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Instilling a Commitment to Service: A Law Firm Pro Bono Seminar

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The Need for a Doctrinal Course on Law Firm Pro Bono

How can the legal academy ensure that law students graduate with an awareness of the justice gap and a commitment to public service? Why should it bother to do so? While the majority of law school graduates continue to practice with private law firms,¹ most of these students graduate without understanding the importance of law firm pro bono, one of the most direct ways for them to have an impact on clients and communities in need. Even students planning a career in the public sector should know about law firm pro bono in order to help their organizations effectively market or co-counsel a case with a large firm. It is critical for law school graduates to recognize the interdependence of the private and public sectors that developed to supplement the inadequate system of government funded legal services and how law firm pro bono has become an essential part of filling this “justice gap.”

While most law schools now provide their students with diverse clinical and externship opportunities,² only a few offer a doctrinal course designed to explore the relationship between law firms and public interest legal services providers. At the University of Virginia School of Law, we developed a

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1. Recent statistics compiled by the National Association of Law Placement (NALP) show that a majority of law graduates entered private practice within nine months of their graduation date. According to the National Law Journal, in 2009 the law schools with the highest percentages of graduates hired by the NLJ 250 firms include: Northwestern University School of Law (55.9 percent), Columbia Law School (54.4 percent), Stanford Law School (54.1 percent), University of Chicago Law School (53.1 percent), University of Virginia School of Law (52.8 percent), University of Michigan School of Law (51 percent), University of Pennsylvania Law School (50.8 percent), New York University School of Law (50.1 percent), University of California Berkeley School of Law (50 percent), and Duke Law School (49.8 percent). The National Law Journal, *The Go-To Schools*, Law.com, *available at* <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202443758843&slreturn=1&hbxlogin=1>.
2. While we encourage students to work on a pro bono project of their own choosing, we do not currently require such participation as a part of the course.

semester-long seminar to facilitate understanding of the critical role played by large law firm pro bono programs in addressing the justice gap. We taught this course for the first time in the spring of 2009, just as the economic downturn was increasing the demand for legal services yet at a moment when service providers were particularly stressed.

The seminar:

- analyzes the history and institutionalization of law firm pro bono programs;
- highlights the importance of pro bono from the perspective of indigent clients, nonprofit groups and the public sector;
- discusses the ways in which pro bono affects the bottom line of a law firm;
- examines the different models that law firms use to structure their pro bono programs;
- explores the nexus between pro bono and the professional development of lawyers;
- considers potential ethical conflicts, including positional conflicts, which can impact the amount and type of pro bono services provided by law firms;
- reviews the incentives of lawyers and law firms to do pro bono, and;
- presents at least one case study demonstrating how pro bono lawyers can make an impact on people in need of legal services.

Although it would be possible to have only a law school faculty member teach this type of doctrinal course, we believe that a full-time pro bono counsel or administrator can provide important “real world” law perspectives (e.g., highlighting emerging pro bono issues and trends) for students. In addition to regular lectures, the course has included a wide range of guest speakers including former law firm managing partners, law firm pro bono counsel and partners, legal service representatives from various providers, general counsels of large nonprofit organizations, and even representatives from news publications that report on law firm pro bono. Bringing these experts to Charlottesville provides students with a realistic sense of the scope of institutionalized pro bono outside of their own community and summer employers.

Students work in teams as part of an experiential project to develop a structure for a law firm pro bono program. Designing their own pro bono program allows students to think critically about issues such as who will run the program, how it will operate, the role of the pro bono department within the law firm, as well as departmental strategies and budgets. In other words, they are challenged to design programs that would allow a law firm to develop, grow and maintain a robust pro bono initiative to meet the growing needs of indigent clients and nonprofit organizations.

To ensure access to justice, law schools should strive to break down the perceived barriers between public service and private law firm pro bono. Teaching law students to understand the need for creative partnerships between these sectors will help accomplish that goal.

