

# Boston Bar Journal

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## A Sense of Decency

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**The SJC's Chapter 40B Session: Wrestling with the "Plain Language" of Chapter 40B**

By William F. Lee



William F. Lee is a co-managing partner of WilmerHale, and a member of the firm's Executive and Management Committees. In addition to his firm responsibilities, Mr. Lee continues to concentrate his practice primarily on intellectual property and commercial litigation.

## A Sense of Decency

Almost 90 years ago, Boston attorney Reginald Heber Smith authored the seminal book *Justice and the Poor*, which cast light on those in the shadows of the American justice system. Smith exposed the vast difference in the quality of legal representation available to the disadvantaged and the wealthy. His advocacy led to national efforts to provide the poor better access to high quality legal services.

After starting his career as a legal services lawyer, Smith joined Hale and Dorr and became our managing partner. By bringing his public-minded focus to private practice, Smith insisted that each of the firm's lawyers fulfill their professional responsibility to provide legal services to those who could not afford them.

In the generations since Smith, we, and many other Boston-area lawyers, have maintained a commitment to providing the highest quality representation to those without access to the legal system. Our lawyers have been involved in many of the influential pro bono cases that have shaped the nation. Most recently, in *Boumediene v. Bush*, 128 S.Ct. 2229 (2008), the U.S. Supreme Court held that our six clients held at Guantanamo Bay have a constitutional right to challenge their detention in United States civilian courts. We also represent, in separate cases, nineteen veterans of World War II and the Korean, Vietnam, and two Gulf Wars, who have been denied benefits for service-connected injuries. Two of our associates successfully advocated for asylum for a Congolese immigrant who suffered unimaginable hardships in her native country. Closer to home, we served as pro bono counsel to a class of approximately 15,000 children suffering from severe emotional distress, for

whom we obtained previously unavailable home-based mental health services after a trial in the U.S. District Court in Springfield. *Rosie D. v. Romney*, 410 F. Supp. 2d 18 (D. Mass. 2006).

One only has to look at the websites of any law firm in Boston – solo practitioner, small, medium, or large firms – to appreciate the breadth and depth of the pro bono contributions of local lawyers. Lawyers in Boston firms have devoted countless pro bono resources in areas as diverse as the arts, domestic violence, inner city schools, low-income housing, the environment, and prisoners' rights. And, of course, those who do public interest work full-time, such as the many lawyers who devote their careers to providing legal services for the poor, and who work in government agencies and non-profits, are the real unsung heroes.

In a time of heightened cost-consciousness, performance rankings, economic uncertainty and competitive pressures, it is challenging for law firms and individual lawyers to strike the right balance between the professional responsibility to provide legal services to those who cannot afford to pay and every lawyer's and law firm's desire for economic success. But challenges from market pressures are certainly not new. After joining Hale and Dorr, Smith created the system whose central feature is the "billable hour." Yet he recognized that financial goals and moral obligations exist side-by-side and can reinforce one another. While Smith urged lawyers to operate efficiently by tracking and billing the time spent on each task, he fully recognized the need for lawyers to devote part of that time to serving those who should not be billed and cannot pay.

As the first signatory to the Pro Bono Institute's Law Firm Pro Bono Challenge, WilmerHale has dedicated itself to providing at least five percent of the firm's billable hours to the poor and disadvantaged. We exceed this goal each year. While our work has immeasurably benefited our pro bono clients, it has also yielded substantial benefits to our firm. Pro bono work provides younger attorneys with opportunities for written and oral advocacy they might not see until later in their careers. Soon after the merger of Hale and Dorr with Wilmer Cutler and Pickering, we used pro bono matters as among the first opportunities to cross-staff cases between various offices, strengthen relationships with our new colleagues, and appear regularly before the U.S. Supreme Court on pro bono matters of national importance. In short, pro bono work has enhanced the sense of identity and community at our firm, an experience shared by many other firms.

While the practice of law is more of a business than ever before, it remains a noble profession. We have special obligations as lawyers to improve the administration of and access to justice. By involving ourselves with the needs of the communities in which we live and practice, and by serving those who lack the means or access to retain quality legal representation, we advance the cause of justice. We also become better and more fulfilled lawyers, by working to achieve that "sense of decency" – famously identified by our partner, Joe Welch, in his pro bono representation at the Army-McCarthy hearings – on which a democratic society and the Rule of Law depend. ■

WilmerHale is proud to support  
the Boston Bar Association  
in its efforts to promote professional  
excellence, community service,  
diversity and equal justice for all.

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## *Save The Date*

### **Walk to the Hill for Civil Legal Aid**

January 22, 2009 from 11 a.m. to 1 p.m.

The BBA urges all its members to participate in the 10<sup>th</sup> annual Walk to the Hill for Civil Legal Aid, to be held at the Massachusetts State House. The BBA is a proud sponsor of this critically important opportunity to convene hundreds of lawyers to advocate for civil legal aid for low-income people. Amid uncertain economic times, this event will be more important in 2009 than ever before.