Making Good and Doing Good Too: Pathways To Careers that Combine Business Law
Pro Bono, and Public Service

By Hon. Elizabeth S. Stong, Moderator

Is it possible to have a successful career in business law, and a satisfying one too? What about the law student or lawyer who wants to dive deeply into the most complex commercial transactions and disputes, but also use their legal training and experience – including as a business lawyer – to assist the unrepresented and to improve access to justice? These are big questions, and they deserve thoughtful answers.

In this program, a panel of young and not-so-young lawyers, a federal judge, and an American Bar Foundation research professor will reflect on these questions and provide their own perspectives and answers. They will also give practical examples from their experience and the experience of others about how and why law firms can promote a combination of private practice and pro bono work, and how in-house counsel can incorporate pro bono and public interest work into their practice.

And taking a longer view, the research results from the “After the JD” longitudinal study of almost 5,000 new lawyers will illustrate how lawyers are combining private practice, pro bono, and public service, especially in the first ten years of practice. Notably, the most recent wave of results from this study shows that lawyers are moving away from private practice, toward business both as inside counsel and in non-law positions. And the percentage of lawyers working in private practice is in decline. The gender gap in compensation and attaining partnership also persists. But still more than three-quarters of the most recent cohort of survey respondents indicate that they are “moderately” or “extremely” satisfied with their decision to become a lawyer, and tend to agree that law school was a “good career investment.” See http://www.americanbarfoundation.org/research/summary/42.

Personal narratives, expert guidance, and research should combine to make this program engaging and informative. Practical tips on how to combine private practice and public service will also be shared. Ample time for questions is also planned.
Pro Bono Committee presents

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Making Good and Doing Good Too:
Pathways to Careers that Combine Business Law, Pro Bono and Public Service

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TABLE OF CONTENTS

Program Abstract

Speaker Biographies

Economic Perspectives on Pro Bono in Legal Practice
(reprinted with permission)

- Lawyers’ Pro Bono Service and Market-Reliant Legal Aid by Rebecca L. Sandefur
- Pro Bono as an Elite Strategy in Early Lawyer Careers by Ronit Dinovitzer and Bryant G. Garth
- The Institutionalization of Pro Bono in Large Law Firms by Steven A. Boutcher
- Pro Bono and Low Bono in the Solo and Small Law Firm Context by Leslie C. Levin
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Speaker Biographies

Hon. Elizabeth S. Stong

Judge Elizabeth S. Stong is a U.S. Bankruptcy Judge for the Eastern District of New York. Previously, she was a partner at Willkie Farr & Gallagher, associate at Cravath, Swaine & Moore, and law clerk to U. S. District Judge David Mazzone. She is a member of the Council on Foreign Relations, the Council of the American Law Institute, and the ABA Center for Innovation and holds leadership roles in the International Insolvency Institute, Practising Law Institute, P.R.I.M.E. Finance, American Bar Foundation, and ABA Business Law Section and Judicial Division.

Her past positions include President of the Harvard Law School Association, Chair of the NCBJ International Judicial Relations Committee, and Chair of the New York City Bar ADR Committee. She also served on the ABA’s Standing Committee on Pro Bono and Public Service, Standing Committee on the American Judicial System, Standing Committee on Continuing Legal Education, Commission on Women in the Profession, and Commission on Homelessness and Poverty.

Judge Stong has trained judges in Central Europe, North, Central and West Africa, the Middle East, and the Arabian Peninsula with the U.S. Commerce Department, the World Bank, and INSOL. She has consulted with the Supreme Court of China and People’s High Courts in Beijing and Guangzhou, and led judicial workshops in Cambodia, Argentina, Brazil and Chile. She received the ABA Glass Cutter Award, the NYIC Hon. Cecelia Goetz Award, the Brooklyn Bar Association’s Freda Nisnewitz Award for Pro Bono Service, and the MFY Legal Services Scales of Justice Award. Judge Stong is an adjunct professor at Brooklyn Law School and St. John’s University School of Law.
Shazia Ahmad

Shazia Ahmad serves as Credit Suisse's Regional Head of the Americas Team for Regulatory Shareholding Reporting. She manages regulatory filings to ensure they meet regulatory requirements at the state and federal levels. She also has special expertise with the Banking Holding Company Act (BHCA), Foreign Investment Real Property Tax Act (FIRPTA) and Federal Energy Regulatory Commission (FERC). In addition, Shazia is actively involved in various service activities at Credit Suisse and externally with organizations including the Women’s Education Project (WEP) and School of Leadership Afghanistan (SOLA). Shazia is an involved member of the American Bar Association's Business Law Section, currently serving as the co-chair of the State Banking Law Developments Subcommittee and as a board member of the Young Lawyers Committee.

Karen T. Grisez

Karen T. Grisez is the Public Service Counsel in the Washington, D.C. office of Fried, Frank, Harris, Shriver & Jacobson LLP. She manages the office’s pro bono program and provides both supervision and direct representation to pro bono clients in immigration cases, as well as in traditional poverty law areas including Social Security disability, veterans benefits, family law, and housing. She has extensive litigation experience in federal courts, before the Board of Immigration Appeals and in Immigration Courts around the country, and also practices in other courts in the District of Columbia and Maryland.

Ms. Grisez is a frequent speaker and trainer on legal topics relating primarily to asylum, other forms of immigration relief, immigration court reform, detention, ethics, representation of victims of torture and trauma, and on various models for delivery of pro bono services generally. She has testified twice before Congress and once before the US Commission on Civil Rights as the ABA’s representative on immigration-related topics.