Setting the Stage: Institutionalization of Law Firm Pro Bono and the Justice Gap

The economic downturn has increased the access to justice gap for those without substantial financial resources.³ Legal services programs, facing ongoing cutbacks in federal and state funding, have suffered staff reductions and layoffs.⁴ Recent statistics compiled by the Legal Services Corporation showed that for every client served by an LSC-funded program, one person who seeks help is turned away because of insufficient resources.⁵ While the availability of government-funded legal services declines, the number of low-income clients who need assistance with a diverse array of legal issues continues to grow. It is important that the next generation of lawyers become aware of the ever-increasing needs of indigent clients, the ever-dwindling government funding for legal services, and the need for large law firms to help fill this resource gap through pro bono.

The institutionalization of pro bono in law firms allows for the leveraging of significant private-sector resources on behalf of low-income clients and the organizations that advocate for them. At the same time, the law firms reap significant benefits in terms of marketing, recruitment and attorney retention that ultimately helps their bottom lines.⁶ Pro bono has become an important way that law firms differentiate themselves in order to market their services to corporate clients and to recruit high quality legal talent.⁷

3. See generally Legal Services Corporation, *Documenting the Justice Gap in America* (2009), available at http://www.lafla.org/pdf/justice_Gap09.pdf.
4. Necta Pal, *Cuts Threaten Civil Legal Aid*, Brennan Center For Justice, Apr. 22, 2011, available at http://www.brennancenter.org/content/resource/the_economy_and_civil_legal_services/ (indicating that “[a]gainst the backdrop of such pressing needs, funding shortfalls from state, federal and private sources have resulted in layoffs, salary reductions, and elimination of specific programs or entire legal aid offices”). (LSC’s funding declined from \$420 million in FY 2010, to \$404 million in FY 2011, to \$348 million in 2012.) Legal Services Corporation (2012).
5. In the fall of 2011, Congress voted to once again cut funding to the Legal Services Corporation. Funding for fiscal year 2012 was just \$348 million, a reduction of \$56 million from the prior year (2011). This reduction resulted in a cut of 14.8 percent to field programs that serve the poor nationwide. Legal Services Corporation, *Documenting the Justice Gap in America—The Current Unmet Civil Legal Needs of Low-Income Americans* (2009), available at <http://www.lsc.gov/media/press-releases/congress-votes-348-million-lsc-funding>.
6. See generally Scott L. Cummings, *The Politics of Pro Bono*, 52 *UCLA L. Rev.* 1 (2004) (discussing the transformation of pro bono from an ad hoc system of services provided by individual lawyers to the current system of delivering pro bono through programs developed and controlled by large law firms).
7. Steven A. Boucher, *The Institutionalization of Pro Bono in Large Law Firms: Trends and Variations Across the AmLaw 200*, in *Private Lawyers and the Public Interest: The Evolving*

Although the institutionalization of pro bono in the large law firms is a relatively recent development, it represents a radical change in the way legal services are delivered to the poor in this country.⁸ The emergence of the large law firm particularly in the 1980s and 1990s, the push for more pro bono service from the organized bar (e.g. the ABA's Law Firm Pro Bono Project and the resulting Law Firm Pro Bono Challenge),⁹ the decision of *The American Lawyer* to rank law firm pro bono programs, and the proliferation of nonprofit organizations serving the needs of low-income clients all led to the development of institutionalized pro bono in large law firms.

Institutionalizing pro bono in large law firms led to more focus on strategies for the pro bono practice, new matter intake and staffing procedures, substantive training, direct legal conflicts, pro bono policies, public interest fellowship and externship opportunities, relationship-building between the firm and the public sector, as well as the role of pro bono in recruitment, training, marketing and business development initiatives. In turn, thorny issues arose concerning, for example, adequate supervision of associates, partnerships with fee-earning clients and other organizations, the need for effective evaluation techniques, charitable donations, and the effect of positional and business conflicts on the choice of matters to accept.

Finally, the ranking of law firm pro bono programs by publications such as *The American Lawyer* has encouraged law firms to increase pro bono participation and hours. Some law school pro bono programs also encouraged pro bono activity at large law firms because they both make students more aware of the varying types of such opportunities while encouraging students to request them upon arriving at their firm.

How Law Firms Work and How Pro Bono Hits the Bottom Line

Before students can truly understand how pro bono functions within a large law firm, they need to be educated about how law firms are structured and how they operate.

