

## Professionalism, Creativity, and Conviviality in *Pro Bono* Legal Work

A NFPA discussion with Charlie Asher, Indianapolis, Indiana

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I'd like us to discuss some ways that *pro bono* legal work can be a special opportunity for legal professionals to more creatively connect with some of the law's highest traditions. First, a handful of quotations to help pose the opportunity I'd like to raise—and then hear your ideas about.

- “The legal profession is largely self-governing [and that] relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.” Preamble to the Model Rules of Professional Conduct for Attorneys.
- “As a public citizen, a lawyer should seek improvement of the law [and] should help the bar regulate itself in the public interest.” Preamble to the Model Rules of Professional Conduct for Attorneys.
- “There is nothing so useless as doing efficiently that which should not be done at all.” - Peter Drucker, Austrian-born American management consultant, educator, and author.
- “My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature. . . . I realized the true function of a lawyer was to unite parties driven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby—not even money, certainly not my soul.” - Mahatma Gandhi, *The Story of My Experiments with the Truth*

So with those introductory observations (that I think may usefully find their way into our discussion), some thoughts on professionalism, creativity, and conviviality in your *pro bono* work and mine—in these five sections.

- A. A tribute to, but also caution about, the law's focus on precedent.
- B. *Pro bono* work as a call to creativity.
- C. Three *pro bono* opportunities from our office—which NFPA members may join.
- D. Five other sample *pro bono* ideas—and then some of yours.
- E. Some closing thoughts and cautions.

## **A. A tribute to, but also caution about, the law's focus on precedent.**

Not in the slightest do I mean anything I share as a criticism of the law. Indeed, I'm addressing a challenge faced by the law that should be expected, as it grows out of a vital contribution the law makes to society: keeping us grounded in our Constitution, laws, and other protective traditions.

Every time voices step up to question values like affording representation to guilty people, guaranteeing jury trials (in civil or criminal cases), or preserving huge chunks of the Bill of Rights that often couldn't survive a public referendum, the legal profession seems to step up—in legal proceedings and public discourse—to preserve essential features of our system of ordered liberty. So, let's give the law and ourselves well-deserved credit for protecting crucial traditions.

But while giving the law and ourselves well-deserved credit for protecting crucial traditions, do we agree we can often be too steadfastly about tradition, precedent, and overconfidence in our tried and true ways? As Chief Justice Warren E. Burger observed in 1972, "Don't go into the legal profession if you want [to make] social change." And so I think judges, attorneys, and paraprofessionals in our field could profit from more energetically and regularly asking whether there are better ways to serve the public.

When the law has opened its eyes to larger issues of its service the public good, it seems to have distinguished itself. Consider measures like striking down (i) impediments to voting by minorities, (ii) "separate but equal" schools, and (iii) the criminalization of homosexuality. But are there ways our precedent-based profession (meaning yours and mine) misses this standard today?

- Do our family law systems consistently help families to the potential peace on the other side of family upheaval?
- Does the law's role in what's commonly called the War on Drugs actually make for a safer and healthier society—and are there better ways?
- Does the law's contributory role in creating the largest prison population in world history actually help society?
- Does the law give drug-addicted and dependent (including alcohol-addicted and dependent) defendants effective information on their recovery options?
- Does the law do enough to help personal bankruptcy filers to more successful financial management in their lives in the future?
- Can a 70,000-page federal tax code really be in the public's best interests?

To name just a few sample inquiries.

I'm hoping you and I can look at some opportunities we could get excited about—and maybe act on—in the fertile fields of *pro bono* legal services.

## **B. *Pro bono* work as a call to creativity.**

For two reasons, it seems to me *pro bono* work may be an especially fertile ground for us—and the law—to cast aside some stifling traditions.

First, it's free of at least some of the difficult financial realities that can handcuff us.