Ms. Grisez is a member of the American Bar Association, is former Chair of and current member of ABA Commission on Immigration, a member of the ABA Working Group on Unaccompanied Minor Immigrants, and a member of the Advisory Board of the ABA’s Immigration Justice Project in San Diego. She also previously served on the ABA's Standing Committee on Pro Bono and Public Service. She is a member of the American Immigration Lawyers’ Association, serves on its national Pro Bono Committee, and the DC Chapter’s Pro Bono Committee. She is also a former Trustee of the American Immigration Council.

Ms. Grisez serves on the Board of Directors of the Capital Area Immigrants’ Rights (CAIR) Coalition, and is a member of the Board of Trustees of the Center for Migration Studies based in New York. She also serves on the Board of Directors of the Washington Council of Lawyers and is a Trustee of the Washington Lawyers’ Committee for Civil Rights and Urban Affairs.
Katherine McCullough

Katherine McCullough is counsel in the Washington, DC office of White & Case LLP. Her practice focuses primarily on general corporate work, including project finance, and the structuring and formation of private equity funds targeting investments in emerging markets, particularly Africa, Latin America, Asia and India. In particular, Ms. McCullough has represented investment managers in establishing private equity funds with investments focused on small- and medium-sized enterprises, clean technology, mezzanine financing, infrastructure, and social development. Additionally, Ms. McCullough has experience establishing private equity funds that include debt components, including debt financing from the Overseas Private Investment Corporation, the Inter-American Development Bank and other development financial institutions.

Ms. McCullough is currently working on forming a proof-of-concept fund for an international nonprofit organization and has also worked on equity funds for other nonprofit organizations. She has also represented an asylum seeker petitioning for lawful permanent resident status.

Robert L. Nelson

Robert L. Nelson is the Director Emeritus of the American Bar Foundation, the MacCrate Research Chair in the Legal Profession at the ABF, and professor of sociology and law at Northwestern University. He holds a J.D. and Ph.D. in sociology, both from Northwestern, and has held several positions of academic leadership throughout his career. He is a leading scholar in the fields of the legal profession and discrimination law. He has authored or edited ten books and numerous articles, including Diversity in Practice: Race Gender, and Class in Legal and Professional Careers, Legalizing Gender Inequality, which won the prize for best book in sociology in 2001, Urban Lawyers: The New Social Structure of the Bar, co-authored with John Heinz, Edward Laumann, and Rebecca Sandefur, which was published by the University of Chicago Press in 2005, and Rights on Trial: How Workplace Discrimination Law Perpetuates Inequality, co-authored by Ellen Berrey and Laura Beth Nielsen, which was published by the University of Chicago Press in 2017.

His current research includes After the JD, a national study of the careers of lawyers, which is tracking the entering bar class of 2000 for the first 12 years of their careers (with several collaborators) and the Future of Latinos in the United States: Law, Opportunity, and Mobility (with Rachel Moran).
PART II

ECONOMIC PERSPECTIVES ON PRO BONO IN LEGAL PRACTICE
5. LAWYERS’ PRO BONO SERVICE AND MARKET-RELIANT LEGAL AID

REBECCA L. SANDEFUR

INTRODUCTION

In the United States, many services that facilitate people’s participation in our common life are provided through markets or, for those who cannot afford market rates, through a combination of public and private sources of labor and of public and charitable funding—so many that this model of provision might be termed “American-style.” For example, transitional housing for people moving out of homelessness and into stable housing is provided in this way (Barrow & Zimmer 1999), as is the distribution of surplus food to hungry people (Barrett 2002), as is temporary accommodation and counseling for women seeking safety from battering partners (Roberts & White 2007; see generally Abel in this volume; Katz 1996:283–334, 2001; Marwell 2004). Among many other services provided in this way are subsidized civil legal services, or civil legal assistance.

American-style civil legal assistance has two distinctive qualities that are clearly apparent when it is compared with the legal aid systems of other countries. One aspect that contrasts with many other Western welfare states is the United States’s limitation of legal aid to those designated as poor, currently a bit less than 17 percent of the population (Houseman & Perle 2003; Regan 1999; U.S. Bureau of the Census 2007; see generally Abel 1985). Other countries extend subsidy for civil legal services much farther up the income distribution, well into the middle classes in some cases (Paterson 1991; Regan 1999; Zemans 1996). A second aspect is U.S. legal aid’s typically American structure, revealed in Figure 5.1. The structure of U.S. civil legal assistance is like that of a three-legged stool, resting on the work of three distinct groups of lawyers: those funded by the federal Legal Services Corporation (LSC), those working in legal aid societies that do not receive LSC funding, and those who volunteer in organized

1. Research was supported in part by Stanford University. I thank Jane K. Ohgami and Patricia Seo for research assistance. Earlier versions of this paper were presented at the Baldy Center Conference on Private Lawyering in the Public Interest, April 2008, Buffalo, NY, and the Annual Meetings of the Law and Society Association, May 2008, Montreal, Quebec. I am grateful to Steve Boucher, Jeannie Charn, Scott Cummings, Bob Granfield, Lynn Mather, and participants at both conferences for helpful comments and thought-provoking conversations.
pro bono programs that exist expressly to provide poor people free or reduced-fee assistance with their civil legal problems (Sandefur 2007).

Roughly 50 million Americans are eligible to receive civil legal aid services, and surveys suggest that, in any given year, around half of them face at least one problem that raises civil legal issues (Consortium on Legal Services and the Public 1994:Table 4-1). Yet despite this evidence of considerable need or demand, little information is available about the American legal aid system that exists to meet that need or demand. What data do exist suggest that in 1997—the only year for which national data on organized civil pro bono programs are available—lawyers donating their time in these programs provided somewhere between a quarter and a third of the total full-time equivalent attorneys available to staff the legal aid system (Sandefur 2007:85).