Attorneys and administrators in law firms, as well as law school faculty, often accept as the norm how little law students know about the operating structures of law firms. In most cases, a student's experience with a law firm is restricted to a summer associate program where they do some substantive work and get a general feel for the law firm's culture. Unfortunately, they usually

Role of Pro Bono in the Legal Profession 135, 148 (Robert Granfield & Lynn Mather, eds., Oxford Univ. Press 2009).

8. Cummings, *supra* note 7, at 114. See also Cummings & Rhode, *supra* note 3, at 2366 (discussing three important consequences for pro bono resulting from the growth of large firms: the increasing need for centralization and greater bureaucracy, including for pro bono; more financial resources and under-utilized manpower that could be directed toward pro bono; and the need to train large numbers of young associates).
9. Robert A. Katzmann, *The Law Firm and the Public Good* 79 (Bookings Inst. Press 1995) (indicating that the Law Firm Pro Bono Challenge encourages firms to donate between 3 and 5 percent of their billable hours to pro bono work).

come away from this experience without a clear picture of how a law firm works as a business, including how a firm makes and spends its revenues. For this reason, our course offers an overview of law firm operations early in the semester with a managing partner, executive director, or some other influential law firm stakeholder delivering this message as a guest speaker.

While it is useful to discuss how a successful pro bono effort can be managed without a significant out-of-pocket cost to the firm, it is necessary to outline the “business case” for pro bono. While the most important reason for doing pro bono is because it’s the right thing to do, key law firm stakeholders may find other justifications more persuasive—particularly after hearing how and why pro bono can be used to enhance the bottom line. Some point out that pro bono is best for developing the legal skills of young attorneys, and since law firms are in the business of “selling” the talent of their lawyers, pro bono bolsters firm revenue. Others suggest that pro bono provides a platform for a firm to gain recognition in the marketplace. Indeed, a firm’s pro bono profile can impact the prestige it enjoys within the legal community.

The Structure of Law Firm Pro Bono Programs

Armed with a better understanding and context for how large firms operate, students can begin to see how these firms structure successful pro bono programs. Because so many law students begin their careers in the private sector, pro bono work is generally the best way for them to provide legal assistance to those in need. It is helpful for new associates to be informed about the critical issues that law firms consider in developing and/or maintaining such programs.

While many students will enter large firms that have existing pro bono structures, others will not. A young associate who understands pro bono will be better positioned to pitch such a program at an appropriate time. Additionally, a significant number of law graduates will join smaller or medium-sized law firms with no formal pro bono program. Even for these students, classroom discussions of pro bono programs can be a helpful guide for how to approach their firm leaders about starting and/or increasing pro bono efforts. Any firm is more likely to consider developing or enhancing a pro bono program if interest in such a program comes from within its own attorney population—especially associates who can clearly articulate how pro bono can operate successfully with the firm’s business model.

We introduce this discussion by outlining a series of factors that should be considered by firm management when developing a pro bono program. They include:

1. Determining who will oversee the firm’s pro bono program

Law firms need to think carefully about who will lead the pro bono efforts. There are many different options for a leadership structure, and law firm pro bono programs have been successful using a variety of models. A firm will

need to decide, for example, whether the program's leader will be: an attorney, administrator or both; full-time or part-time; senior, junior or mid-level; a former public interest lawyer or attorney from within the firm. The firm's culture and its vision of pro bono will dictate the direction it takes with respect to the leadership question.

2. Determining how the pro bono program will operate within the current firm structure

When creating a new pro bono program—or reorganizing an existing model—it is important for students to realize that the structure of the pro bono department itself can directly impact its chances of success. The operational structure of the department (or whether there is a “department” at all) will depend on the structure of the firm and how it operates, as well as what resources the firm is willing to provide for pro bono. For example, some firms will task one individual (a partner or administrator) with managing pro bono efforts and will have neither a committee nor an administrative department for additional support; others will opt for a committee structure, led by a partner or counsel and facilitated by a pro bono administrator, while some firms operate without a formal committee and develop a pro bono administrative department to serve its attorneys.