But second, because it's focused on doing public good, it can invite legal professionals of all stripes to more directly consider what actually helps—and hurts—the public. We can see it as a call to do what the Preamble to the Rules of Professional Conduct says in its important but (in my experience) rarely discussed injunction that the legal profession “has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.”

*One day Alice came to a fork in the road and saw a Cheshire cat in a tree.*

*“Which road do I take?” she asked.*

*“Where do you want to go?” was his response.*

*“I don't know,” Alice answered.*

*“Then,” said the cat, “it doesn't matter.”*

*Lewis Carroll, from [Alice in Wonderland](#)*

## **C. Three *pro bono* opportunities from our office—which NFPA members may join.**

My trusty NFPA contact Chris Flynn has suggested that I say something about some of the *pro bono* projects our office has led, so here are three of those from the last several years (along with bulleted suggestions on steps you might consider if any of these interest you).

1. [UpToParents.org](http://UpToParents.org) is a free website we created that's given over 250,000 separated, never-married, and divorced parents the chance to make building family peace for their children's sake their chief guiding light through divorce and paternity cases. Our office has also referred parents to [UpToParents.org](http://UpToParents.org) as preparation for (a) free and reduced-cost family mediation with us and (b) divorce and paternity co-parenting classes we've written and taught.<sup>1</sup>

If you're interested, you could consider bringing this resource to the attention of your family bench and bar and any co-parenting educators your county uses. An introductory memo to professionals is available at

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<sup>1</sup> The website has received considerable recognition, including the ABA Dispute Resolution Section's “Lawyer as Problem-Solver Award,” the Association of Family and Conciliation Courts' Irwin Cantor Innovative Program Award, and the Academy of Professional Family Mediators (APFM)'s “Children's Champion Award.”

[https://uptoparents.org/UTP\\_Files/Docs/UTP%20Professionals%20Intro%207-6-16.pdf](https://uptoparents.org/UTP_Files/Docs/UTP%20Professionals%20Intro%207-6-16.pdf), and I'd be available to answer any questions you have.<sup>2</sup>

A few suggestions for any NFPA members interested the implementation of [UpToParents.org](https://uptoparents.org) as an automatic resource in all divorce and paternity cases in their counties:

- Review that professional introduction about [UpToParents.org](https://uptoparents.org) at [https://uptoparents.org/UTP\\_Files/Docs/UTP%20Professionals%20Intro%207-6-16.pdf](https://uptoparents.org/UTP_Files/Docs/UTP%20Professionals%20Intro%207-6-16.pdf).
  - Do a run-through yourself on the website. You can insert your children's names or choose the name of a hypothetical child. But take on the facts of a divorce or paternity case with an average amount of hurt and conflict, and do a thorough job as if you yourself were in an actual family transition.
  - Seek a meeting with some of your most peace-minded family judges, attorneys, and co-parenting educators about this possibility.
  - Feel free to contact us with any questions or concerns.
2. Certainly I think implementing [UpToParents.org](https://uptoparents.org) as an automatic resource in your county is already a big step forward, but let me mention [AssessFamilyLaw.org](https://assessfamilylaw.org). This is a free website our office built suggesting 25 measures jurisdictions could use to create comprehensively cooperative systems of family law. I've presented to judges and family bar leaders from over 300 counties about these 25 measures. If after adopting [UpToParents.org](https://uptoparents.org), you and your family bench and bar leaders would like

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<sup>2</sup> The core philosophy behind [UpToParents.org](https://uptoparents.org) (as Judge Michael Scopelitis helps to explain in the videos parents see during their website work) is that the dominant determiner of how parents fare in these challenging family transitions is how well they are connected to their children's need for family peace. Although there are multiple settings where parents may hear about the site and use it, the most common is as preparation for a co-parenting class or mediation (or, in many jurisdictions that still offer no live classes, as parents' only guidance on peaceful co-parenting).

