

Cui Bono? WJS 7/14/89

A committee appointed by the chief judge of New York is now the latest to propose a requirement that all lawyers perform free pro bono legal services. It won't take too many lawyers too many hours to imagine the constitutional, practical and political objections to any such not very modest proposal.

Voluntary pro bono activity has a noble tradition, with lawyers representing poor criminal defendants or poor people involved in matrimonial or landlord-tenant disputes. But *mandatory* pro bono work raises many difficulties, starting with the 13th Amendment prohibition against involuntary servitude. As a practical matter, today's highly complex laws have led to highly specialized lawyers; who wants an OSHA lawyer handling a custody battle?

But of course the fundamental problem with court-mandated pro bono work comes with the highly political nature of so much litigation in American courts these days. Who decides what's pro bono publico and what's not? Should judges really be the ones to decide what's socially beneficial? The New York committee doesn't offer much guidance, despite proposing that lawyers can satisfy this requirement via "public interest" groups, either by 20 hours work each year or in some cases by making a \$1,000 annual contribution. The report gives as an example help to "organi-

zations dedicated to sheltering the homeless."

What about helping prosecutors handle appeals from death sentences to criminals who had victimized poor neighborhoods? Or litigating against rent control laws, which raise the cost of housing for the poor by limiting availability? Or litigating against minimum wage laws, which create unemployment among the underclass? We would call this pro bono.

The federal Legal Services Corp. was supposed to help individual poor litigants, but was hijacked by lawyers pursuing a political agenda. LSC has spent hundreds of millions of taxpayer dollars agitating massive class actions, including cases whose sole purpose was to increase welfare spending. An LSC report found that its supposedly pro bono lawyers had diverted "services intended for the poor to such non-poor groups as Planned Parenthood, the American Civil Liberties Union, the San Francisco Sex Offenders Task Force," etc. An LSC that actually served the poor might have quieted calls for mandatory pro bono work by private lawyers.

Many lawyers will continue to kindle points of light by quietly donating their services to religious and civic groups that help the poor. But New York and other states considering highly organized, legally mandated "voluntary" activity should reconsider—at least until someone can say what's pro bono and what's not.