When measured in money rather than person-hours, private contributions to American-style civil legal assistance are also revealed as substantial. Figure 5.2 presents one perspective. The two left bars of the graph report the monies received in 2005 by legal aid organizations that were funded, in whole or in part, by the federal Legal Services Corporation. The LSC is the centerpiece of American-style civil legal assistance. It does not provide services itself, but rather is a granting agency funded by Congress that responds to locally initiated proposals for providing civil legal services to the indigent (see Houseman & Perle 2003; Johnson 1999; Kilwein 1999). As the left two bars of the figure reveal, although the LSC funds many legal aid organizations, the majority of the money received by those organizations does not come from the LSC. Instead, that money represents a mix of state and local government and private sources of funding. In 2005, the LSC distributed around $331 million to its grantees, an amount on the order of $58 million less than the funds LSC grantees received from other sources (Legal Services Corporation 2006).
FIGURE 5.2 SELECTED SOURCES OF SUBSIDY FOR CIVIL LEGAL ASSISTANCE: FUNDING RECEIVED BY LSC-FUNDED ORGANIZATIONS AND ESTIMATED MARKET VALUE OF PRO BONO SERVICE, IN MILLIONS OF DOLLARS: USA, 2005


The two right bars of the graph report estimates of the monetary contribution to civil legal aid that is represented in lawyers’ pro bono service. The first estimate evaluates lawyers’ pro bono as hypothetical lost revenue. Here, services are valued by an estimate of what lawyers would have collected if they had been selling their usual services to their usual clients rather than donating services in pro bono programs. In a sense, this estimate of pro bono’s value reflects the market value of the lawyer who is donating his or her time. The second estimate is closer to what pro bono clients would have had to pay if they had bought the services on a private market instead of receiving them for free; this measure estimates the market value of the services pro bono clients receive. Estimating pro bono’s

2 The estimates of pro bono’s value are computed by calculating average receipts to the legal services industry per lawyer, and multiplying that quantity by the estimated number of full-time equivalent (FTE) lawyers participating in organized civil pro bono programs. For 1997, Sandefur (2007:97 and n. 17) estimates that lawyers’ pro bono service provided about 2,900 FTE civil legal aid lawyers, a number about 0.3 percent the size of the total lawyer population that year. In 2005, 0.3 percent of the lawyer population would have been around 3,312 attorneys (computed from ABA 2004, 2008). The first measure of lost receipts averages across private-practice lawyers providing services to all kinds of clients—businesses, government, and individuals. The measure of the value of services donated is computed by calculating average receipts from individuals per lawyer, and then multiplying that quantity by the estimated number of FTE pro bono lawyers. Both measures of pro bono’s value may overestimate the monetary contribution of lawyers working in organized civil pro bono programs, because some lawyers who were listed as program volunteers may never have actually provided any clients with services
value as foregone revenues places its contribution to American-style civil legal assistance at around $624 million, close to twice the amount of money appropriated by Congress for civil legal aid. The legal services purchased by individuals are usually much less expensive than those purchased by organizations (Heinz et al. 2005:159–164), so estimating pro bono’s value as donated services places its contribution at a substantially lower level, around $246 million. However, even this more conservative estimate of the monetary value of pro bono services places it at around three-quarters (74 percent) of the total Congressional appropriation to the LSC.

Lawyers’ donated labor makes a notable difference in the amount of legal aid available relative to need, as revealed in Figure 5.3. The measure used here indexes need by the size of the population eligible for subsidized service. The measure is inexact for a number of reasons, among the most basic being that neither the population of eligible potential clients nor that of serving lawyers is distributed evenly throughout the country (Sandefur 2007; see generally Economides et al. 1986). However, despite its imprecision, the need measure has the advantage of a long history, having been developed in the early days of the Office of Economic Opportunity Legal Services Program, the forerunner of the contemporary LSC (Johnson 1999). In 1996, the LSC funded roughly one

(see, e.g., Maute & Hill 2003). Data for revenues from the private practice of law come from the Service Annual Survey (U.S. Bureau of the Census 2007: Table 6.1). Information about the share of total revenues collected from clients who are individuals comes from the 2002 Economic Census (U.S. Bureau of the Census 2004:Table 3).
full-time equivalent (FTE) attorney for every 14,000 people in the country eligible for that lawyer’s services (Sandefur 2007:83). A whole parallel world of legal aid exists among organizations that do not receive any funding from the Legal Services Corporation, including many law school clinics, legal aid societies that provide services that the LSC is not permitted to fund, and societies that could not get or did not want LSC funding. Once an estimate of the number of lawyers working in these organizations is incorporated, the ratio of FTE legal aid lawyers to eligible clients drops to 1 such attorney for about every 7,000 eligible people (Sandefur 2007:84). A third supply of civil legal assistance comes from organized civil pro bono programs that exist expressly to bring the labor of volunteer lawyers together to serve the civil legal problems of poor people (see, e.g., Gocker in this volume). Taking account of lawyers’ service in these kinds of organized civil pro bono programs further reduces the ratio to 1 FTE legal aid lawyer for about every 5,000 or so eligible people nationally (Sandefur 2007:85).

One could produce alternative estimates of the relative value and contribution of different sources of funding and labor for civil legal assistance, but the point illustrated would be consistent across them: lawyers’ pro bono work in organized civil pro bono programs contributes substantially to the legal services available to indigent people facing civil legal problems in the United States. Given the extent of reliance on pro bono, factors that affect the supply of pro bono labor can thus, by extension, affect the supply of civil legal assistance. The thesis of this chapter is that the importance of volunteer labor renders American-style civil legal assistance market-reliant in ways that are predictable and can be demonstrated empirically.