Another part of our thinking is the importance of remembering that many parents in these cases have had years of immersion in dangerously mistaken lessons about separation and divorce (for example, that in these cases parents' best interests are in conflict rather than mutual, that deferral to legal rights and legal proceedings is always a good idea, etc.). These unfortunate and often deeply ingrained misconceptions are rarely dispelled by a single trip to court, class, or mediation, however well handled by the professionals. [UpToParents.org](https://uptoparents.org) can be an additional, longer, and continuously available aid for parents to do better for their children and themselves.

The site employs uniquely engaging features of personalization and interactivity, including the use of the children's actual names, exercises about their particular circumstances and needs, and tailored feedback to parents at 18 points during their work.

to take these further steps, you may find a valuable blueprint in the survey at [AssessFamilyLaw.org](https://www.assessfamilylaw.org).

The 25 measures covered by this website have received some exceptionally positive reviews, but I'd caution from experience that moving the legal culture in this regard requires an unusually committed and forward-minded bench and bar.

A few suggestions for any NFPA members interested the use of [AssessFamilyLaw.org](https://www.assessfamilylaw.org) in their jurisdictions:

- Find at least a few progressive and peace-minded judges and attorneys to join you in using [AssessFamilyLaw.org](https://www.assessfamilylaw.org) to do your separate evaluations of your county's family law system.
  - Be prepared and accept that your scores will likely diverge from each other's to some extent.
  - Discuss with those core people the likelihood that your county would be interested in a daylong seminar and concerted effort to adopt a good number of the suggestions on this website.
  - Consider holding off that larger effort of a seminar and adoption of several of the website's suggestions until after you see if your county will take the more measured step of implementing [UpToParents.org](https://www.uptoparents.org). (It's been my experience that a county not willing to take that smaller step will have trouble with the larger task of considering the full 25 measures.)
3. [DefenseMap.com](https://www.defensemap.com) is our newest resource. Its uses will mostly be free (including in all juvenile cases and all adult cases involving capital, postconviction, Innocence Project, law school, and related *pro bono* uses).<sup>3</sup> The purpose is to give defense attorneys much fuller pictures of the backstories to their clients' lives and cases—and to give clients the chance to examine their lives and life options.<sup>4</sup>

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<sup>3</sup> We're working hard to make [DefenseMap.com](https://www.defensemap.com) financially accessible in all cases. With the requirement of constant updates and staffing of a bilingual Helpline, some adult cases will have to be charged a fee. Even then, however, the target price will be only \$36 for private cases and \$18 for public defender cases.

<sup>4</sup> I enthusiastically recommend the following observations from Dr. Sandra L. Bloom's article "Understanding the Impact of Sexual Assault: The Nature of Traumatic Experience," Sandra L. Bloom, from *Sexual Assault: Victimization across the Lifespan*, edited by A. Giardino, E. Datner, and J. Asher; GW Medical Publishing, Maryland Heights, Missouri, pp. 405-432 (2003). She persuasively shows (in the context of the behavior of victims of sexual assault but applicable, we think, to all psychologically injured persons) that if our first, and often only, question is, "What's wrong with you?," then we are injuring both the accused and the society as a whole.

*The first fundamental attribute of Creating Sanctuary is changing the presenting question*

We think this resource can give modest-means clients intake experiences and attorney-client relationships comparable to (and maybe superior to) those enjoyed by high-asset clients.<sup>5</sup>

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*with which we verbally or implicitly confront another human being whose behavior we do not understand from “What’s wrong with you?” to “What’s happened to you?” Changing our position vis-à-vis other people in this way radically shifts the perspective we take on ourselves and others, moving us toward a position of compassion and understanding and away from blame and criticism. Rather than think of troubled or troubling people as “sick” or “bad”, it is more useful to understand that psychological injuries are comprehensible, treatable and remedial, just as physical injuries are, even if the psychologically injured person must learn to live with some form of disability. A recovery paradigm for the complex problems that accompany overwhelming trauma provide the survivor with the single component that is often missing from treatment: HOPE. When people receive understanding and compassion from others it enables them to begin their way down the long road of understanding – and changing – themselves. . . . The real challenge is how to establish and maintain safety without invoking punitive, violent, and restrictive measures that add to the problem.*

<sup>5</sup> It has to be emphasized that it has not been the fault of defense attorneys that so much of these crucial backstories have been beyond their grasp. The dearth of time, the implausibility of asking such personal questions at the start of a new relationship, and the understandable focus of both attorney and client on a host of other emergent issues all operate against the possibility of addressing the hundreds of questions posed to the client able to work alone on [DefenseMap.com](http://DefenseMap.com).

