

THE SYNERGY OF PRO BONO AND DIVERSITY: Balancing Challenges and Opportunities

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Synergy at the Intersection of Diversity and Pro Bono



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Synergy at the Intersection of Diversity and Pro Bono*

by Carl G. Cooper and Carleton O. Strauss †

This publication considers some of the objectives pursued and challenges encountered by proponents of diversity in, and pro bono service by, the legal profession and most notably major law firms and corporate legal departments. It summarizes the societal and professional objectives that have energized advocates to develop strong business cases to guide their companies and firms in both spheres. It concludes by suggesting that there is a substantial opportunity to exploit synergies emanating from objectives and activities that are common to both endeavors. In the most general terms, that commonality stems from a desire to have the professional complement of our institutions be reflective of our society at large and, correspondingly, to render professional service of a breadth that reflects the needs of our society at large.

The Pro Bono Business Case Rationale

The business case rationale for pro bono is multi-faceted. Some aspects of the case are intangible, while others are quite concrete. Beginning with the intangible is the ethic of public service for its own sake. It is good to do good, and it feels good to do so. This feeling is often enhanced

by the opportunity to represent the poor, vulnerable or disenfranchised in a way that underscores the principle that justice is blind. It is an opportunity for lawyers to serve that principle by leveling the playing field through effective legal counsel. A lawyer who is positively energized by a pro bono experience will bring that positive energy to her work, colleagues, and institution.

Somewhat more tangible, but still largely aspirational, are the exhortations found in the guidance documents¹ and rules of professional conduct² that govern our profession. They impress on lawyers the importance of giving service back to society in exchange for the professional franchise of being allowed to practice law. While codified in these historically recent enactments, the obligation of public service is fundamental to the learned professions. The law is a noble profession with a proud tradition, and it derives much of its historic nobility and pride from its ethic of public service.

Of course, these laudable goals are not always sufficient to make the business case in a world that seeks immediate tangible evidence to justify any investment of resources, human or financial. This brings us to the more practical and objective institutional benefits of pro bono such as training, mentoring, recruiting, market differentiation, and institution building. They are considered *seriatim*.

Training

Training is one of the oft-cited benefits of pro bono. Large law firms and corporate legal departments most often deal with large matters. Large litigation matters often span years and settle without trial. A young litigator can wait years before hearing the sound of his or her own voice in a courtroom. Similarly, the "big deal" transaction environment may require years of work on due diligence exercises before having the opportunity to put the pieces of even a modest transaction together. Pro bono engagements can provide an opportunity to fill a portion of this experience void by providing a means for the young lawyer to exercise these skills in a courtroom or at a conference table.

* This monograph was prompted by a positive response to a program in which the authors were presenters at the 2004 Pro Bono Institute Annual Seminar. A follow-up session is planned for the 2005 conference on March 4, 2005. The authors wish to gratefully acknowledge the thoughtful guidance and research assistance provided by the Pro Bono Institute, especially Esther Lardent, Tammy Taylor, and Jon Blair.

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Mentoring

Mentoring is related to training but is qualitatively different. It is the means by which the legacy of inter-generational excellence is bequeathed. It involves a uniquely qualitative dimension by which the mentee acquires not just the science but the elusive art of lawyering. It is how one learns the unwritten but often outcome dispositive protocols of the profession. While mentoring will most often occur through institutional mentoring programs and professional interactions while serving commercial clients, pro bono may provide additional and early opportunities for mentoring. The pro bono engagement provides the raw material to the novice or journeyman lawyer who will, for the most part, be constructing the project independently. However, through consultation with more senior lawyers, the craft will become art. Incidentally, this underscores the need for partner involvement in any effective pro bono program.

Recruiting

Anecdotal accounts and some surveys suggest that a demonstrably vital pro bono program may aid recruiting efforts. Law students often lack familiarity with the circumstances or issues involved in the matters they will handle for their future employers. They may more easily relate to issues encountered in pro bono cases. This frame of reference coupled with an appropriate element of idealism causes them to query firms as to whether they will have an opportunity to perform pro bono work. In a highly competitive market for legal talent, an unambiguously positive message on pro bono may be decisional.

