

Pro Bono Leads the Way

Metro Volunteer Lawyers Adds to America's Rich History of Pro Bono Service

BY RIC MORGAN

“Equal Justice Under Law” is carved in stone above our courthouse doors, and its guarantee of equal justice is enshrined at the very core of our enduring democracy. Yet access to justice requires access to lawyers, a luxury that often eludes our most vulnerable populations unless someone steps in to help. This article highlights the important work of America's pro bono lawyers, whose deep commitment to individual rights has been furthering equal justice and transforming society for more than two centuries.

The American Pro Bono Tradition

Long before the American Revolution, the tradition of pro bono service was deeply rooted in our legal profession, and it has remained so ever since. As far back as 1770, John Adams, Founding Father and later the new nation's second president, took on the pro bono defense of eight British soldiers prosecuted for what became known as the Boston Massacre.

In 1841, his son, former President John Quincy Adams, at age 73 and nearly blind, argued before the U.S. Supreme Court, providing pro bono representation for 53 illegally purchased African slaves charged with murder after their seizure of the slave ship *Amistad*. Adams won their freedom and contributed to the outlawing of slavery punctuated a few decades later by the passage of the 13th, 14th, and 15th Amendments.

In 1858, Abraham Lincoln represented defendant Duff Armstrong pro bono in an Illinois murder trial. Lincoln's resourceful impeachment of a key witness using the *Farmers' Almanac*, and his impassioned closing argument, won Armstrong's acquittal. The victory sealed Lincoln's reputation as a brilliant attorney and

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gave rise to his national prominence.

In 1925, a substitute school teacher named John Scopes was prosecuted for teaching evolution in a Tennessee public school. Scopes was defended pro bono by attorney Clarence Darrow. At trial, Darrow famously called the prosecutor, William Jennings Bryan (three-time Democratic Presidential nominee and former U.S. Secretary of State) to the witness stand to demonstrate that Bryan's belief in the literal historical accuracy of the Bible was unreasonable. Bryan's testimony and Darrow's withering cross-examination were carried on live radio, a first for its day. At the end of the eight-day trial, the jury took only nine minutes to return its guilty verdict and fined Scopes \$100. The verdict was overturned on appeal by the Tennessee Supreme Court. The “Scopes Monkey Trial” was a milestone for academic freedom and the separation of church and state. It also set the standard for public

education based on science, and not religion.

In 1954, civil rights attorney Thurgood Marshall, as chief counsel for the NAACP's Legal Defense Fund and acting pro bono, prevailed before the U.S. Supreme Court in *Brown v. Board of Education*, ending the long-standing manifest injustices of Jim Crow laws and paving the way for school integration across America. Marshall, grandson of a slave, championed a civil rights revolution that forever changed the landscape of American society. He went on to win 29 of the 32 cases he argued before the U.S. Supreme Court between 1943 and 1961, nearly all pro bono. In 1967, he became the first African American Justice of the U.S. Supreme Court.

In 1966, Phoenix attorneys John Frank and John Flynn took on the pro bono criminal appeal of Ernesto Miranda, which went to the U.S. Supreme Court, and continues today to safeguard the 5th Amendment right of criminal defendants against self-incrimination.

In 1973, two Texas attorneys in their twenties, Sarah Weddington and Linda Coffee, provided pro bono representation in *Roe v. Wade*, the first case to recognize the right to privacy implicit in the 14th Amendment, which encompasses a woman's decision to terminate her pregnancy. The decision is a milestone in individual reproductive rights and struck down the anti-abortion laws of 46 states. Weddington remains the youngest person ever to have successfully argued a case before the U.S. Supreme Court.

As these cases illustrate, pro bono lawyers have had a crucial role in ensuring fundamental fairness in our civil justice system throughout history. Lawyers have a special responsibility to use their specialized training and skills not just to advance cases, but also to help fulfill our nation's founding promise of equal justice under the law.

The Justice Gap in Colorado

Study after study shows that low-income Americans find it very difficult to secure quality representation in a costly legal system:

- The 2017 Legal Services Corporation report on the justice gap found that 86% of the civil legal problems reported by low-income Americans received inadequate or no legal help and 71% of

low-income households experienced at least one civil legal problem in the previous year.¹ Here in Colorado, modest income families also have very limited opportunity to hire a lawyer to defend their rights of person and property, or redress inequalities.