Here are just some of the vital topics that can necessarily go unaddressed.

- i. Which clients were molested as children?
- ii. Which were abused in multiple other ways—and in what specific respects?
- iii. What have been their histories with school, work, health, military, and use of free time—and what issues have attended those?
- iv. What PTSD do they carry with them, from what, and with what repercussions and what role to the case at hand?
- v. What important life assets are missing—and in what particulars?
- vi. What mood and functioning issues do the clients have—and how would they describe their source and consequences?
- vii. Have there been suicidal or other self-destructive gestures?
- viii. What counseling have they had and what counseling or other assistance do they wish to have?
- ix. What negative and positive relationships do they have that they could be helped to make better decisions about?
- x. What addictive patterns are harming them?
- xi. What are all the contributing factors to the current case?
- xii. What changes are they interested in making in addictive behaviors, relationships, work, or other areas of life—and what specific steps do they have in mind for any such changes?

[DefenseMap.com](http://DefenseMap.com) is an entirely novel resource, so it requires a little study to understand how (with no attorney time) it collects and screens client information and then creates uniquely powerful Defense Maps highlighting issues, defenses, and mitigation. We think interested paralegals should visit these pages for an understanding of this tool.

- a. The site itself, including the Attorney page.
- b. The Sample Maps link in the upper left corner of each webpage.
- c. The FAQs, especially 2.5 (the assistants who can help clients not able to complete a Map on their own), 2.6 (incarcerated clients' use of the site), and 2.9 (steps in large PD and private offices' adoption of the website).
- d. The "Distinguishing a Legal Practice with Defense Maps" memo available from the homepage and Attorney page.

There are separate bilingual versions of [DefenseMap.com](http://DefenseMap.com) for both adult and child cases, and the adult cases include tracks tailored for five kinds of cases (new, appeal and postconviction, sentencing relief, defense to parole and probation revocation, and expungement).

I think the version for children deserves some explanation (partly because that may be the area where some paralegals may want to devote their *pro bono* energies. For one thing, kids in our delinquency systems are often ill-equipped to speak up for themselves and what is driving them. Many may be acting out seriously dangerous dysfunctions in their families. (My wife's therapeutic group used to refer to these kids as "The Heroes," as often their acting out was a strategy to get their families the help they'd long needed but never sought.)

These kids have completely deserved, but almost never had, the confidential assistance of that one defender with resources to uncover the actual facts of their lives. A colleague who still handles delinquency cases as a public defender describes having as little as two or three minutes alone with each

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- xiii. What strengths do they have, and what better use might they make of them?
  - xiv. What heroic and giving things have they done?
  - xv. Who relies on them?
  - xvi. Who can speak highly of them—and what would they say?
  - xvii. If they are in custody, what are all the assurances the defense could give for their lawful behavior while on release?

And much more. None of us would want a person we cared about represented by an attorney unaware of issues like these, yet except in the most well-financed cases, attorneys have not until now had a workable way for these issues to be investigated.

new juvenile client before being asked in court to admit or deny the allegation of delinquency.

For more about this and the hope we have for the use of [DefenseMap.com](https://defensemap.com) in juvenile cases, you can visit the short audio at <https://defensemap.com/podcasts> entitled “Defense Maps in Delinquency Cases.”