Market Differentiation

In the increasingly competitive global market for legal services, firms are continually trying to differentiate their services, to show why they add more value than their competitors. Substantial members of the client community are increasingly saying that a firm's responsiveness on social issues like pro bono and diversity may be differentiators in counsel selection and retention decisions. Client Requests For Proposals are increasingly posing these questions. While there may be only anecdotal evidence that these issues are material in the selection of counsel at this time, it is reasonable to assume that these questions will become more, not less, material in the future.

Institution Building

The prior points of training, mentoring, recruiting and market differentiation coalesce around the theme of institution building. As institutions enhance their ability to do these things well, by pro bono or otherwise, they will knit

the lawyers into the fabric of the institution. In the case of law firms, they will attract and retain better clients. In the case of corporate legal departments, they will contribute more positively to their corporate culture. All of this is institution building.⁵

The Business Case for Diversity

Just as the business case for pro bono is multifaceted, so too is the case for diversity. And again, the points range from the moral to the practical. It is perhaps uniquely within the province of the legal profession in our constitutional democracy to be focused on securing for all citizens the rights of "life, liberty, and the pursuit of happiness." It is axiomatic that those rights will be best secured if the guardians of those rights are themselves reflective of the diverse society they serve.

However, as with pro bono, there is also an eminently practical side to the diversity business case. Here, it may be best to start with lessons learned from many of our colleagues who serve as corporate in-house counsel. Their companies often do business throughout the country or the world. Consider the breadth of customer needs and business challenges experienced by companies who market consumer goods or operate retail chains in every urban center or hamlet in America. Addressing the issues presented in that business context is not a "one size fits all" proposition. Rather, it is a situation in which a culturally diverse group of professionals will be better equipped to understand and creatively respond to those issues. This market reality has led many corporate legal departments to emphasize diversity within their ranks.



[1] Institutions that pursue diversity in their ranks may also be advancing through pro bono the legal interests of diverse and historically underserved populations.


For example, General Motors (GM) has set a goal of 35% women and 20% minorities within their work force and, correspondingly, they require their Preferred Law Firms to reflect those numbers in their work force that handles GM's business transactions. DuPont and Bell South both require law firms that do business with them to report the portion of the work performed by minorities and women on their matters. While they have not required specific percentages, it is clear to their outside counsel that the more representative the numbers of women and minorities, the more likely it is that their services will be retained.

The corporate focus on diversity has very real implications for law firms. Legal departments that value the benefits of diversity in serving their companies will sooner or later and to a greater or lesser degree seek corresponding professional diversity in the outside law firms they engage. Law firms that have not institutionalized diversity as a core value will not be prepared to meet this market reality. On the other hand, those who have made positive strides in diversity will be provided with the opportunity to differentiate themselves in the marketplace. Opportunities to put your head and shoulders above those of your competition do not occur every day.

Pro Bono as a Manifestation of Diversity

Institutions that have embraced the respective business cases for diversity and pro bono are often propelled to activities that address the objectives of both. That is, institutions that pursue diversity in their ranks may also be advancing through pro bono the legal interests of diverse and historically underserved populations. For example, pro bono representations have resulted in wholesale changes in public policy through landmark litigation on numerous issues of civil rights. On the other hand, pro bono service rendered at the retail level to thousands of underserved diverse persons has addressed emergent problems for persons at risk. Of course, these representations cover a broad spectrum from employment and housing to ameliorating spousal or child abuse. And, in somewhat of a middle ground, there are legal projects and counseling designed to empower community leaders and entrepreneurs to develop stronger and safer communities.

Not surprisingly, institutions often correctly identify and consciously support these pro bono activities as a recognized manifestation of a broader ethic of service to a diverse community—a community that they want to have reflected in the makeup of their work force. In some instances law firms partner with clients in their communities



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as part of this effort. Such pro bono service is a testament to institutional core values of both diversity and public service. While this commonality may, at least superficially, seem obvious, it is not clear that institutions have fully recognized and exploited synergies between the two spheres.