Determining where within a firm's administrative structure pro bono best fits is also a critical management decision. Pro bono can be a stand-alone group, reporting to the firm's managing partner, chairman, executive committee; it can also be treated as a practice group. In some firms, the pro bono department functions as part of the law firm's human resource teams, including recruiting and professional development.

3. Defining the role of the pro bono leader

Students should be exposed to the ways in which law firms define the role of the pro bono leader—a role that will be highly dependent on whom the firm selects to hold the position. Some questions to consider include: will the firm's pro bono leader supervise/work on pro bono matters; how involved will the leader be in soliciting, approving and/or staffing pro bono matters; what role will this person play in determining the major strategy and policies of the firm's pro bono efforts; and will this leader be expected to assume any non-pro bono administrative functions, such as diversity, community service, professional development or recruiting.

4. Determining pro bono policies

After deciding who will lead the firm's efforts, the role of this leader and the framework for the program's operation, the next step is to design the firm's pro bono policies and incentive structure. Students are generally aware that law firm pro bono policies vary, but they need to understand the reasons for this variation. For example, a firm must determine whether pro bono will be allowed, strongly encouraged or required. The firm will also need to decide how many pro bono hours to “credit” toward associates' billable targets (assuming

the firm has such targets). These policy decisions will depend primarily on the firm's leadership, market demands, the firm's size and business model, and the interest in pro bono among the firm's attorney pool. Other policies to address include the definition of pro bono, the case intake process, supervision, evaluations and closure of pro bono matters. For example, to structure an appropriate intake process for pro bono matters, a firm needs to identify who will be responsible for approving each new matter and what information will be necessary to adequately conduct such a review.

5. Strategy for the pro bono program

Law students should also be aware that firms typically determine a strategy (or, perhaps, multiple strategies) for their pro bono efforts. Some firms choose to focus more on signature pro bono projects while others adopt an "anything goes" style, and still others focus only on smaller, time-limited matters. Firms may also use pro bono as a means to develop relationships with fee-generating clients by "partnering" with them on projects.

6. Pro bono budget and/or managing expenses

Students should understand how pro bono program leaders manage pro bono related expenditures and become familiar with how much money it takes to operate a successful pro bono program. Even if a firm has no specific pro bono budget, students should consider who within the program is tasked with managing expenditures, as well as the usual large-ticket expense items, which can include litigation expenses and charitable donations.

7. Class Project: The Pro Bono Pitch

After fully exploring how law firms operate and how they structure pro bono programs, it is useful to have students apply this knowledge in a practical exercise. For example, we ask our students to prepare a memorandum for a hypothetical law firm managing partner advocating for the creation of a new pro bono program. Students work in teams assigned to firms of various sizes located in different geographical regions and with differing budgets. The memoranda typically discuss the structure of the pro bono program, the firm's pro bono policies, attorney evaluations, new matter approval, and the strategies and goals for the program, including responsibilities for the department and its leadership, metrics for determining successful outcomes and the pro bono practice focus areas.

The Perspective of Nonprofits and the Public Sector

While our course focuses primarily on law firm pro bono, the relationship between firms and the public interest community is critical to understanding how pro bono programs work. By the time they complete the class, students should have developed an appreciation of how public interest organizations function, as well as the symbiotic relationship between the private and public legal service providers.

We suggest devoting at least one class session to this topic. A successful format we have used is a panel comprised of speakers from different public interest organizations, including legal service providers and the nonprofit community. The speakers should provide several key “takeaways” for students including:

1. How legal service providers function

Law students entering the private sector generally fail to understand the work and internal functioning of the public sector organizations. To develop more successful pro bono attorneys, law schools need to better prepare students to work with low-income clients and with the public interest groups that serve them. It is best if students can hear directly from representatives of well-respected nonprofits or legal services organizations. Students will benefit from knowing how to facilitate a positive relationship between their law firm and the pro bono organizational clients it serves.

2. The impact of institutionalized pro bono on service providers

Discussing the history of law firm pro bono (as suggested earlier) should shed light on this topic, but it is important for students to hear directly from public interest providers about how their operations have changed as a result of such institutionalization. For example, donations of attorney time and money to public interest groups by private law firms have allowed pro bono organizations to modify their operations so as to maximize the benefits of these pro bono relationships.

