

LAW, LIBERTY AND JUSTICE AFTER SEPTEMBER 11

District of Columbia Judicial & Bar Conference

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I begin with thanks for your invitation to address this extraordinary joint gathering, and I bring greetings from your friends and neighbors in New York State. As a former New York City litigator and member of the D.C. bar, and as a co-conspirator with your terrific Chief Judge, my friend Annice Wagner, and her colleagues in many initiatives, I have spent a good deal of time in your District. But we have an even more intense bond between us--a family connection. My Court of Appeals Colleague George Smith and your Court of Appeals Colleague Inez Reed are brother and sister, twins no less. Thanks for your surprise visit here today George. I not only forgive you for not being at your desk. I applaud you.

It is a particular privilege to be here today to address a joint conference of lawyers and judges, and most especially to address the vital subjects of law, liberty and justice in the context of the post-September 11 world, a profoundly and irreversibly changed world. I thank the Chief for inviting me to tell the story of the New York courts and 9/11.

For the moment, I'm going to turn the clock back to September 11. That day is never far from us, is it? For each of us, the subject remains intensely close and personal, particularly in cities like ours, which bear visible scars of that savage attack. In New York City, Portraits of Grief still are headline news, as the search for remains continues at Ground Zero—the World Trade Center site. Only weeks ago, we laid to rest one of our three valiant Court Officers who, along with their colleagues, raced to the site to aid in the rescue effort, and lost their lives there. Our court officers, like our police officers and firefighters wear black bands on their badges. Seemingly, September 11 generates fresh news every single day. Most recently, in New York City it's fire safety tests, and economic and environmental concerns, stepped-up airport security measures, stories of survivor networks, plans for rebuilding the site, and controversy over the towers of blue light that until Sunday illuminated the nighttime Manhattan skyline. That fateful morning always is with us.

Our bustling Manhattan courthouses, many of you no doubt know, are situated in the shadow of the World Trade Center, in what became known as the Frozen Zone, for weeks without reliable telephone service, virtually inaccessible by public transportation, the sight and smell of smoke hovering in the air. One of our courts—the Court of Claims—was actually situated in the World Trade Center. Since September 11, every day at 8:46 a.m. sharp, a Court Officer leads a rousing rendition of "God Bless America" in the lobby of one of our Manhattan courts. If nothing else, "God Bless America, land that we love"—sung with passion, and with tears—takes you immediately back to that fateful Tuesday morning.

None of us, of course, will ever forget where we were and what we were doing at that moment. There are so many hair-raising stories--like the Cantor Fitzgerald executive who decided to take his son to his first day of kindergarten instead of traveling directly to work in the towers. And the fellow who stopped to have his eyeglasses fixed instead of going straight up to his office near the top of the World Trade Center. And the woman serving with us at 80 Centre Street in Manhattan as a grand juror who otherwise would have been at her desk on the 90th floor. Every story like that, of a life saved or a life lost by some twist of fate, reminds us all of how precious, and fragile, our lives are.

That day I was in Albany—the state capitol, about 150 miles north of Manhattan, straight along the path of the Hudson River, the same path those planes followed down from Boston to reach the World Trade Center. My colleagues and I were in Albany for the second week of the September Session of oral arguments at our Court. In fact, many of our court administrators were in Albany that day as well, for a two-day conference on the vital subject of Access to Justice—a conference that had attracted a few hundred legal service providers, public interest lawyers, judges, court personnel and others from New York and elsewhere. Many of our court security people, by eerie coincidence, also were in Albany that day, attending the Sixth Annual Emergency Medical Preparedness Symposium. The speaker—a self-described cynic—was talking about America's vulnerability to an IRA-type attack: a first hit, and minutes later a second hit when all the cell phones started ringing.

In Albany, our first thoughts were to touch base back home in Manhattan, a major feat in itself given the communications difficulties. At the Court of Appeals, we anguished with our Colleague Judge Howard Levine, whose 14-year-old granddaughter had just that week started classes at Stuyvesant High School, right next door to the World Trade Center. What a relief it was to learn, hours later, that the school had been safely evacuated. The children were all walked up in groups through the City streets, after seeing people in flames leap from the towers.

Naturally, very quickly we had to turn our attention to critical questions concerning the courts. On the one hand there was a human inclination to cancel, to adjourn all scheduled activities, because everything we were doing, all our "important" affairs, suddenly seemed so trivial, so insignificant. The unanimous sentiment, however—from my Court of Appeals Colleagues as well as my court administration colleagues—was to go forward, not to postpone, not to capitulate, not to succumb to the terrorist attack on our people and our values.