Implementation of Diversity— Pro Bono as a Synergistic Opportunity

Legal institutions, be they corporate legal departments or law firms, face very real and similar challenges in developing a cadre of diverse professionals. Historically, neither the legal departments of corporate America nor the law firms that serve it have been sources of opportunity for minorities. So, as these organizations set out to diversify, they face challenges of institution building in recruiting, training, and mentoring their lawyers. Indeed, while all of these challenges are daunting, perhaps the mentoring challenge is the greatest because the institutions lack the intergenerational element: a senior generation that is not diverse is inherently less well-equipped to infuse the next generation with mentoring experiences viewed through the lens of diversity. Interestingly, this list of challenges substantially coincides with the list of institutional benefits derived from an effective pro bono program. Consequently, it is reasonable to view an effective pro bono program as a tool in developing a diverse professional team. The benefits of pro bono in nurturing diversity are perhaps best discussed in the context of a lawyer's life cycle in the organization.

Recruiting

Diversity is, of course, in the first instance about recruiting. Human nature being what it is, we often want to affiliate with institutions (employers) with whom we perceive some connection beyond the mere economics of the relationship. When we visit the new employer, we are looking for people who are like us or at least people who seem to have something in common with us. Many institutions run into something of a "chicken or egg" problem in recruiting a diverse team. If they have no minority attorneys, it is more difficult for a minority recruit to identify with the people he or she meets.

A pro bono program that illustrates a connection between the institution and a broader and diverse society is a significant indication of an awareness of diversity as a core value. Many pro bono services involve minority organizations and/or interaction with minority groups. This in turn increases the diversity aspect of any firm involved in those programs.

Also, a minority recruit may have had life experiences that created an awareness of the needs of historically underserved minority communities. In those instances, the minority candidate's interest in pro bono may go beyond the generalized sense of belonging to a specific profession to being able to respond to societal needs that the recruit perceives. In the latter circumstance, the presence of a pro bono program that addresses those societal needs may resonate very positively with the recruit.

Retention: Training and Mentoring

Ironically, as challenging as recruiting can be, the more difficult challenge in diversity is retention. This is true of all young lawyers, but it is particularly so with respect to minority candidates. The National Association of Law Placement (NALP) surveys demonstrate that while attrition for majority males is about 60%, for non-white males it hovers around 70% and for African-American females, the numbers are as high as 98% attrition by their eighth year with large firms.

Pro bono can help here as well. For some of the minority candidates, those whose life experiences may have made them particularly sensitive to the needs of professionally underserved populations, the pro bono program may afford them an opportunity to "give back." That opportunity may represent a core element of their professional persona. An institution that provides a vehicle for such

work will be more likely to knit such individuals into the fabric of the institution. Improving lawyer retention allows the institution to enjoy the economic benefit of its investment of time and resources in the professional development of its lawyers.

The potential benefit of pro bono extends significantly beyond the personal gratification of being able to do good. It extends more tangibly to training and mentoring. A sage lawyer once said that a young lawyer needs someone to teach him or her how to act like a lawyer. Role models are important. Minorities and women sometimes lack role models. Ultimately, this can cause those young lawyers to be less connected to the institution. In that sense, they are a population uniquely at risk from a retention perspective.

Because pro bono provides a vehicle for training and inter-generational mentoring, it can be a vehicle for increasing the number and quality of interactions between junior and senior lawyers. Moreover, pro bono collaborations often arise in a context that is less stress-inducing than commercial engagements which are otherwise relied upon to provide training and mentoring opportunities.

And, since many of these diverse lawyers are first generation lawyers, the opportunity to perform some pro bono work on a relatively independent basis will give them a taste of lawyering in the first person, something that can be energizing to a young professional.

Exploiting the Synergy—Management's Approach

The synergies between the development of a diverse professional corps and a strong pro bono program are substantial. However, in order for them to be exploited, they must be recognized as such by a management team that appreciates the multiple points of intersection from recruiting, to professional development, mentoring and retention, to business development.

