

At the Bar

David Margolick

Lawyers and compulsory public service:

Resisting the inevitable.

One lawyer, describing the plan, conjured up Orwellian images of Big Brother. Another lawyer said it smacked of the Soviet Union. Many said it violated numerous clauses of the Constitution, including the ban on slavery.

The speakers were not professional civil libertarians but rank-and-file lawyers from places like Bismarck, Fargo, and Mandan, N.D. Their target was not some draconian measure to curb crime, but a far more modest proposal requiring them to devote 20 hours a year to the noncriminal legal problems of the needy.

Traditionally, the mere mention of making public service work a condition for licensing has generated hostility of Pavlovian predictability. Eight years ago the American Bar Association's House of Delegates crushed such a proposal, as have many other organizations. The North Dakota plan was proposed by a panel created by the state's Supreme Court. It is now stalled and may just be the latest victim.

Still, there are numerous signs that such compulsory programs are inevitable if not exactly imminent. Courts and bar associations in Texas, Florida, and Arkansas have already put mandatory public service requirements into effect. The issue has been debated in Oregon and Washington. It is on the table in Maryland, and it will soon be addressed in New York by a panel created by Chief Judge Sol Wachtler and led by Victor Marrero of Brown & Wood and including the most impressive convert to the cause, former Secretary of State Cyrus R. Vance.

Throughout the country, the talk is no longer so much whether and if lawyers will be required to contribute their services as it is how much, when, and where.

"Mandatory pro bono is coming, for two reasons," said Representative Benjamin L. Cardin of Baltimore, condensing the Latin for the public good. He has spearheaded the effort in Maryland. "There's a rising social consciousness among attorneys, as well as a more pragmatic concern that if they don't do something themselves, something more severe will be imposed on them."

The different climate reflects a desire to compensate for the Reagan Administration's cutback in the Federal Legal Services program, the largest provider of assistance to poor people in civil cases. And it stems from the obvious inadequacy of current voluntary efforts by bar groups to meet the huge call for help.

Bismarck, N. D., is a place better known as the home of the Raccoon

National Cemetery on "The Honey-mooners" than a hotbed of legal innovation. Indeed, there are only 1,000 practicing lawyers in the entire state. But North Dakota's proposed pro bono program is clearly the most far-reaching and imaginative anywhere. Until recently, its backers thought, it was also the most palatable.

All licensed lawyers — private practitioners, corporate attorneys, government lawyers including Attorney General Nicholas Spaeth and even, arguably, judges — would be required to devote 20 hours each year to the legal needs of the poor. A lawyer could buy his way out (for \$50 an hour, with the money going to other work for the needy), pass along his obligation to colleagues, or "educate his way out" by taking or teaching courses in poverty law.

The program, backed by Chief Justice Ralph J. Erickstad of the North Dakota Supreme Court, rests not on the idea, unpopular among lawyers, that lawyers have a perpetual ethical obligation to serve the poor but that the bar should take the lead in serving society's unmet needs. It would be dropped after six years. By that time state-financed legal aid programs would presumably be in place. Sponsors of the proposal insist that it is not only public-spirited but also self-interested, helping to clean up the bar's image of avariciousness and perhaps even to find new business.

The proposal generated the predictable prairie storm of criticism. In their antipathy to mandatory pro bono, lawyers have one clear advantage over other, equally resistant cartels: they know all the ground rules. In North Dakota as elsewhere, they say it violates the Fifth Amendment, which bars taking property without just compensation.

They say further that it abridges equal protection guarantees: only when doctors must perform free appendectomies, when restaurateurs must donate meals, when landlords furnish free apartments and when gas stations pump gratis gas, they say, can lawyers be so coerced. And they say it violates the 13th Amendment's ban on "involuntary servitude."

The North Dakota state bar recently voted not to act on the measure before June 1989. But the association rejected a move to kill the plan outright. In the meantime, the proposal has attracted national attention. Robert D. Raven of San Francisco called it "impressive and provocative," and so, in a way, was his comment. He is the incoming president of a group that is not known for its fondness for change, the American Bar Association.