

A F O O T H O L D I N T H E B R O N X



*"The fallout from corporate warfare
has its civilian benefits."*

That's the deal breaker."

"What's that?" asked Dr. Mitchell S. Rosenthal, president of Phoenix House, a drug-free residential treatment program for drug addicts.

I'd slipped into business argot that hadn't crossed into the not-for-profit sector. We were in Phoenix House's conference room in an old West Seventy-fourth Street building that had been purchased in 1972 when the neighborhood looked unsalvageable and the building sorely needed repair. The residents had renovated the building and, with Phoenix House's guidance, renewed themselves.

"It means the point over which the deal fails unless resolved," I explained.

"Got it," the doctor said.

It was intriguing that I was introducing the language of deals to him, because the doctor was on a parallel course with many of my business clients. In this meeting in 1978 he faced his first strategic acquisition, a failing treatment program in the Bronx, and we'd

come together to do a deal. In this context, he was in step with his time, expanding by acquiring others.

Dr. Mitchell S. Rosenthal was a builder. After training in psychiatry, he served as a Navy physician at the U.S. Naval Hospital in Oakland, California, and came in contact with Synanon, a residential drug-treatment program. Impressed with their methods and results, he came home to New York after his Navy stint committed to fight drug addiction, and joined the city's Addiction Service Agency in 1967 as one of the two commissioners. Immediately, he bumped against the city's limits and its bureaucracy. Effective treatment required changing the addicts' environment and restructuring their lives in residential facilities. But there were none that the city owned, and the city, for political reasons, couldn't easily buy tenements, even for drug treatment. To buy the run-down buildings, a private foundation, known as the Phoenix House Foundation, was formed. The patients helped repair the buildings as part of their work therapy.

The doctor then enlisted the help of the Department of Human Resources to classify the addicts as totally disabled, which entitled them to federal aid to the disabled that could be contributed to Phoenix House for their care. With the Foundation holding the real estate and federal welfare support providing necessities for the resident addicts, Commissioner Rosenthal could use his agency's budget to pay for staff to deliver health care and treatment to the addicts. It worked, and the Phoenix program was a model program, an exciting initiative of Mayor John Lindsay's administration.

It's impossible to end-run the bureaucracy in the city for long or avoid its politics. Abe Beame, city comptroller and an aspiring candidate for mayor, challenged the conflict of interest he saw in the doctor's acting as a commissioner for the city and as a director of a private foundation holding real estate improved by addicts. Beame started an investigation and wrote a report about claimed abuses arising from the conflict of interest: the principal one was the improvement of Foundation-owned real estate with city and state funds. The "Beame Report" spawned two other investigations: one by the Department of Welfare and another by the New York State attorney general.

Exposed to intense examination by politicians hoping to make names for themselves, the doctor needed a lawyer, preferably a corporate lawyer, to restructure the Phoenix program's arrangements with the city. Nancy Hoving, an early enlistee in the fight against drug abuse and chairman of the board of the Foundation, introduced the doctor to Roswell Gilpatric, then head of the Cravath firm. The case got turned over to Cravath associates, and Carol Bellamy worked on it for a short time. On leaving Cravath to work for the city, she turned it over to me in 1968, thus providing me with a balance to my representation of United Fruit. This was one of the few opportunities at the time for a corporate lawyer to do work in the public interest. Most of such work required court appearances and litigation skills. Work in the public interest required artful juggling of the matters for which you were responsible, because the corporate clients always came first. To take on a client in the public interest also meant that you lengthened your day, since time spent that couldn't be billed didn't seem to count as much as billable hours.

I met the doctor and the Foundation's board in the conference room on West Seventy-fourth Street. The doctor was my age, filled with his mission and at ease with his position as the leader of the Phoenix program. The board members were mature, well-connected New Yorkers looking for an able advocate. The purpose of the meeting was to take my measure to see if I could do the job. I'd been at Cravath eight months and was inexperienced, relying solely on my own native shrewdness and the patina of professional competence that goes with holding down a job at a law firm. Inexperienced or not, I was judging them, while being judged, for a lawyer must know his clients. It was probably my brassy stance of not accepting their version of the story and of evaluating them by asking demanding questions that got me through the meeting without them calling Cravath for another lawyer. Phoenix House became one of my earliest clients, the first that I represented without direct supervision of a partner.