Anecdotally, it does not appear that legal institutions have recognized and exploited these synergies. This may be because, as a matter of custom or historic accident, pro bono has been viewed as a "practice area" separate and apart from the more administrative and human resource focused efforts of recruiting, retention, and business development. Consequently, a first step to exploiting these synergies must be a recognition of their potential and a seamless management approach through real time communication between those charged with advancing diversity and those administering pro bono. Such communication will understandably

lead to the identification of opportunities that can be exploited. Also, when viewed holistically, there may be ways to recruit support staff personnel into the effort. Those persons may be more diverse than the attorney corps, and they may be able to identify pro bono service projects in the community that both serve important needs and cause the firm to be a more attractive place to diverse professionals.

Next Steps

While it is beyond the scope of this essay and, indeed, our experience to be able to offer an extensive primer of specific steps on how to exploit the synergies, several initial steps do emerge.

- Promote a management structure in which there is a high level of communication and collaboration between those charged with responsibility for diversity, professional development and pro bono. Some organizations have elected to repose clusters of these responsibilities in the same individual, explicitly or implicitly acknowledging the synergy.
- Promote communication and collaboration among groups or committees of lawyers whose primary mission is diversity, professional development, or pro bono so that their efforts are not isolated from one another.
- Consciously seek out and undertake pro bono activities in diverse communities that have been historically underserved. These activities can extend to business revitalization representations to nurture the community.
- Converge diversity pipeline projects and pro bono activities. Many firms support diversity by participating in educational programs in diverse communities to encourage racial and ethnic minorities to consider careers in the law, an effort to get them in the career pipeline. Presentation of pro bono seminars in those communities that explain and clarify legal rights and responsibilities provides legal advice while coincidentally providing a tangible example of why a legal career should be pursued.

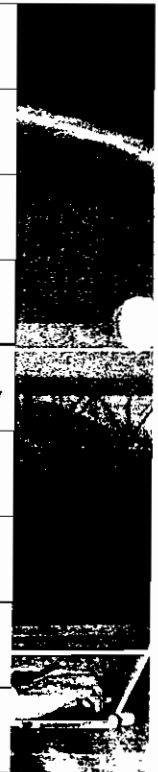
These illustrations provide a point of beginning. Obviously, this is not a "one size fits all" subject. Each institution will have its own set of opportunities and challenges.

The Potential for Synergy—Beyond Stereotypes

We believe that this recitation only scratches the surface of the potential synergy between an effective pro bono program and the development of a diverse professional team. While this synergy seems obvious at a visceral level and is supported by some anecdotal and limited statistical evidence, the synergy does not seem to have been "recognized" in any formal sense. We are aware of no literature on the subject per se. It may simply be that the state of the record reflects that the synergy concept is in its nascent stage.

On the other hand, there may be some reticence to articulate a linkage between pro bono and diversity because of an apprehension that the linkage will give rise to a response based on unfounded stereotypes, for example, a suggestion that pro bono work is for minorities and not for "mainstream" or "serious" lawyers.

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If there is such reticence, we must leave it behind. While some diverse lawyers may, by virtue of their life experiences, be able to make unique contributions to pro bono, it is clear that pro bono is an obligation of, and opportunity for, lawyers of every age and stripe. Leaders must emphasize this universality of pro bono so that the positive synergy between pro bono and diversity is not held hostage by any taboo arising from a misguided sense of political correctness.

Conclusion

Diversity must be addressed on a holistic basis because it represents a cultural paradigm shift for many institutions. Consequently, it implicates everything from recruiting and retention, to training and professional development, to marketing. While a pro bono program will not assure diversity, it can be an extremely useful tool in addressing some of the most difficult challenges faced by those who seek to promote diversity in legal departments and law firms. To the extent that institutions focus on pro bono as a tool, it will raise the profile of pro bono, thereby supporting the essential pro bono mission of expanding the availability of legal services to those in need. We encourage leaders in each sphere to be sensitive to and seek ways to exploit these positive synergies.