**VOLUNTEER LAWYER LABOR AND MARKETS FOR LAWYERS AND THEIR SERVICES**

The organized pro bono programs in which lawyers may participate take a dizzying variety of forms, with individual programs themselves often partnerships between public and private entities (for a description of some of these models, see Cummings 2004). For example, the now-defunct Oklahoma City Volunteer Lawyer Center (VLCenter) was a partnership of an ecumenical church group, a handful of individual churches, a few local business and civic groups, a local law school, and the local LSC-funded legal aid office (Maute and Hill 2003:395, n. 113). At a downtown church, the VLCenter ran six Saturday clinics during the 2001–2002 school year. Pro bono clients, prescreened for conflicts of interest with individual volunteer lawyers, could come in for appointments that included

3. Conflicts of interest can emerge when a pro bono client has a problem that involves one of the volunteer lawyer’s actual paying clients, or when a pro bono client’s problem pits him or her against the same kinds of clients that a lawyer serves for pay (see below, pp. 103–104).
advice and might lead to representation (Maute & Hill 2003:401–404). Originally, the focus of the clinic’s work was to be pro se divorce, but the founders changed this focus to “consumer counseling.” The shift in the content of services to be provided occurred not in response to an assessment of local legal need, but because founders realized “that different religious values” among churches supporting the VLCenter “made pro se divorce a more controversial topic” (Maute & Hill 2003:397, n. 119). This change in focus illustrates a central point made by Daniels and Martin (2009:3) in their study of large-firm pro bono in Chicago: the access of people of limited means to legal assistance “may depend heavily on the interests of those who control [its] supply.”

One of the most important groups of organizations controlling the supply of volunteer labor is multilawyer private-practice law firms. The pro bono work that contributes to organized civil legal assistance is not, in fact, primarily an activity of individual lawyers: it is also substantially an activity of lawyer-employing organizations (Boutcher in this volume; Cummings 2004). The recent flurry of attention to law firm pro bono might encourage the belief that these organizations have only recently come to play an important role, but this is not the case. Twenty-five years ago, as today, much of the pro bono that came out of the private-practice bar was produced by lawyers in larger firms, and much was donated not by individual lawyers, but by the law firms in which they worked. Findings from a 1984 survey of American lawyers reveal that about 18 percent of lawyers participated in organized pro bono programs that delivered civil legal services to poor people (Sandefur 2007:97). Twenty-five years ago, in 1984, an estimated two-fifths (41 percent) of the total pro bono hours served in organized pro bono programs that delivered civil legal services to poor people came from lawyers who worked in large firms, which at that time were firms with more than 20 lawyers.4

Available evidence suggests that large law firms continue to supply a great deal of labor for organized civil pro bono programs (see Boutcher in this volume). No contemporary national survey exists that reports on pro bono work for the whole American legal profession, but an excellent source of information about young American lawyers’ activities is the After the JD study ( AJD). The AJD is a

4. Information about lawyers’ pro bono service in 1984 comes from the National Survey of Lawyers’ Career Satisfaction, a nationally representative survey of American attorneys in that year (Hirsch 1993). It collected surveys from 2,967 lawyers, achieving a response rate of 76.9 percent in a stratified random sample (Hirsch 1993: Table 4). The questions about pro bono did not distinguish criminal from civil pro bono, but lawyers were asked about what fields of law they worked in. In order to get an estimate of specifically civil pro bono work, I restrict the analysis to respondents who reported little or no work in criminal law (see Sandefur 2007:97). The estimates I present are for the 1,073 respondents who answered the survey questions about their pro bono work and reported little or no practice in criminal law (5 percent of their time or less). Estimates are weighted to correct for differential sampling probabilities (Hirsch 1993:Table 5).
nationally representative sample of lawyers who became eligible to practice law around the year 2000 (Dinovitzer et al. 2004; see also Dinovitzer & Garth in this volume). The AJD asked these young lawyers to report the total “hours of pro bono work they performed during the last twelve months,” but did not ask for any information about where those hours were served. A majority of young lawyers in private practice reported doing some kind of pro bono service (Dinovitzer et al. 2004:Table 4.3), and, as was the case in the 1980s, a substantial amount of this service came from lawyers in the largest firms. Of the total pro bono hours contributed by young private-practice lawyers in 2002, almost three-quarters (72 percent) came from lawyers working in firms of more than 20 lawyers. Large firms today are much larger than they were a quarter century ago, and these big firms provide a lot of volunteer labor. Among respondents to the AJD, 49 percent of total pro bono hours served by private practice lawyers came from lawyers in firms with more than 250 attorneys.

The organizations in which lawyers work were 25 years ago and are today playing an important role in subsidizing their lawyers’ donated time. Effectively, much pro bono labor is donated not by the lawyer who serves, but by the firm that pays that lawyer to do pro bono work. In 1984, fully 85 percent of the total hours that private-practice lawyers served in pro bono programs that provided civil legal aid were on the clock. That is, the lawyer reported that these hours were worked as “part of [her] job, that is [her] firm . . . was not compensated but these hours were considered by [her] employer as a legitimate part of [her] total hours worked.” The firm did not get paid, but the lawyer did—by the firm. One sees a similar pattern among contemporary young lawyers. Respondents to the After the JD survey were asked whether their total pro bono hours were “billable time” (fully compensated), “non-billable time” (uncompensated) or “a combination of billable and non-billable time” (partly compensated). Among lawyers in firms of more than 100 attorneys, 36 percent of young attorneys who did pro bono work reported that all of that work was done on billable time, so that the lawyer was paid by his or her firm for all of the “volunteer” labor produced. Among lawyers in smaller firms, about 17 percent of attorneys who did pro bono work reported that all of that work was on the clock (see Feathers and Levin, both in this volume, for illuminating discussions of how attorneys in smaller firms bear the costs of their own public service work.) The AJD survey does not provide information about where attorneys served their pro bono time. However, given other research (Boutcher in this volume; Cummings 2004), one can surmise that many of the hours currently donated to the organized pro bono

