation. Please feel free to read them ahead of time, and to print a copy and bring it with you to the Writing Diagnostic Assessment.

1. El Paso Times (El Paso, TX), August 27, 2003

Attorney Andres Almanzan makes his living by defending businesses in court. But twice a year, he takes on something out of the ordinary for him -- handling uncontested divorce cases for the poor.

This practice is part of his mandatory participation in the El Paso pro bono project created nearly 21 years ago by the El Paso Bar Association. The program, which was among the first in the nation, requires attorneys in private practice to represent indigent clients in two domestic cases a year. "Pro bono" means lawyers provide their services free.

"This is a responsibility that we as attorneys and counselors at law have toward our respective community. If some don't do it, it's just that they don't make the time for it." [T]here is no law mandating attorneys to accept these cases. However, the Texas Supreme Court recommends that each attorney commit to at least 50 hours of pro bono work each year.

El Paso has about 1,200 lawyers. The pro bono program takes on about 1,000 cases a year, most them dealing with family law. Attorney Daisy Everhart takes on more than her share of pro bono cases. Everhart said she is impressed with the pro bono program because, even though there are no sanctions for not taking on the cases, most attorneys accept them.

2. Texas Lawyer, April 12, 2004

[T]he Legal Services Funding Workgroup says the state's legal-aid programs face an emergency. But the group can't recommend that the Bar allocate \$1.35 million to the Texas Equal Access to Justice Foundation [TEAJF] to alleviate the problem because the Bar doesn't have the funds. In December 2003, the Bar's Legal Services to the Poor in Civil Matters Committee requested that the Bar dip into reserves to fund legal services on an emergency basis after a subcommittee's study showed the three largest legal-aid programs faced a \$2.7 million budget shortfall this year.

Betty Balli-Torres, TEAJF's executive director, says the 2004 funding for the programs is still about \$700,000 less than last year. One reason for the decrease in the shortfall is the foundation received \$880,000 from Texas lawyers' 2003 voluntary contributions for legal services to the poor earlier than had been expected Although lawyers will be billed in May for a new mandatory \$65 fee to support pro bono services, Bar leaders aren't sure when that money will come in. [T]he fee will generate about \$1.7 million a year for civil legal services to the poor.

3. New York Law Journal, April 7, 2004

The 72,000-lawyer New York State Bar Association has voted in favor of a wider official definition of "pro bono" work. [T]he state bar's House of Delegates decided by an overwhelming voice vote that the term should include civic and charitable work as well as that done for the poor. Since at least 1990, the state court system has defined pro bono as providing legal assistance to those who could not otherwise afford a lawyer.

In January, the court system issued a report that an estimated 10 million additional hours of attorney assistance may be needed each year "to provide New York's poor with even a bare minimum amount of the legal help that they need." [T]he Office of Court Administration [OCA], is confident that "people of good will can sit down collaboratively and come up with a program that increases pro bono efforts overall, including a dramatic increase in the number of hours devoted to the poor." [T]he head of the Legal Aid Society's pro bono program, however, called the state bar's position "a tremendous step backward" in terms of providing the poor with equal access to the courts. "By allowing lawyers to satisfy their ethical obligation by doing things outside of the legal system," he said, "the state bar is turning away from the core ethical obligation to assist people in gaining equal access to the courts."

Prompting the state bar's action was a recommendation from the New York County Lawyers' Association. "There is a whole range of good works that lawyers undertake" that are not included in the court system's definition of pro bono . . . Lawyers work without pay on disciplinary committees, school boards and civic and charitable groups . . . Much of the work done on behalf of victims of the 2001 terrorist attacks would not fall within the court system's definition. [M]uch of the pro bono work done in county lawyers' programs is not narrowly focused on the poor. One program supplies volunteers, at the court system's request, to mediate fee disputes between lawyers and their clients. Another provides volunteers to help resolve matrimonial disputes." "The association is adamantly opposed to mandatory pro bono." The state bar also went on record as opposing mandatory reporting of pro bono activities.

In 1998, a commission appointed to examine a mandatory pro bono program recommended that New York lawyers be required to donate 20 hours of work a year. The commission report was never adopted but its definition of pro bono work was used in surveys from 1992 to 1994: "representation given to those who could not afford counsel; activities devoted to simplifying the legal process or increasing the availability of legal services to the poor; and professional services to non-profit organizations in matters designed predominately to address the needs of poor persons."