The Access to Justice Conference in Albany, by the way, went forward that day—a powerful statement of the participants' commitment to equal justice under law. But there were lots of tears and lots of hugs, and mercifully few speeches. I had bought a bright new suit for the occasion of my Keynote speech, a speech I could not give and a suit I could not wear that evening. On Friday that week, just before returning to New York City, I attended the investiture of a good friend as a Federal Magistrate-Judge. Again, the event hugely attended. To this day, court events are packed. We had hundreds only last week at a Long Island courthouse ceremony honoring September 11 volunteers. Everyone wants to gather, to remember, to console, to touch flesh, to plan for the future, to celebrate America, to celebrate life.

As events unfolded in Manhattan on September 11, our courts at 25th Street and 54th Street were not in the danger zone, so trial court judges went there to hear emergency applications and conduct arraignments. Those courthouses also was available to people in need—people searching for relatives who had been evacuated from the temporary holding cells in criminal court, people facing eviction, a woman concerned about delay in her insurance case and her life-saving chemotherapy.

First thing Saturday morning, September 15, Chief Administrative Judge Jonathan Lippman and I toured our court facilities in lower Manhattan. We met City engineers working around the clock to change air filters in the courthouses, and Inspectors testing for structural damage. At one point, approaching our administrative office building on Beaver Street, we were met by the terrifying sight of hundreds of people, many in uniform, racing toward our car, and we high-tailed it out of there. That was the first bomb scare we encountered—many more followed.

At our courthouses, that Saturday we were greeted by Court Officers—red-eyed but on duty—and by judges and court personnel planning for the following week. Judge Lippman and I determined right then and there that the Manhattan courts, like all the other New York State courts, would open for

business as usual on Monday. We felt it especially important to do that, for practical as well as symbolic reasons. The courts, after all, perform a vital public service. But we also wanted terrorists to know that they cannot defeat us or what we stand for. They cannot undermine our way of life or our values, most especially our fundamental ideal of equal justice.

As you might imagine, it was one thing for us to decide there would be business as usual on Monday morning in lower Manhattan, but quite another for the judges, court personnel, lawyers and jurors to implement that decision. The challenges were formidable, starting with widespread personal dislocation, devastation and fear. Twenty-six of our Court Officers had rushed to help at Ground Zero as soon as the first plane hit. Three did not return. Sixty or more of our court family were missing loved ones—firefighters, police officers, World Trade Center employees, people from every walk of life. A clerk in Queens County lost two of her firefighter sons; to this day the third still is at Ground Zero every day searching for his brother's remains. With everyone looking for ways to help--giving blood, making donations, offering comfort--dozens, possibly hundreds of our court employees joined people from around the nation at Ground Zero, on bucket brigades to assure access to potential open areas of survival; unloading supplies of food, tools, emergency equipment; helping with the flow of people and traffic; whatever they could do.

We had no virtually no telephone service—just imagine business-as-usual at a courthouse with few working telephones, no faxes, e-mail or Internet access! No public transportation and a rash of bomb scares. Thousands were feared dead at the World Trade Center. As it turns out, close to 17,000 lawyers had their offices in the Frozen Zone, 1400 right in the World Trade Center, their records and offices destroyed or inaccessible.

We set immediately up regular meetings with our administrative judges, and communications and security staffs. From creative, committed people came wonderful ideas, like getting the word out that the courts would, free of charge, provide copies of lost records, computer runs of attorneys' cases, and even assist lawyers in reconstructing their lost client lists. An Internet phone system—600 telephones—were installed over a September weekend. Fortunately, data communications was restored at most Manhattan court facilities. We established a bank of readily reachable, effective hotlines in every court for lawyers and litigants to get good information about their cases.

And the jurors—the jurors were just great! With lower Manhattan in chaos, jurors still showed up in the hundreds, despite announcements over the airwaves and on the Internet. They wanted to contribute, to serve. Many even declined offers to be excused. Outside of Manhattan, even in adjacent boroughs and counties, jurors engaged in trials on September 11 elected continue to their cases to completion. That was *their* contribution, *their* act of patriotism.

And talk of stories—we have loads of them here too. Like the retired firefighter who asked for a deferment of jury service—*but only a short one*—because of his commitment to working at Ground Zero. And the man who managed to get a message through to the courts from Philadelphia, where he was with family, mourning the loss of his firefighter son, to let us know why he was not responding to his jury summons.