5. The After the JD survey is the first longitudinal survey of American lawyers. The data I use in this chapter come from the first wave of the survey, conducted in 2003. The 3,905 individuals in the main national survey represent a response rate of 71 percent (Dinovitzer et al. 2004:90); estimates are weighted to correct for differential sampling probabilities.
programs that provide civil legal aid come from lawyers working in large law firms. One can also be fairly confident that many of those hours are correctly understood as donations by law firms rather than by the individual attorneys doing the work.

**Law Firm Interests and Lawyers’ Service**

Since organizations are substantially subsidizing lawyers’ volunteer behavior, they will likely play an important role in deciding how much labor will be provided and to what purposes that labor will be devoted. Among other things, law firms are businesses that sell services in a market (Abel 1989). Therefore, organizations that employ lawyers to provide legal services have a number of interests that might be expected to affect their lawyers’ volunteer behavior. The analysis that follows is not meant to exhaust the possible market interests at play, but to highlight three important ones and to suggest some of their potential consequences; I then focus my empirical analysis on one.

The market-linked interests I outline below are not the only ones that shape lawyers’ decisions about how much public service work to do and which causes to do it for. An important perspective on professional occupations such as law understands them as being crucially different from other lines of work. In this classical vision of professionalism, professionals put their clients’ needs and the public interest ahead of their own bottom line (Parsons 1968, 1969). Lawyers, in particular, have a special concern for the public interest in their role as “officers of the court” (Gaetke 1989): they are ethically bound to consider the interests of justice, as well as their own clients’ personal interests (Rhode 2004, 2005, and in this volume). Seeking to further justice is one important reason that lawyers provide counsel and representation to people and to causes that would otherwise go unrepresented or unserved.

Identifying the ways that market interests can shape public service behavior provides a deeper understanding of how public service values are expressed in real-life situations. Insights gained from the study of what lawyers and law firms do and why they do it can aid us in designing policies that might encourage the expression of professional ethics in ways that bring greater public benefit. As other chapters in this volume show, individual lawyers’ reasons for doing pro bono work reflect many different values, including the values that bring people into the profession and the values that law schools try to teach through mandatory pro bono requirements (see Adcock in this volume, Granfield & Veliz in this volume, and Schmedemann in this volume). But no person’s values are expressed in a vacuum. Legal services markets are one important context within which attorneys make choices about how to live out their ethical commitments in their professional lives as lawyers (see Dinovitzer & Garth in this volume).

Three kinds of market interests shape the context in which lawyers do pro bono work. One interest is a wish on the part of the organizations that employ lawyers—for example, law firms, offices of internal counsel, and government
agencies—to recruit able lawyers and, if those lawyers are inexperienced, to find ways to train them. Another market interest, especially among organizations that get their revenues from the private market for legal services, is in business creation. Law firms want to maintain their relationships with existing clients and often to cultivate relationships with new clients. Finally, law firms have a basic interest in persistence, in continuing as viable economic entities. This is perhaps an obvious point, but it has an important consequence. The desire to continue as a business likely means that some amount of surplus is necessary for a firm to donate pro bono services through subsidizing lawyers’ pro bono work. A limit exists on the amount of pro bono that will be subsidized.

Organizations that employ lawyers usually want to attract and retain good ones. Part of how they try to achieve this is through offering rewards—pay, opportunities for promotion, sushi and massages (Browning 2007; Galanter & Palay 1991; Phillips 2001)—but they may also offer opportunities to do particular kinds of work, such as work that allows young lawyers to live out value commitments by serving causes that are important to them, or to engage early in tasks they would not otherwise see until after several years of large firm practice, such as appearing in court to litigate. Newly minted lawyers also often lack experience in the practice of law. Few law schools require clinical legal education, and little of law schools’ core curriculum is related to the practicalities of doing lawyers’ work. Pro bono work affords opportunities for young lawyers to receive basic training, to do hands-on client service and court and tribunal work, and to have control of a case from start to finish (Cummings 2004; Daniels & Martin 2009). The opportunity to do pro bono work under supervision by experienced attorneys in organized pro bono programs can thus be both a recruiting tool and a means of equipping recruited attorneys with lawyerly skills.

Law firms’ interest in business creation creates two concerns that may affect their lawyers’ pro bono participation. First, it is clear that law firms select pro bono projects with an eye to avoiding those that might antagonize existing or potential clients. 6 This concern is as old as legal aid under capitalism, and reflects a desire to prevent positional conflicts of interest (Smith 1919). Such conflicts emerge when a lawyer or a firm serves classes of clients whose group interests are opposed—for example, credit card companies and consumer debtors, or landlords and tenants. Positional conflicts likely have greater impact on the types of legal services provided to the indigent than on the amount of such services. Interview studies in contemporary large law firms reveal that these firms sometimes try to avoid conflicts by proscribing firm lawyers’ work on volunteer projects that might offend paying clients (Cummings 2004:116–121; Spaulding 1998:1414, 1418). As one partner in a large firm reported apropos of positional

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6. Law firms also use their participation in pro bono programs as a marketing tool with potential clients (Daniels & Martin 2009:13–16).
conflicts and selecting between potential pro bono projects, “We [the firm] know what side our bread is buttered on, and we stay there” (Spaulding 1998:1409). If a local legal services market is fairly diversified, the aggregated positional conflicts faced by local law firms may not restrict the range of civil-law troubles that pro bono can serve: one firm’s positional conflicts could be compensated for by another’s lack of conflicts in the same area of law. However, if a local market is dominated by clients from a particular industry (for example, banking or energy), then the supply of legal services for poor people facing problems with businesses in those industries (for example, problems with credit cards or utility bills or service) may be highly restricted, because law firms may be unwilling to participate in pro bono projects that target the industries that pay their bills. To my knowledge, no empirical research has assessed the quantitative impact of positional conflicts on the types or amount of pro bono services provided.

