

Pro Bono in Principle and in Practice

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The American bar's commitment to provide legal service 'pro bono publico' often express what is most admirable in the legal profession. How best to reduce the gap between professional ideals and professional practice has been the subject of much debate but little data. The following discussion reviews findings from the author's recent study, which included both a review of the literature on altruism in general and bar contributions in particular, as well as questionnaires and interview responses from a sample of some 3000 attorneys.

Generalising insights to the legal profession is a challenge, given the volume of related research, the diversity in definitions of altruistic behaviour and the range of methodologies for assessing it. Encouraging individuals to engage in public service for intrinsic reasons rather than extrinsic rewards serves multiple objectives. In describing the influences on altruism, researchers generally distinguish between intrinsic and extrinsic factors. Intrinsic factors include the personal characteristics, values, and attitudes that motivate decisions to help others. Extrinsic factors involve the social rewards, reinforcement, costs, and other contextual dynamics that affect charitable assistance.

Well-designed educational programs involving service opportunities may also enhance future interest in altruistic activity. Among educational experts, the approach that commands greatest support is 'service learning', which integrates community placements with academic course work. This approach is generally thought preferable because it maximises the likelihood of adequate supervision and structured reflection. Taken together, the research findings on altruism offer some useful insights about pro bono programs for lawyers and law students.

A wide gap has always persisted between the rhetoric and the realities of pro bono commitments. The tradition of uncompensated service has extended historical roots, although what exactly it has entailed remains subject to dispute. For some years the bar has sought to encourage greater pro bono involvement. Part of the motivation has been to prevent the government from responding to pervasive unmet needs by loosening the rules against practice by non-lawyers.

The rationale for pro bono work generally rests on two central claims. One involves the value to society of addressing unmet legal needs and the profession's responsibility to contribute to that effort. A second justification involves the value to lawyers, individually and collectively, of such pro bono contributions. The first argument builds on two premises: first, that access to legal services is a fundamental interest; and second, that lawyers have some obligation to help make those services available. The second rationale for pro bono work rests on benefits to lawyers individually and collectively.

Pro bono activity also serves the interest of legal employers and the legal profession generally. Strong public service programs can produce tangible, although hard to qualify, organisational benefits in terms of retention, recruitment, reputation, morale and job performance. For these reasons, the vast majority of surveyed lawyers believe that the bar should provide pro bono services but the vast majority also oppose mandatory pro bono requirements. To the objection that pro bono work is charity, it can be stated that it is not simply a philanthropic exercise; it is also a professional responsibility. A further objection to mandatory pro bono requirements is that lawyers who lack expertise or motivation to serve under-represented groups will not offer cost-effective assistance. In any event, with or without mandatory pro bono initiatives, it makes sense to encourage greater voluntary contributions.

Pro bono programs in law school are a relatively recent development. Current law school pro bono programs vary considerably in scope and content. Among the schools with formal voluntary pro bono programs four-fifths have a referral system with a coordinator or group of

coordinators. The remaining schools have an alternative voluntary approach, which is to provide substantial administrative support for student-run programs.

Yet despite this growth in institutional support, many laws schools' programs have left much to be desired. Although recent data on voluntary student involvement are lacking, pro bono administrators interviewed for the Association of American Law Schools commission report estimated that only about a quarter to a third of the students at their school participate, and that average time commitments were quite limited. As with debates over mandatory service by lawyers, the most serious objections to service by law faculty and students are practical rather than moral. Surveyed administrators of mandatory programs do not generally report that student resistance is a major problem; they believe that most participants' own internalised standards or desire for a favourable job reference supplies the necessary motivation for competent service.

The objective of this empirical study was to provide the first broad-scale data about the personal characteristics, educational experiences and workplace policies that influence pro bono participation. Lawyers' responses concerning the type of work available did, however, make clear the problems that can arise when no well-designed structure exists to screen pro bono opportunities and to handle concerns about what cases qualify. Another frustration with the kinds of pro bono opportunities available emerged from lawyers holding public sector positions. Internal codes of conduct, agency regulations, or conflict of interest legislation often significantly limited the volunteer legal activities that judicial and governmental employees can pursue. Over a third of surveyed lawyers said that their organisation's informal reward structures were at odds with formal policies supporting pro bono work. Lawyers with substantial family responsibilities not only had competing demands on their time, they also had greater financial obligations, which pushed them to focus on paying work and client development activities that generate it.

To determine the effect of law school on pro bono activities, the survey asked individual lawyers a range of questions concerning career aspirations, educational experiences and involvement in public interest work while a student. Some lawyers took the opportunity to elaborate on the law school experiences that had positively or negatively influenced their interest in pro bono service. Many attorneys, however, reported a far less positive experience, both with the law school culture in general and with their clinical or pro bono opportunities in particular. A second cluster of criticisms involved the perceived elitism or ideological bias of faculty, students and administrators. A final set of negative influences on pro bono and public interest involvement arose from unrewarding clinical or pro bono experiences.

The survey gave lawyers an opportunity to indicate whether there was anything their organisation could do to encourage more pro bono work and what if any changes they would recommend in law school pro bono programs. The survey findings underscore several key points about the influences on pro bono commitments. The most critical factors — the rewards service, a sense of professional obligation, and workplace practices — are themselves subject to influence. Well-designed programs involving employers, law schools and bar associations can increase the likelihood and quality of pro bono contributions. The challenge is how to make such programs a priority.

A first step in expanding pro bono participation is to increase its visibility. Further, pro bono incentives could come from law schools, bar associations and other legal organisations. Although ABA accreditation standards require schools to provide appropriate pro bono service opportunities for students and to encourage service by faculty, many institutions neither keep nor disclose specific information on participation rates. The message that public service is a professional responsibility needs to be reinforced, not only in pro bono programs but also throughout the law school culture. So too, the bar, the judiciary and the laws schools need to work together to develop more effective coordinated plans to expand pro bono participation.

Related strategies should focus on making public service opportunities more available, attractive and effective. Other strategies for strengthening pro bono programs involve improving support structures. Finally, pro bono initiatives need additional sources of funding. Lawyers' assistance is free, but matching them with service opportunities and providing training and backup support are not.