The city's investigation was distasteful to the board. They'd set out to fight drug abuse and were in a political cross fire. Cravath litigators were defending them to show that there was no self-dealing, but that effort was only a holding action and wouldn't solve

the problem. Beame's inquisition was a platform from which to ask nasty questions with the assurance of press coverage. Not finding anything wrong wouldn't keep him from continuing to posture or probe, which impeded the program's ability to treat addicts. Beame's interest was in extracting any concession that gave him a political victory over John Lindsay.

The solution was already known when I stepped in to represent Phoenix House. Beame would require that the doctor resign from his city post to join the Foundation, and thereafter the Foundation would negotiate contractual arrangements with the city and state to deliver drug-treatment services. The Foundation would then be an independent vendor of services, and its performance would be monitored.

Simple as it sounded, it was totally unreasonable when examined. The board assessed Beame's proposal and were noisy about it. At their meetings, everybody spoke, without the usual show of restraint found in business boardrooms. Nancy Hoving was a spirited advocate and often led freewheeling and heated discussions. All the members had contributed time and money to the Foundation and were committed to fight the drug problem, and even the city, if it interfered with their efforts. They saw that the doctor would lose his job and then have to negotiate for the funding of the program, including his salary. Drug treatment would stop. Compromise lay in the doctor's resigning but with the city continuing to fund Phoenix House's drug treatment program until the contractual terms could be worked out. It meant that the doctor would have to fund his salary through charitable contributions, which was a lot to demand. The self-interest of politicians is more than most good-minded people should suffer. There was little reward in victory for him other than the opportunity to deal with the drug problem in the city for a marginal salary that he raised by pleading for contributions. At any time he could have opened a Park Avenue office and become a psychiatric physician for the rich, with success assured. But the doctor was willing to leave his job to free the board from the cloud of investigation. I liked him for that and told him that I thought the compromise would work. Assuming Beame accepted, I was prepared to work out the contractual arrangements with the city.

He resigned from the city job, and it took another eighteen months to spin off the program, have the city withdraw all charges, and get a clean bill from the Welfare Department and the state attorney general. During that time, the doctor and I got to know one another well. Our professions were a bond. As a lawyer, I was in his view called on to serve Phoenix House, as if I too had taken the Hippocratic oath: in my case, to facilitate medical treatment through law. That obligation to serve knew no time constraints. One night he called me after midnight, waking me to ask me what to do about a boy who had been arrested during the day in New Jersey while trying to solicit charitable contributions for Phoenix House.

"How am I supposed to know?" I said irritably. "I don't do that kind of work."

"You're a lawyer. If he were sick, I'd treat him. But I don't know what to do here."

"Wait till morning," I said with enough authority to put him at ease. "We'll get him before a magistrate and get him released on bail." That satisfied the doctor, and it worked: so he was encouraged for the next time. I bought two copies of *The Bust Book*, a primer on dealing with the police, one for the office and one for home, all for the next time.

The next time was having me work on the tag end of a hopeless criminal appeal for two residents who said that they hadn't committed the robbery of a drugstore for which they were convicted. They had an alibi defense, claiming to be at a Phoenix House facility at the time the crime was committed. The witnesses in their favor were Phoenix House residents, former addicts. The jury didn't believe them and found the defendants guilty. The conviction had been devastating to morale at the facility.

"No one has any faith in this case," he told me. "You have to do it. You clerked for the Chief Justice of California. We need leave to appeal to the Court of Appeals from the Chief Judge. This is right up your alley. The residents need their faith in the criminal justice system restored."

I worked on a brief (trying to overturn a jury verdict based on claimed errors of courtroom procedure and the charge of the judge to the jury) and made an appearance in Chief Judge Charles D.

Breitel's chambers in lower Manhattan. A chubby young man from the Queens district attorney's office was there to oppose my application. As we waited together in the anteroom for the Chief Judge to see us, I inspected my adversary. Nothing he wore seemed to fit. He saw me examining him, knew what I was seeing, but was unconcerned. He was a tough little man.

"You write that brief?" he asked.

"Yes."

"Pretty good," he said, acknowledging my pride.

Of course it was good, damn good. I'd given it a lot of effort and felt that the sentences sang out for justice.

"For an amateur," he added.

I clenched my teeth, and didn't respond, waiting for him to eat his words before the judge. But it wasn't to be. The judge gave me less than five minutes for argument and denied the request. I left the chambers, pausing only long enough to let my adversary shake my hand in his pincer grip, forcefully pressing home his victory. There was a reason why no one had believed in the appeal: it was hopeless. And residents of Phoenix House would have to find faith in the criminal justice system through another example. If I'd known more, I'd have been less sure, but I learned about the benefits of legal specialization.