Second, some evidence suggests that lawyers’ pro bono service activity is sensitive to their concerns about encroachment onto their turf by other occupations. All professional occupations, including law, act collectively to restrict the supply of services by restricting their production (Abbott 1988; Abel 1989; Larson 1977; Weeden 2001). An important means through which this is achieved in the legal profession is lawyers’ legal monopoly on the provision of legal services (Abel 1989). The legal profession does not restrict supply only for selfish reasons; it is also concerned about the public interest. The profession wants to maintain a basic level of quality in legal services and to protect the public from unqualified or unscrupulous practitioners. At the same time, it also wants to maintain a high price for the services it provides (Abbott 1988; Abel 1989; Friedson 1994).

Providing free work can, perhaps seemingly paradoxically, be a way to help lawyers keep control of the supply of legal services. If poor people go unserved by lawyers, “other occupations—document preparers, estate planners, financial advisors, social workers,” paralegals—“can step in to provide services at fee levels . . . that poor people can afford” (Sandefur 2007:88). Indeed, competing occupations defending themselves against charges of the unauthorized practice of law have argued that their services are needed because the high cost of lawyers’ services puts civil justice beyond the means of many ordinary Americans (e.g., Greenwell v. The State Bar of Nevada). In response to these concerns, state legislatures have considered, and sometimes approved, what amounts to the practice of law by nonlawyers for specific, limited issues—for example, certain matters involving immigration (e.g., Moore 2004:11–13). In response to these challenges, state legal professions have encouraged lawyers to do pro bono work both in the service of justice and in defense of professional boundaries (e.g., Nevada Lawyer 2005). An analysis comparing lawyers’ pro bono participation in 40 states found that lawyers participated in organized civil pro bono programs at higher rates in states where the legal profession was concerned that lawyers’ work was under threat from unauthorized practice by other occupations (Sandefur 2007). This finding suggests that pro bono service is today, as it has
long been, “one way . . . to reduce demand for less expensive service providers” (Rhode 2005:97).

Defending the boundaries of the profession is a long-term project (Abbott 1988; Abel 1989). In the short term, individual law firms must also make a sustainable living, producing profits sufficient to compensate partners and pay salaries for associates and other employed staff such as secretaries and paralegals. The costs of doing business likely place a limit on the amount of service any law firm or individual lawyer can afford to donate. The specific values of these costs and of the related limits are neither natural nor self-evident. Many factors—such as regional or national norms about how high partner profits or associate starting salaries should be, as well as a firm’s bottom line—shape the amount of pro bono that any lawyer or law firm will be willing to do. The relationship between revenues and public service is not some kind of economic law, but it is a clear and powerful regularity. When revenues per lawyer are higher in a legal services market, the lawyers there produce more pro bono service, and when revenues are lower they produce less. The data available are not sufficient to demonstrate a causal link, but they do constitute compelling evidence that the amount of available legal aid is linked to conditions in legal services markets, and that American-style civil legal assistance is consequently market-reliant.

**Legal Services Markets and Lawyers’ Pro Bono Service**

Evidence for the relationship between pro bono service and conditions in legal services markets comes from two sources: an investigation of state-to-state differences in lawyers’ rates of participation in organized programs delivering service to poor people, and an investigation of market-to-market differences in the average hours of pro bono produced by young lawyers. The state-level study compared the percentage of lawyers in each state who participated in organized pro bono programs that delivered civil legal services to poor people. The source of pro bono data was a 1997 survey of organized civil pro bono programs across the United States, which provided information about pro bono participation in 40 states (Center for Pro Bono 1998). This information was linked to information about state legal professions’ concerns surrounding unauthorized practice, state professions’ attempts to encourage lawyers’ pro bono service, and revenues in state legal services markets (Sandefur 2007). In multivariate models that assessed the relative contributions of these different factors to cross-state variation in lawyers’ service, I found that market conditions—revenues per lawyer in the state and whether or not the state profession perceived threats from other occupations’ unauthorized practice of law—explained more than half of all that the models could explain about variation across states in pro bono participation.7

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7. The most elaborate model of pro bono participation across states explained about two-thirds of the total variance (R^2 = .65). The level of legal aid funding in each state and
Market conditions explained more about variation across states in pro bono than did the size of state legal professions, legal aid funding, the content of state professional ethical codes dictating norms about pro bono service, and state professions’ other aspirational attempts to encourage pro bono service. For the average state in the study, an increase of one standard deviation in receipts to the legal services industry per lawyer (about $24,000) was associated with an increase of almost 5 percentage points in the share of the state profession that participated in organized civil pro bono programs. In comparison with state legal professions that did not perceive a threat of unauthorized practice, the average state legal profession that did evidenced 7 percentage points more participation in organized civil pro bono programs (Sandefur 2007:101). Across states, lawyers’ participation in organized civil pro bono programs was strongly related to conditions in legal services markets.