- The Colorado Judicial Branch's FY 2018 Statistical Report shows there were 646,697 new court cases filed last year in Colorado's district and county courts.² Of the total statewide cases, 438,586 cases (67.8%) were filed in the district and county courts of the six major urban counties of the Denver metro area, with a combined population of 2,831,280 (Adams, Arapahoe, Broomfield, Denver, Douglas, and Jefferson counties).³
- U.S. Census Bureau data for 2017 shows an estimated 377,014 residents in the six Denver metro area counties would qualify for free legal aid services, based on incomes at or below 125% of the Federal Poverty Level.⁴ To qualify for free civil legal aid services in Colorado, an individual must have an annual income less than \$15,613 per year, and a family of four must have an income less than \$32,188.⁵ Because of limited government funding, for every Coloradan receiving legal aid, another qualifying individual is turned away.

Due to limited government-funded legal services, pro bono commitments from the private bar are essential to closing the justice gap. Pro bono work by the private bar has grown in scope and visibility in the last 30 years, and Colorado lawyers providing pro bono services remain a potent force at the forefront of today's major issues, shaping legal doctrine and working for free to defend the powerless, the unpopular, and the helpless. And throughout the country, innovations crafted by pro bono attorneys are leveraging digital technologies in new ways, inventing better ways to help low-income people navigate the courts. While technology helps, pro bono attorneys are vitally needed to help narrow the "justice gap" for low-income individuals and others shut out of the justice system.

Bridging the Gap: Metro Volunteer Lawyers

Metro Volunteer Lawyers (MVL) was founded by the Denver Bar Association over 50 years ago and is supported today by the bar associations in Adams, Arapahoe, Broomfield, Denver, Douglas, and Jefferson counties. MVL's mission is to bridge the gap in access to justice within the six-county Denver metro area by coordinating pro bono legal services provided by volunteer lawyers to indigent and low-income clients who could not otherwise afford legal services for their civil legal issues.

MVL staff provides online, telephone, and walk-in intake services, prompt eligibility screening, substantive interviews, identification of legal needs, and referrals to volunteer attorneys. Efficiencies gained by this centralized MVL staff support are substantial. Last year, MVL referred 1,644 cases to 600 volunteer attorneys across the six-county metro area.

In many cases, lawyers can identify and resolve legal issues without going to court or can resolve court cases more efficiently and fairly than persons representing themselves. The provision of legal services helps stabilize families, saves taxpayers money, reduces the number of cases clogging the courts, and helps people move toward self-sufficiency and full participation in society.

According to a recent survey by the American Bar Association, 81% of attorneys believe that pro bono services are either somewhat or very

important. But when asked if they were likely to undertake pro bono support, less than half (45%) said they were likely or very likely to do so.⁶ They reported being discouraged by lack of time, family commitments, uncertainties about taking on cases, and sometimes lack of skills or experience.

MVL strives to encourage volunteer attorneys to take pro bono and low-fee cases by providing support, resources, structure, and mentoring opportunities (attorneys can take on a case with the assistance of a mentor or mentee). The MVL program thus eliminates many of the uncertainties involved in taking on pro bono cases and helps volunteer lawyers fulfill the promise of equal justice under the law.

No matter where you live, no matter what type of legal work you do, there is a family, a veteran, a child, or a widow who needs your help. Whether you're part of the largest firm, have a solo practice, or are retired, your skills, experience, and talent can make an enormous difference in the lives of our most vulnerable populations, and help them live with dignity and respect.

MVL stands ready to help you. 



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NOTES

1. Legal Services Corp., "The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans" (July 2017), www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf.
2. Colorado Judicial Department Annual Statistical Report: Fiscal Year 2018, www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2018/FY2018FINAL.pdf.
3. Colorado State Demography Office, Colorado Population Estimates by County, 2010-2017, <https://demography.dola.colorado.gov/population/population-totals-counties/#population-totals-for-colorado-counties>.
4. Colorado State Demography Office, Poverty Ratio by County, <https://demography.dola.colorado.gov/census-acs/american-community-survey-data> (citing U.S. Census Bureau Table C17002). See also U.S. Census Bureau data at www.census.gov/quickfacts/fact/table/US/PST045218.
5. Chief Justice Directive 98-01, "Costs for Indigent Persons in Civil Matters" (2011), Attachment A (amended Mar. 2019) (incorporating federal poverty rates published in the Federal Register (84 FR 1167, 1/11/2019)).
6. Faith-Slaker, "Supporting Justice IV: A Report on the Pro Bono Work of America's Lawyers," ABA Committee on Pro Bono and Public Service (Apr. 2018), www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_supporting_justice_iv_final.pdf (results of ABA 2016-17 survey of 47,000 attorneys in 24 states on their pro bono work).