Our professional relationship permitted me, in turn, to make demands on the doctor. For example, the city, a short time after the Phoenix program was spun off, sent a team of auditors to the West Seventy-fourth Street office on a surprise visit to screen confidential patient records. The doctor made an emergency call to me for advice on how to deal with this intrusion. I told him to throw the auditors out. They didn't need those records for an audit and weren't entitled to access to confidential patient information. In working out the spin-off arrangements with the city, I'd specifically negotiated confidentiality arrangements that precluded the auditors from looking at portions of the patients' records where the patients gave confidential information about their past history, which could include information about prior criminal activity. My sense of privacy had led to my seeking and obtaining the provision from the city's counsel, who apparently hadn't discussed the arrangements with the city's auditors.

The doctor said, "They told me that if we don't allow access, they'll cut off the money."

"Throw them out," I said. "They have no right to look at the information. Tell them we'll see them in court." I was adamant and my voice was harsh. No compromise was possible.

It was a tense moment. No one likes to oppose their main source of funding. The doctor was being put in that position, with the future of Phoenix House at stake. The city's ability to cut off the money and starve the program was a highly potent weapon. I recognized the high stakes and then realized that the position I'd taken was more than that of a legal adviser. I'd left him no room for decision. The effort I'd put into representing the program had me speaking as a partner in the enterprise, which was stepping over the line. No matter my emotional feelings, I had to step back into my role as lawyer and only advise, leaving him free to make the decision.

I said, "I don't mean to preclude your decision. Let's discuss this situation." I didn't have to say anything more.

He had already made up his own mind. "If we can't keep the patients' confidences, we won't be able to treat them. We have to take the risk."

He threw the auditors out, and we waited. We got nasty calls from city officials, but the city backed down. They reluctantly acknowledged that they didn't need confidential patient information to make audits.

For him, I was a general practice lawyer. He called me when there was trouble or when he needed advice, no matter the type of problem. For me, participating in a common enterprise offered a sense of continuity that balanced the brief encounters that mainly made up doing deals. I watched him over time become an able administrator and build a staff that could deliver low-cost and effective treatment, which made Phoenix House the premier national drug-treatment program. Working closely with him enabled me to understand my business clients better, for I could appreciate their sense of achievement in building their organizations. Some of my investment banking clients were interested in fighting drug abuse and I encouraged them to go on the board. The clients, astute businessmen, were able to make more direct con-

tributions to the running of Phoenix House than I could, because the business part of the doctor's operations was similar to many of the businesses they advised. But then came an instance where my main legal experience could be put at the service of Phoenix House.

"Do you know anything about acquisitions?" the doctor asked me one day in 1978.

"Yes," I said.

"This is a difficult one. We don't know how to do it and we're competing with other programs to acquire it."

At last, a matter for which I was trained.

In the conference room on West Seventy-fourth Street, he told me about Logos, a treatment program in the Bronx. I got myself a cup of coffee from the pot that was always available and sat back and listened. The conference room's proportions made it an intimate working room, and here we'd worked through many of Phoenix House's problems.

Ron Coster, the chief financial officer of Phoenix House, sat with us to explain the costs. The doctor stated the facts. Logos treated about forty residents in a facility in the lower Bronx. A state audit had turned up questionable expenses that, on further examination, exposed fiscal problems and mismanagement. The state, having uncovered a waste of funds and other fiscal problems, would cancel Logos's contracts to deliver services unless a reputable, well-managed program took it over.

The Logos program had run up debts in a number of quarters for well over \$50,000, including a \$30,000 loan from Chemical Bank that had been personally guaranteed by the chairman, a local Catholic parish priest. The problem, as the doctor saw it, was: "If we take over the program, we take over the debts, which isn't worth it to us. For that much debt, we'd set up our own program in the Bronx."

The doctor had it fully analyzed: "If we deal directly with the state, the program will go under and the priest will be responsible for the \$30,000 to Chemical Bank. No one wants that. The priest didn't know about the poor management, and neither did the outside directors. The board wants someone who will come in and assume the loan and get the priest released."

“Even the state wants the priest released,” he continued. “They are reluctant to write new contracts if it means the priest will be liable. But no one who has looked at it is willing to take on the debt.”

“Did anyone ask the bank to forgive the debt?” I asked.