The second analysis draws on the After the JD study, and looks at pro bono work by individual lawyers. Here, I investigated the amount of pro bono service provided by young lawyers working in private practice law firms across 19 different legal services markets included in the study. These ranged from large urban markets such as New York City to markets smaller in terms both of the number of lawyers and of the revenues they collect, such as the state of Oklahoma (Dinovitzer et al. 2004). I modeled two different measures of young lawyers’ pro bono work: whether a lawyer did any pro bono work at all, and, among lawyers who did pro bono work, the average number of hours that they served. My models predicted these two measures of participation as a function of two factors: whether the lawyer said that his or her pro bono hours were all billable (i.e., that the firm rather than the lawyer made the donation), and the revenues per worker in the legal services market in which he or she worked.

the size of the state legal professions accounted for 9 percent of variation across states in lawyers’ pro bono participation rates, while information about revenues and concerns about unauthorized practice accounted for an additional 39 percent of the variance, or 55 percent (=.39/.65) of the variance explained by the most elaborate model (Sandefur 2007: Table 3).

Concrete and specific attempts to recruit lawyers into pro bono service—for example, a statewide pro bono organization working with specific law firms to secure their attorneys’ participation in organized pro bono programs—were associated with higher rates of pro bono participation. However, the existence of pro bono reporting requirements and the content of state professional ethical codes concerning pro bono bore no relationship to differences in state pro bono participation levels (see Sandefur 2007:89–93, Table 3).

The measure of revenues comes from the Economic Censuses of the United States, and represents the receipts to the for-profit legal services industry (i.e., the private practice of law) per employee in that industry for the specific market (e.g., New York City, Minneapolis, or the state of Oklahoma). These regression models were computed using weights to correct for stratified sampling. In the After the JD study, information about law
Among young U.S. lawyers in 2003, I found that, on average, private practice lawyers in more lucrative legal services markets were no more likely to report doing any pro bono work than were those in less lucrative markets. However, among lawyers doing pro bono work, those working in more lucrative markets performed more service: an increase in market revenues of one standard deviation ($38,000 per employee in the legal services industry) was associated with a predicted increase of 11 hours of pro bono work by individual attorneys (p < .001). Law firm subsidy was also associated with increased pro bono service. Among lawyers who did at least some pro bono work, those whose service was fully subsidized by their law firm performed, on average, about 11 hours more pro bono work than did those whose pro bono service was only partially subsidized or not subsidized at all by their employers (p < .10). These are simple analyses, but they are also very suggestive. We know that many other factors affect pro bono participation besides subsidy and market conditions, but the findings from these two studies suggest that market conditions and law firm subsidy are significant factors shaping lawyers’ pro bono behavior.

The evidence available is largely circumstantial. However, taken all together, it suggests that pro bono service—including that service that contributes to civil legal assistance—is linked to conditions in legal services markets. This relationship obtains, in part, because a lawyer’s individual service is reliant upon his or her organization’s subsidy: in many instances it is not individual lawyers, but their employers, that donate their time. Because pro bono service is powerfully related to conditions in legal services markets, and American-style civil legal assistance is substantially reliant on that service, one might fairly describe civil legal aid in the United States as market-reliant through its dependence on pro bono.

HALF FULL OR HALF EMPTY? GOALS AND INSTITUTIONAL DESIGN

Among the questions posed by authors in this volume are whether private practice lawyers are doing enough pro bono and whether they are doing the right kinds of pro bono (Rhode in this volume). These are important questions, but they are normative questions not amenable to sociological analysis. They are, in addition, distinct analytically from questions about what factors shape lawyers’ pro bono behavior and about the consequences of lawyers’ pro bono work. As other authors in this volume have compellingly shown, pro bono has become institutionalized in the large firm sector of legal services markets (Boutcher in this volume; Cummings 2004). It has also become institutionalized as a way of providing civil legal assistance (Sandefur 2007). The aim of this chapter has

firms’ subsidy of pro bono work is available only for attorneys who reported doing pro bono work.
been to understand something of how these institutional arrangements work, and to identify some of the vulnerabilities they create—not for lawyers, but for people who rely on civil legal assistance.

In the United States, civil legal assistance is significantly market-reliant. To characterize American-style legal aid in this way is an analytic description, not a normative evaluation. American-style assistance is substantially dependent on volunteer labor, particularly that of lawyers working in organized civil pro bono programs. This labor, in turn, is sensitive to market conditions, leaving U.S. legal aid market-reliant at the second order, in the sense that it depends for labor on sources of supply that are conditioned by market dynamics.

Whether this state of affairs is desirable or undesirable depends upon one’s goals. If one’s goal is substantial volunteer activity by the private practice bar, then the glass looks half full. An enormous number of lawyers—perhaps as many as 200,000—participate in organized civil pro bono programs that provide civil legal services to poor people (Sandefur 2007). An even greater number of lawyers do other work that they themselves regard as public service (Rhode 2004, 2003). Whether or not their contributions to civil legal assistance are “enough” by some normative standard, they are substantial in sheer quantity and significant in their contribution to civil legal aid. If, on the other hand, one’s goal is a stable and reliable system of civil legal assistance that provides the services that indigent people need or want when and where they need or want them, the glass looks rather different, and the half-full/half-empty metaphor starts to fail as a description.