Business as usual, of course, did not mean that the pace automatically resumed. There were missed court dates during the week of September 11. Other appearances had to be rescheduled. Criminal cases were delayed by absent police officers, who had more pressing assignments. The message to all of our judges was to be sensitive and flexible--in individual cases--no blanket adjournments--and to move forward as much as feasible with the business of the courts—a difficult, delicate balance.

But they did it, they did it, as day by day we have returned to what we now call normality. Our courts and lawyers were absolutely magnificent in meeting the extraordinary challenges of those extraordinary times. Indeed, this, I believe, has been a shining hour for our courts and lawyers, barely missing a beat in their service to the public, showing the world the high value we place on our system of justice.

Against this backdrop, there are so many things to say about law, liberty and justice post-9/11. Indeed, right at this moment we are planning a national conference on the very subject to take place Wednesday, Thursday and Friday, September 25 through 27 in lower Manhattan, where we will address three key themes--Immediate Response, Preparedness and Emergency Legal Issues Unique to the Disaster. I hope you'll join us. But in my remaining moments before you today, I would like to touch on a different subject, just one aspect of our experience that I believe has particular relevance to today's gathering: pro bono service. And I know here in the District of Columbia that I am in large part preaching to the converted about the importance of pro bono. But for us this was, I assure you, a major learning experience.

I read in the *New York Times* recently that the term "9/11" has become a permanent part of our vocabulary, and is being written into dictionaries. I am eager to see how it will be defined. Pro bono is already a permanent part of our profession's lexicon, and that term for me is forever defined by the shining hour of the New York Bar.

I offer two examples—first, Bar Associations and second, volunteer lawyers individually, admittedly only a small part of the picture, the part I personally experienced. There are so many lawyer stories to be told—not only within the courts and Bar Associations but also among legal service providers, government attorneys, civil rights lawyers, law firm pro bono coordinators, paralegals, law schools. I hope that someone will collect these stories. Regrettably, one errant lawyer or judge is a guaranteed headline, our profession's abundant good works little noticed. But that's a subject for another day.

First, the Bar Associations, about fifty of them in all--principally New York but also neighboring Bar Associations. As we discovered, it was impossible to know on Day One what all the special needs would be. Day by day, they emerged. Sensibly, Bar leaders quickly came together to coordinate and thereby enlarge the response. They convened regularly in this period, and divided up the tasks as they appeared—for example, the County Lawyers Association, displaced from its own offices on Vesey Street in lower Manhattan, undertaking to represent families of uniformed officers and Port Authority employees; the Trial Lawyers Association forming "TLC" (Trial Lawyers Care) to counsel claimants to the federal victims' compensation fund; the New York City Bar Association developing the Facilitator Program to train volunteers so they could provide holistic services—like the family doctor—including counseling in areas such as estates law, social security, immigration and housing, as well as establishing small business walk-in clinics to help affected street vendors, shoeshiners, shopkeepers, restaurateurs.

The New York State Bar Association coordinated offers of assistance from Bar groups around the world, and also established a program for lawyers and clients where law offices were decimated or inaccessible. The Women's Bar Association took on the task of special services to families and small businesses that were victims of the attack. Countless local Bar Associations pitched in as well, with a list of contributions that would keep us here all day.

Comprehensive handbooks, resource guides and Internet materials were produced virtually overnight by the Bar Associations and law firms. Probono.net September 11 Practice Area—an Internet portal for communicating information and needs—registered more than 2700 attorneys. What an astounding display of cooperation, communication, leadership.

Second, lawyers individually responded generously, many volunteering for the first time. To give one illustration, the court system, in cooperation with the City of New York, established a novel procedure for quickly securing Death Certificates though no body was recovered, so that survivors could access bank accounts, insurance proceeds and other assets. A call went out one day for lawyer volunteers to be trained in interviewing victims' families and preparing the necessary submissions. Within hours, hundreds of lawyers responded, filling the House of the Bar Association—the sight of all those terrific people is indelibly engraved in my mind. Owing to all the combined efforts, 2363 orders for Death Certificates were issued by the court within hours of filing, instead of the year or more that procedure can take in ordinary circumstances.

Day after day for weeks and months, the unprecedented response from volunteer lawyers continued at what became the Family Assistance Center on 54th Street and the Hudson River. One entire side of that block-long building was labeled "Legal"—teddy bears sent by Oklahoma City lining the wall—and members of the Bar showed up in droves to counsel victims and families. Many times I visited the Center, and I was proud to see New York's lawyers there, patiently and sensitively offering comfort and help—often themselves taking a moment or two to find a private corner and regain their composure. Talk of the Family Assistance Center—what a thing to behold! Federal, State, City, private agencies, legal service providers, religious counselors, and on and on, all came together as never before. Families there could get a meal, emergency cash, a copy of a World War II military record, anything they needed, in any language. Similar centers were established in lower Manhattan.