Endnotes

1 The American Bar Association Model Rule 6.1 defines a lawyer's pro bono commitment as follows:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to 1) persons of limited means, or 2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means.

2 By way of illustration, Rule 6.1 of the Massachusetts Rules of Professional Conduct provides, in pertinent part, as follows:

A lawyer should provide annually at least 25 hours of *pro bono publico* legal services for the benefit of persons of limited means. In providing these professional services, the lawyer should ... provide all or most of the 25 hours of *pro bono publico* legal services without compensation or expectation of compensation to persons of limited means, or to charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the needs of persons with limited means (emphasis added).

3 The business case for pro bono has been insightfully set forth in Dell, Robert M., *Pro Bono and Profitability*, *What's New in Law Firm Pro Bono*, March/April and May/June 2003, Issue 47/48; Lardent, Esther F., *Making the Business Case for Pro Bono*, Pro Bono Institute, (2000) and London, Jack, *The Economics of Pro Bono Work*, Pro Bono Exchange, Volume II, No. 2 (1993).



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What you already know about the
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— *Gloria Santona, General Counsel,
McDonald's Corporation*

"Part of the benefit of the partnership with Choice Hotels is that the attorneys bring expertise to an area of the law I am relatively unfamiliar with—civil law."

— *Patricia Anderson, Law teacher,
Montgomery Blair High School,
Silver Spring, Maryland*

"My colleagues and I in the legal division at The Coca-Cola Company have thoroughly enjoyed working with students and teachers from the Atlanta Public Schools. We believe that the Street Law program encourages young people to continue their education and consider legal careers, which will promote a more diverse work force in the legal profession."

— *Dara Redler, Counsel, The Coca-Cola Company*

"From the perspective of ACC, what endeavor could be more attractive? Through this initiative, lawyers have the opportunity to work with youth in their local community, with the hope that maybe entire generations of young people might be turned on by what they learn and to whom they're given exposure."

— *Susan Hackett, Senior Vice President,
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Need for the Program

- Less than 11% of all lawyers are minorities, while minorities account for approximately 25% of the entire U.S. population¹
- As of 2000, minority representation among general counsel in the Fortune 500 is 2.8%²

Lawyers of color struggle with the issue of diversity—they work hard to be sensitive to the issue, yet remain frustrated that their profession does not yet reflect the society in which they live. Many profession leaders realize that diversity in the legal profession is unattainable if the pool of diverse candidates does not increase. For true, lasting changes in diversity, more minorities must join the profession.

Programs are needed that encourage more students of color to consider law as a profession—consider staying in school, going on to college, attending law school and joining the field. Students of color must enter the pipeline to the legal profession long before law school.



Program Components

The Corporate Diversity Pipeline Program creates lasting relationships between corporate legal departments and law classes in local high schools. The program consists of three components:

- Classroom Visits—Legal department staff visit local classes to help teach law-related lessons.
- One-Day Conference—Students attend a conference at the corporate headquarters to participate in interactive workshops and learn more about legal careers.
- Enhancements—The corporation sponsors mentoring opportunities, internships, or scholarships for outstanding students.

Program Partners

Street Law, Inc. is a leading non-profit in the field of law-related education, with a 30-year track record of teaching about law and democracy across the United States and around the world. Street Law, Inc. provides the following resources for corporations participating in the Corporate Legal Diversity Pipeline program:

- connects corporations with local schools
- adapts the program to meet local needs
- provides on-site training for legal department staff
- provides a web-based library of materials
- promotes the pipeline concept to the legal profession

The Association of Corporate Counsel (ACC) is the in-house bar association for over 17,500 attorneys who practice in the legal departments of corporations and other private sector organizations worldwide. The ACC has adopted this program as its primary pipeline effort.

How to Become Involved

Corporations interested in participating or learning more about the program should contact:

Lee Arbetman
Director of U.S. Programs
Street Law, Inc.
301.589.1130 ext. 230
larbetman@streetlaw.org

For an introduction to this program, visit www.streetlaw.org/pipeline.asp



Participating Corporations

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¹ U.S. 2000 Census

² American Bar Association