

# Holding up the pillars of justice

## How can the legal profession support democracy?

'A profession supportive of democracy' was the ambitious title of the Strategy Summit for the Americas organised by the Cyrus R Vance Center for International Justice Initiatives and the Association of the Bar of the City of New York in March, with the participation of [LATINLAWYER](#). Sebastian O'Meara was among the delegates at the three-day event.

**T**he Cyrus Vance Center has developed a strong record in recent years of promoting pro bono work in Latin America, and the New York conference followed similar events in Buenos Aires, Santiago and São Paulo that have been very effective in pushing forward the pro bono agenda in the region and supporting the establishment of institutionalised pro bono programmes in those countries.

As can be inferred from the title, the aim of the New York event was broader—the conference started from the premise, shared by [LATINLAWYER](#), that the legal profession is uniquely positioned to contribute to civic society and thus support democracy in the region. Pro bono as it is traditionally understood—offering the services of a capable lawyer to those who cannot afford them—is only one part of that potential contribution of the legal profession to civic society, and the Vance Center's notion of how much further that contribution should go is made explicit in its adoption of what it terms the 'four pillars' that support the legal superstructure of a democratic society:

- Access to justice
- A fair and equitable judicial system
- Fair and equitable government policies
- Legal ethics

These 'four pillars', the Vance Center rightly argues, should be in the mind of every practitioner who sees the legal profession as more than just an adjunct to the world of business, and a strong turnout of some of the most widely respected practitioners from Argentina, Brazil, Chile, Colombia, Mexico and indeed the United States showed how successful modern lawyering and a focus on the profession's core values were by no means incompatible.

But progress up the 'four pillars' doesn't just depend on hard-nosed business lawyers taking a broader view of their role; it relies on interaction between members of the mutually dependent constituencies that make up the 'pro bono chain': bar associations, law firms, law schools and NGOs, and all made their voices heard at the event, giving rise to fruitful and provoking discussions.

The reader will not need a blow-by-blow account of all the discussions over three days, which often returned to the same central themes, but some highlights will be informative.

"It is our responsibility not to be bystanders to injustice." With those words, **Todd Crider** (Simpson, Thacher & Bartlett LLP, New York and Committee chair at the Cyrus Vance Center) set the theme for the event, reminding delegates that Cyrus Vance firmly believed that courageous

leadership in a law firm could make a difference to individuals and, in time, to the policies of nations.

A number of countries in Latin America, notably Argentina and Chile, have made significant progress on pro bono in recent years, according to conference organiser **Joan Vermeulen**, executive director of the Cyrus Vance Center. But the differences between countries are not just of implementation, but of ideas as to what pro bono actually is, which makes it all the more important to learn the value of cooperation between different countries.

"The legal profession has to establish a clear commitment to democracy," argued **Juan Cambiaso** (Marval, O'Farrell & Mairal, Buenos Aires, and a member of the executive committee of the Colegio de Abogados de la Ciudad de Buenos Aires). Law schools have an important role to play in making students into citizens who are committed to democracy; bar associations have the capacity to play a strong role in the promotion of democracy and have often done so, but need to make their members aware of this role, while law firms, and large law firms all the more so, have a tremendous responsibility in promoting pro bono. Lawyers need compassion, Cambiaso continued, and while making pro bono an integral part of what lawyers do will not change the world, it will

certainly change the legal profession.

The state grants a monopoly of access to the courts to lawyers, in the belief that this is the only fair way to give equal access to justice to all, argued **Martín Böhmer** (Universidad de San Andrés, Buenos Aires). But if lawyers don't bear that in mind, this monopoly becomes illegitimate. And if this monopoly is to be fair, all sides need access not just to a lawyer, but to a lawyer of the same quality as those engaged by the other party. Böhmer also looked at other parts of the 'pro bono chain', notably arguing that the near-absence of full-time law professors means that professors hold back on their opinions so as not to upset judges whose goodwill they will need as lawyers and at the same time use their prestige as professors to further their interests as lawyers. Other actors in the 'pro bono chain' are likewise weak in Latin America, Böhmer concluded; law schools, for instance, are by and large sterile places that provide a 'doctrinal, memoristic and dogmatic' legal education, where students just have to learn the code, without reflecting on what the practice of law means, which makes transposing US experience to Latin America particularly difficult.

"Democracy is founded on justice, and lawyers are guardians of justice" was how **Bettina Plevan** (Proskauer Rose, New York, and president of the ABCNY) put the challenge facing lawyers, remarking that in the United States the profession had regularly risen to that challenge. And action by an organised bar is essential in making the profession's voice heard, she continued. But the United States is far from being a spotless example of how to do things—only 46 per cent of New York lawyers do pro bono work, and only 27 per cent of them do more than 20 hours a year.