A few suggestions for any NFPA members interested in assisting their jurisdictions’ use of [DefenseMap.com](https://defensemap.com):

- Acquaint yourselves with the site, certainly including the four pages (a-d) mentioned above.
- Visit with your public defender office to see if it would be interested in adopting the website as a tool in either its adult or juvenile cases.
- If juvenile delinquency cases are the ones you’re interested in, after speaking with your public defender office, meet with your juvenile officers hearing those cases to check about their interest.
- Discuss the best ways for you to be of assistance (assisting language- or computer-challenged clients to complete their Defense Maps, helping incarcerated youth complete theirs, etc.).
- Keep in touch with us for any assistance you wish.

**D. Five other sample *pro bono* ideas—and then some of yours**

My hope is that you will use your imagination and good hearts to see what fits for you. Here are some other possibilities that have occurred to me.

1. In the law’s service of veterans, sponsoring a daylong seminar and ongoing discussion of the special legal and personal needs of veterans, especially in this age of a nominally voluntary military and much of the public’s lack of acquaintanceship with these needs.
2. In the law’s service of honest debtors seeking a fresh start in bankruptcy cases, assistance you could be to the education necessary to protect those debtors (and *many* others, including kids) from the hazards of sliding into self-destructive financial habits.
3. In DWI and other criminal cases, making information more widely and easily available on recovery option, including free ones like 12-Step programs. (You, like me, may be aware of many people whose lives have been changed and even saved by some seemingly small bit of information shared with a vulnerable person at just the right time. Even a table of pamphlets and contact information that a judge can refer to at DWI court before calling the cases can be surprisingly effective.

4. Lending your voices to improve co-parenting education in divorce and paternity cases. If you have worked on these cases, you may have a highly valuable perspective to share with the co-parenting classes already offered in your jurisdiction (for example, brief accounts of the cooperative spirit you have seen help families and the unnecessarily combative spirit you have seen hurt families.) But you may also find that your jurisdictions lack necessary classes (if not the basic divorce adjustment classes, then ones for paternity cases, cases with domestic violence and abuse, and cases of high or prolonged conflict). Again, implementing [UpToParents.org](http://UpToParents.org) can be an enormous help.
5. Starting a bail fund project like that in use in the Bronx and a growing number of communities. These allow indigent people held without trial or conviction on minor charges to be released, often with their successful return to their families and jobs and eventual dismissal of charges. See, for example, <https://www.npr.org/2018/10/12/656580025/robin-steinberg-how-can-we-end-the-injustice-of-bail>

I have some further information and ideas on each of these and would be happy to share them with any interested NFPA members.

So, what *pro bono* ideas would you like to share?

#### **E. Some closing thoughts and cautions.**

Three of these.

First, consider conviviality. There should be fun and personal satisfaction tied to this work.

Second, buy-in from your attorneys, other attorneys, and judges may be essential. For many reasons, including because, well, see the next paragraph.

Third, be aware that, as Woodrow Wilson observed, there may be no surer way of making enemies than trying to change something. (“If you want to make enemies, try to change something.”) If buy-in from the other professional stakeholder is possible, great. If not, maybe trying something else is better. (As an old proverb has it, “He who speaks the truth should have one foot in the stirrup.”)

And a small bonus possibility: I’m not at all sure that any paralegal’s or lawyer’s *pro bono* work needs to be in one’s own area of legal expertise. While it may help a *pro bono* initiative to include one or two professionals experienced in that area, it may even help more to have some new blood and fresh eyes as well.

What might we accomplish and enjoy if we tried a new instance of professionalism (including in the way the cited passage from the Preamble to the Rules of Professional encourages), creativity, and conviviality?

Thanks for the chance to meet with you.

Charlie Asher  
Law Offices of Charles A. Asher  
[Charlie@UpToParents.org](mailto:Charlie@UpToParents.org)  
[Charlie@DefenseMap.com](mailto:Charlie@DefenseMap.com)  
1075 Broad Ripple Avenue, #258  
Indianapolis, IN 46220