In 2002 a survey found that 46 percent of the state's attorneys that year had handled pro bono cases as defined [above]. The figure reported in the first round of surveys, from 1992 to 1994, was 48 percent. The 1997 figure was 47 percent. The proportion of attorneys in the 2002 survey who reported providing 20 hours of service, as recommended by the Administrative Board, was 27 percent, the same as in the 1997 survey.

4. New York Law Journal, February 27, 2004

Since the early 1990s, [New York lawyers' p]ro bono participation and output have remained unchanged, and lawyers continue to point to the same reasons for not volunteering.

This stagnation is perplexing because so much has been done in the last decade to improve the pro bono culture within the profession and to erase obstacles to volunteering. It is rare for law students today to graduate without having done some volunteer legal work, and a number of schools have gone so far as to institute a mandatory pro bono requirement. Before 1990, only a handful of law firms and bar associations had an organized pro bono effort. Today, just about every major firm and bar association has a pro bono policy and program, and many have hired full-time employees to coordinate the work.

. . . .

[B]y applying the data from the survey to the entire legal profession in New York, it is estimated that lawyers donate approximately 2.2 million hours of pro bono service a year. That is an impressive number by any measure. However, it is still important to understand why half of the profession did not contribute to that tally. That question has been asked in each survey, and the same top four answers have been given each time. Lawyers consistently cite a lack of time, expertise, resources, and malpractice insurance for not doing more pro bono work.

There is something wrong with this picture. . . . Almost every pro bono program now provides malpractice insurance for its volunteers as well as training and mentoring. Concern over a lack of resources is certainly valid, but that would hardly be an issue for lawyers who practice at mid-size and large firms, and many pro bono matters are not resource intensive.

Concern over a lack of time to do pro bono is probably the only obstacle that has actually grown worse over the years. Lawyers work harder than ever before, leaving little time for other interests. This is an issue that will always be with our profession, and it presents a serious challenge to doing pro bono. However, given our professional obligation to provide such services, we must find ways to deal with this issue, and we must find the time.

5. Texas Lawyer, August 18, 2003

As part of their annual State Bar of Texas dues for 2003, more than 17,000 attorneys donated in excess of \$1 million to help provide legal aid services to poor and low-income Texans, according to the Texas Equal Access to Justice Commission [TEAJF]. Lawyers' contributions for pro bono services become mandatory in 2004 under a provision in H.B. 599, the State Bar's sunset legislation, which the Legislature passed in May. The Legislature's decision to require attorneys to help pay for pro bono services came as funding from interest on Lawyers' Trust Accounts continued to decline. [A] spokeswoman for TEAJF[] says the group only has \$3.1 million available for legal

services grants to be awarded in 2005, down from \$3.5 million available for the 2004 grants.

6. Florida Bar News, August 15, 2003

Miami lawyer Marc Douthit happened to be in the courtroom the day a poor woman who loved a little boy like her own son said she needed a lawyer.

Geraldine Scott wanted to adopt James. She had cared for him since he was two months old, a cocaine-exposed baby without his biological mother. But when little James was two years old, the Department of Children and Families suddenly took the child away--simply because the agency said Scott was too poor to raise him, even though she had never taken a cent of public assistance.

"What makes us do it for free? Sometimes right is right," Douthit said. "When you stand there and see someone who is banged around the system and doesn't really have a place to turn, to me, it was either just stand there and do nothing or step up and do something!"

Do something he did, along with hundreds of hours of legal help from lawyers Fran Allegra, Alan Mishael, and Holland & Knight lawyers Bob Levenson and Lori Weems. In addition, there was a guardian ad litem on the case, as well as the GAL staff attorney Abbie Cuellar, with invaluable help from Louis M. Reidenberg, pro bono attorney for the GAL program.

In Weems' words, "it was a long battle with personalities and politics and everything else. It was ugly." On July 17, there was finally a happy ending to this long saga. In the 11th hour, the attorney for DCF agreed to allow Scott to adopt James, now four.

[Weems remembered] "once asking [my mentor] whether he thought pro bono should be mandatory. I had come from Texas, where we didn't have the requirement. He looked at me like I was nuts. He said it doesn't matter if it's written down. There is mandatory pro bono."