3. Challenges from working with pro bono attorneys

Not all pro bono relationships are successful, and students should be aware of some common pitfalls. Public interest groups may have to intercede with firm attorneys who are ill equipped to work with low-income clients. Legal services groups also may need to “market” those cases that allow the firms to avoid legal and/or business conflicts.

4. Examples of successful programs or projects

One of the most effective ways to model the relationship between the public and private sectors is to highlight a successful project. Students should hear from providers about how they learned to negotiate potential pitfalls and work with law firms to make a positive impact on the lives of pro bono clients.

5. Current issues that affect the public sector

There are topical and challenging issues that come and go in the public interest world, and it is helpful for students to know about them. One example is how the public interest organizations learned to alter or supplement funding strategies during the economic decline—and how the reduction in funding has impacted low-income communities.

Pro Bono and the Professional Development of Lawyers

By the conclusion of this course, law students will appreciate that the primary reason for private lawyers to contribute pro bono hours is that it's the right thing to do—and that their help is critical in assuring access to justice. However, students will also come to understand the “business case” for pro bono, a critical component of which is skill development of the firm's young attorneys.

Some attorneys and law firm leaders who have opposed pro bono work have done so, in part, because they believe that this work will not improve the firm's bottom line. Many who support pro bono insist that it is an ideal way to develop the legal skills of young attorneys, knowing that their “real” work at the firm will provide few, if any, skill-building opportunities during the first years of practice. The truth is probably found somewhere in the middle.

Certainly, there are critical legal skills and substantive knowledge that lawyers can obtain only from work on fee-generating matters. Young lawyers, however, can and should use pro bono projects to enhance the skills they are developing on the billable side of their practice. Although these skills are “soft,” they can be just as critical—developing relationships with clients, fact-gathering, and negotiation. Other times, the skills are more substantive. Young litigators can get valuable deposition and trial experience early in their careers and transactional attorneys can help incorporate and craft development strategies for nonprofits and small businesses.

The bottom line is that students need to understand that a good lawyer can become a great lawyer by doing pro bono work. As attorney competency models and skill development checklists are used more and more, the advantages of pro bono work for young associates cannot be overstated. This holds true even in medium-sized and small firms, where junior lawyers are typically afforded more hands-on responsibility earlier in their career. All lawyers need to be able to communicate effectively with clients in order to address their legal needs. Pro bono work helps lawyers to learn how to be a strong and competent advocate for their clients in a courtroom or a boardroom. Pro bono educates and transforms lawyers.

Pro Bono Ethics and Conflicts Challenges

A seminar focusing on law firm pro bono would be incomplete without a discussion of the ethical issues that can arise in pro bono cases. Although law students are provided an opportunity to explore ethics within the context of their professional responsibility course, students should be reintroduced to these concepts in the context of pro bono.

For example, recognizing and addressing conflicts is critical. Students may already understand the difference between legal conflicts and positional/commercial conflicts, but a refresher is helpful. Certain types of pro bono matters are inevitably “off limits” due to a firm's billable practice. While there are plenty of reasons aside from conflicts for a firm to decline a pro bono case,

it is important to know how law firms navigate potential ethical and conflicts challenges in determining whether to accept a pro bono client and how to staff matters appropriately.

After reintroducing the concepts of ethics and conflicts through class discussion, students should have the opportunity to apply what they have learned. We present our students with case scenarios culled from various legal service providers. We examine which matters would be appropriate to accept and why. Another useful exercise is to present and discuss hypothetical situations in class that invoke common ethical issues that law firms and attorneys encounter when dealing with pro bono clients.

Conclusion

Through this seminar, we introduce law students to one of the best methods of assuring access to justice. Being exposed to the practical side of pro bono by participating in clinics, internships or externships, and working directly on behalf of low-income clients and under-represented groups is critical. However, it is equally important to capture the hearts and minds of those students headed for private practice who may never take a clinic or do a pro bono project in law school. The majority of graduates will begin their careers with private law firms, and they need to be made aware of both the access to justice gap and the ways in which they and their firms can help. Our goal in teaching this seminar is to provide law students with a clearer understanding of the interdependence of the private and public sectors, and the essential role that law firm pro bono now plays in filling the justice gap.