What an example of patriotism—of being a part of America, defending America, standing up for America in a time of crisis. What an example of humanitarianism—the very best of humanity responding to the barbarous acts of the very worst of humanity. What an example of professionalism—lawyers licensed in a public calling responding to a cry for help, fulfilling their time-honored responsibility to render pro bono service.

Now, with more than seven months having passed since September 11, it is fair to say that we have returned to, or are approximating, normality in our courts and in our lives, though our concept of "normality" is forever changed. Despite lingering fears, we are back in the subways, the skyscrapers and the skies. What remains of the shining hour of the Bar? What will "normality" be in this post-September 11 world?

One thing we know for certain is that pro bono legal services are absolutely essential to our nation's recovery effort. More and more people without access to counsel will otherwise become destitute and homeless—jobs lost, emergency health and other temporary benefits coming to an end. It cannot be that, as a profession, we would offer our services to keep a September 11 victim from homelessness or deportation, and deny that same assistance to a needy person who was not a 9/11 victim, when the impact on the person, and on society, is the very same.

What would top anyone's list, looking for the lessons of September 11, is the level of coordination, communication and cooperation among courts and lawyers—united as never before. That joint effort maximized the Bar's ability to assure that needs were accurately identified and efficiently met—lawyers matched with clients—with sensible allocation of available resources and little duplication of effort.

Second, twenty-first century technology was intrinsic to that effort—like web site links for lawyers and clients to seek out opportunities and information. Clients knew where to find help and volunteers knew where to find clients, training and excellent backup assistance.

Third, the facilitator, gatekeeper, family doctor model unquestionably was a big plus—lawyers able

to connect with clients personally, assess the range of needs and serve as a gatekeeper to other resources. The sort of "one-stop shopping" that was available at the Family Assistance Center and other emergency centers—one telephone call to a hotline, one visit to a Website, one trip to an office—is clearly the best model for the client. September 11 proved that even beyond legal services, bringing together *all* necessary resources for a needy population is plainly the most effective way to reduce contention and solve problems. It also most engaged the volunteer lawyers.

Fourth, engaging as it may be for a lawyer to offer clients a full range of legal services—the medical equivalent of bunions to brain surgery—volunteers inexperienced in general legal practice are understandably fearful of harming rather than helping people in need. Wisely, the volunteers were provided with comprehensive training as well as written materials about legal issues likely to arise, detailed how-to's, and contact information for a host of helpful people, agencies and other resources. Perhaps most important, back-up mentors—most often, and most helpfully, experts from the legal services community-- were available to them.

I know from personal experience how terrifying it can be to deal with clients and subjects outside your usual field of practice. When I was a commercial litigation partner at a New York City law firm, I joined an assigned counsel panel and was appointed to represent a defendant in a criminal case. Ultimately, I managed to devise a winning argument, but it could be used only once: "Your Honor, if this case was really serious, they never would have assigned it to me." I should add that, several years later, the client called, asking me to represent him again—the ultimate compliment. When I explained that I had become a Judge, he said, "That's OK—this won't take much of your time."

One-stop shopping supported by training, readily accessible materials, resources and mentors: that's a good model for the future. I am convinced that the Bar's deepest character is admirable—lawyers want to help people in need. The September 11 pro bono effort succeeded so well in part because Bar leaders showed us how to do it. The September 11 effort countered all of the top reasons lawyers give for avoiding pro bono work—I don't have the time; I don't have the expertise; I don't have the office support; I'm not interested in the type of projects available; I can't afford it. Well, now we all know you do, you are and you can.

Finally, I am well aware of the pervasive discontent within our ranks, especially among new lawyers—complaints about the loss of ideals that brought them to the law, limited hands-on experience, no client contact, little opportunity to do something "meaningful." The September 11 pro bono model is good for needy clients, and the need is more compelling than ever. It's also good for lawyers—an opportunity to help people while polishing essential skills. And it lifts up our profession, returning us to our roots as a public calling in a day when too many among us feel overtaken by the race down to the bottom line.

United as never before. United as never before as a nation in our grief, in our resolve and in our love of America. United as never before as a profession in our creativity and cooperation in a time of crisis. United as never before in our service to the public and in our defense of a justice system that is the envy of the world. Hopefully, in this post-September 11 world, we will find ways to keep that spirit alive, and maintain the luster on a shining hour of our great profession.

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