Ron Coster smiled. “Everyone. The answer is no. That’s why the bank took the guarantee.”

“Who did you speak to?” I asked.

“The loan officer,” Ron said.

“Nasty?” I asked.

“Firm,” Ron said. “Very firm.”

“Did the state try?”

“The state won’t do that,” Ron said.

“You guys want all the assets without paying for them,” I said. “And you won’t assume any liabilities. That’s better than I’ve ever been able to do for my clients.”

“I told you, it wasn’t easy,” the doctor said.

“Let me back up. Why do you need this program?”

“It’s an old program that has community acceptance and involvement. We have only one treatment program in the Bronx. This acquisition gives us a firm foothold in the Bronx. We have to be well represented there. Otherwise, we haven’t done our job for the city. And it’s not so easy to start up programs now. Communities are afraid of us. They believe we bring crime, which is totally untrue, but prejudice is hard to dispel.”

“Let’s deal with the logic of the situation.”

“Go ahead,” the doctor said.

“If no one is prepared to assume the debt, then the state will have to choose someone to take over the program. It’s only a matter of time,” I said. “You’re the best qualified to run it, and if you wait, you’ll get it on your own terms.”

“This is not a situation where you can wait,” the doctor said. “There are too many variables. The state may do nothing. Some other program may plunge in and assume the debt. Or a number of other possibilities could occur that we can’t see right now. Besides, the kids need treatment.”

“The priest is the key,” I said. “That’s the deal breaker.”

“Is there anything that can be done?” he asked.

“Well, the bank should release the priest. That was a goodwill loan.”

“Everybody’s tried the bank,” Ron Coster said, his frustration showing.

“I’ll call Dick Simmons at Cravath,” I said. “He represents Chemical Bank and is a sensible man. Let’s see what he can do.”

The last time I’d spoken to Dick Simmons was about three years before, when I told him that Wachtell Lipton was prepared to do Cravath a favor, but didn’t need any favors from Cravath. Now it looked like I needed a favor, or politely put: a concession for a mutual client, Phoenix House.

I called Simmons and told him about the situation. He listened and didn’t ask any questions until he had all the facts.

“What do you want me to do?” he asked.

“Have the bank release the priest,” I said.

“Who is the loan officer?”

I gave him the man’s name.

“It’ll take me about an hour,” he said matter-of-factly. “Call the loan officer in about an hour and he’ll make arrangements to get you the release.”

“Thank you,” I said.

“It’s small,” he said.

“Big for Phoenix,” I said appreciatively.

I called the loan officer and was met with: “You delivered the bank.” I could hear the anger in his voice. I didn’t say anything; he hadn’t said anything to which I could respond.

“Who do you know?” he asked.

“I need the release,” I said. “We’re on Park Avenue.” I gave him our address.

“I’ll send it over to you this afternoon,” he said. And then: “Who do you know?” he asked again.

“It’s the right thing to do,” I said, this time choosing not to respond.

“It’s somebody very important, because until an hour ago we had all made up our minds,” he said, retaining in his voice the resistance Ron Coster and everyone else had met.

The doctor was delighted. “The legal old-boy network really works,” he said.

“It wasn’t that at all.”

“It wasn’t?” He looked puzzled. We were in the West Seventy-fourth Street conference room and Ron Coster was with us. He too looked perplexed by my response. They were used to seeking and taking favors for Phoenix House. This looked like another one.

“There weren’t any favors delivered here,” I said. “The bank is not in the business of giving away money. That’s why the loan officer was upset about giving the release.”

“Then what was it?” the doctor asked. He liked to know how things worked. I could see his interest.

“I asked for the release and Simmons evaluated his client’s position. That is the way lawyers always deal with each other. We didn’t have to push the pieces of this game to the end of the board. He could see that to collect on the loan, the bank would have to try to enforce the guarantee by suing the priest in the Bronx Supreme Court. There would have to be a jury trial. From that it followed that in a charitable loan, where the priest never got any money, the bank couldn’t win, and the matter would probably be picked up by the newspapers. Why should the bank generate ill will trying to collect on a loan meant for community goodwill? Without my saying anything, he knew that it was best to be gracious. That’s the way all cases are settled.”

“Simmons is a powerful guy,” the doctor said.

“Of course,” I said. “That’s why I called him. But his power comes from his good sense,” I said, “and not from being able to give arbitrary directives.”

“The fallout from corporate warfare has its civilian benefits,” the doctor said, enjoying his insight into the way lawyers work.