Politicisation is always a potential issue, and bar associations must be careful to be measured and impartial, argued **Scott Horton** (Patterson, Belknap, Webb & Tyler, New York), engaging issues that are supported by all members, from the most liberal to the most conservative.

Bar associations are generally much weaker in Latin America, with the notable exception of Brazil. In Mexico, of 200,000 qualified lawyers, only 1,900 are members of the country's largest bar association, a high proportion of them criminal lawyers, making it hard for bar associations to make themselves heard. But **Gabriel Larrea**, president of the Ilustre y Nacional Colegio de Abogados de Mexico, argued that even his small association plays a vital role in its contacts with the administration and the courts, for instance by organising courses for judges.

In Colombia, there is no bar association, but

**Alfredo Lewin** (Lewin & Wills, Bogotá) argued that establishing a bar association was only desirable if this association actively worked to promote a just society, rather than defending the interests of lawyers.

There is in many cases a conflict, argued **Oscar Vieira** (Fundação Getúlio Vargas and SUR-Human Rights University Network) between what the legal community in general expects from the leaders of a bar association—namely the protection of the interests of lawyers—and what the leaders of a historically engaged and politically progressive bar association such as Brazil's OAB actually think.

Pro bono can inspire reactions perhaps unforeseen in North America and Europe—delegates from a number of countries reported that lawyers and bar associations were suspicious of free provision of legal services in any shape or form, as this could be seen as unfair competition in a context where armies of under-employed lawyers compete fiercely for the tiniest jobs. This

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is notably the case in Brazil, where lawyers are not allowed to provide free legal services to individual clients. Todd Crider found this restriction a "fabricated reason for doing nothing" which meant that "the poor will continue to be denied decent representation". In support of a change in the rules, Crider argued that there is a positive dynamic for the legal profession in play here—if there's just one lawyer in town, he or she will be poor; if there are two, they will both be rich.

There is a "conceptual deficit" in relation to access to justice in Latin America, said **Paola Bergallo**, an Argentine PhD candidate at Stanford Law School, and professional associations have until recently played only a marginal role in promoting it.

**Carlos Creel** (Creel, García-Cuellar & Muggenburg, Mexico) went further, seeing a "conceptual deviation", arguing that it is hard to talk about the role of the legal profession in

support of democracy in a context where there is no real democracy.

Lawyers must contribute with what they're good at, argued **Thomas Heather** (Ritch, Heather & Müller, Mexico)—as a financial lawyer, there was no point in him representing a defendant in a criminal case; but he and his firm could, for instance, contribute to the establishment of a viable and transparent securities exchange regime in Mexico.

The clients of law firms have their role to play in the 'pro bono chain', argued **Alexis Rovzar** (White & Case, New York/Mexico), who advocated persuading general counsel of large companies in the region to look at a law firm's pro bono record as one their criteria in choosing a law firm.

Law firms and NGOs have to realise that they need each other, argued a number of delegates, and in the United States they have increasingly done that. But that's not always the case in Latin America. NGOs and law firms can in many cases be seen as being on opposite sides of a social and political conflict, argued **Esteban Restrepo** (Gómez-Pinzón Linares Samper Suárez Villamil Abogados, Bogotá), and the challenge was to create an "area of confidence" between them.

The media also has a place in the pro bono chain by circulating the ideas discussed at meetings of this sort, and **LATINLAWYER** played its part in moderating, alongside Columbia University's **Alejandro Garro**, a roundtable that brought the conference to an end and discussed in an interactive format many of the points raised in the previous days.

Reflecting on the lessons of the meeting, Todd Crider noted a "tremendous and deeply rooted perception of the profession of law not being the profession of justice", and stressed how the challenge now was to translate discussions into concrete actions that are achievable and are carried out. The Vance Center aims to promote two key initiatives in this regard—the preparation of a 'Pro Bono Declaration of the Americas' which would commit the legal profession in each jurisdiction to substantive and meaningful actions in spreading pro bono, and the compilation of the ethical rules governing the profession in each country in the region to allow comparative analysis and progress towards a model that pushes the profession as a whole in the right direction. The Vance Center's conferences are clearly a key forum in which to discuss this, and Crider closed the session by announcing that the Barra Mexicana, the Ilustre y Nacional Colegio de Abogados de Mexico and the leading Mexican law firms present at the conference had agreed to hold a meeting in Mexico in the autumn of 2006 to take the discussions further.