One way to achieve the goal of adequate civil legal aid would be for government to fund an ample supply of qualified legal aid lawyers. The United States decided against this strategy over two decades ago (Abel in this volume; Johnson 1999; Kilwein 1999). The pro bono programs that exist today are in part a legacy of American lawyers’ response to cuts to U.S. legal aid in the 1980s and 1990s, specifically Congress’s dramatic reductions in federal funding for the LSC and imposition of restrictions on the services that LSC grants were permitted to support (Houseman and Perle 2001, 2003; Kilwein 1999). A heavy reliance on volunteers to provide an important public service is also, as noted above, a characteristically American-style way of getting the job done.

Reliance on volunteerism has some potential strengths. For example, pro bono programs are independent from government in important ways that insulate them from the kinds of pressures faced by the Legal Services Corporation. Though these programs are affected by market conditions, their independence from government could potentially give them the capacity to be resilient and effective sources of civil legal assistance for poor people. Many of the parties whom the poor find themselves confronting are agencies of government: those that decide, for example, what wage and hour laws will be, or who will receive how much in Temporary Assistance for Needy Families (formerly Aid to Families with Dependent Children) funds, housing subsidies, social security
stipends, veteran’s benefits, and the like. Unlike LSC-funded attorneys, pro bono lawyers’ work is not funded by the same government that funds these agencies. Whereas Congress has substantially restricted the scope of LSC attorneys’ work—for example, these lawyers are not permitted to litigate for welfare reform—it has much less scope to directly restrict pro bono lawyering. However, whether pro bono’s potential to provide a reliable and resilient source of civil legal assistance can be realized depends upon the willingness of pro bono lawyers and the law firms in which they work to coordinate their activities and to direct their work toward areas of need, which may not correspond to areas of lawyer interest.

The challenge of matching supply to need is not unique to the portion of legal aid that is supplied through pro bono. In important ways, American-style civil legal assistance is disconnected from its service population. Few civil pro bono programs spend many resources trying to ascertain what services their potential clients want or need. In part, this reflects market-reliance: the interests of important market players—businesses that buy legal services from large law firms and are concerned about positional conflicts, young lawyers sought by law firms who want to do pro bono work that is interesting, fashionable, and satisfying—drive some of what these programs do. But a lack of attention to what legal aid clients want is not unique to volunteer lawyer programs. Gathering the intelligence that would allow a systematic match between need or demand and services provided has never been a prominent component of American-style civil legal assistance. The central federal agency that funds civil legal assistance in the United States, the Legal Services Corporation, collects information about what its grantees do, but not about what its service population wants or about the problems that poor people actually experience (see, for example, LSC 2005; see generally Abel 1985). To the extent that the LSC sets the norms in American-style civil legal assistance, it models for other organizations and programs an indifference to the issue of matching the content of services to existing need or demand.

In order to make this kind of match, we would require much better intelligence about the civil-law problems of the American public than we currently have. The last comprehensive national legal needs survey in the United States was conducted in the 1970s (Curran 1977); the most recent partially representative survey is at this point 15 years old (Consortium on Legal Services and the Public 1994). In contrast, other countries—for example, Canada, England and Wales, and Australia—have ongoing, government-based research programs that explore and document the legal problems of their publics (Currie 2007, 2009; Mulherin & Comarelos 2007; Pleasence et al. 2006). This research, more sophisticated both methodologically and conceptually than the American tradition of legal needs studies, is used by governments to guide central legal aid policy (Moorhead & Pleasence 2003; Pleasence et al. 1999; Sandefur 2008, 2009).

Given the differences in how these countries’ legal systems are organized, a good American system of legal intelligence collection would probably not import
the commonwealth model whole-cloth. In the American context, provision of legal services is locally initiated; lawyers are licensed to practice by individual states; and many laws, codes, and regulations are determined at state or local levels. The different organization of our legal system means that we might want to organize the collection of information regionally or locally, to ensure that a given area’s providers could get information about the problems of their own, local clients. A variety of entities exist that could take on the task of coordinating intelligence-gathering, including the Legal Services Corporation or the Bureau of Justice Statistics. But whoever oversees the work, some kind of intelligence is necessary to match legal aid supply to need or to demand, particularly in the absence of a market from which to make inferences about what clients might want or could use.

In addition to lacking any central intelligence function, the very design of American-style civil legal assistance creates challenges of coordination. Countries such as England and Wales provide legal aid through “judicare,” a system in which government pays private lawyers to provide services to people whose incomes make them eligible to receive civil legal assistance (Paterson 1991)—a model of provision in some respects similar to the United States’s Medicare program for providing health services. The budgets for judicare programs are centrally controlled and managed, and it is clear in these systems both who needs the intelligence about demand and need and who coordinates legal aid labor: the central government, which coordinates labor by deciding what kinds of lawyer services will be reimbursed and at what levels. The United States’s legal aid system is structured very differently, with labor and funding coming from a wide variety of sources, drawing on resources controlled by many different organizations, programs, and agencies. In contrast to the judicare countries, there is no central point where the American-style system comes together (Abel in this volume).

If this basic structure for legal aid provision remains unchanged, one could look for potential points of coordination within the existing system. Good candidates include the major granting agencies that fund civil legal aid work and the programs that use lawyers’ pro bono labor, particularly state bar associations, Interest on Lawyers’ Trust Accounts (IOLTA) fund programs, and the Legal Services Corporation. As a term of their grants, these grantors could require grantees to provide services that local populations want or need—identified through intelligence-gathering—and to coordinate their services to prevent gaps or redundancies. This coordination would direct volunteer labor toward providing services that low-income Americans want or could use, but at a cost. This kind of coordination would require pro bono and other legal aid programs and the lawyers who serve in them to sacrifice some of the independence they currently enjoy.

The changes proposed here presume a continued commitment on the part of Americans to American-style civil legal assistance: they are remedial rather
than radical. Although such innovations might soften the impact of market-reliance on the provision of legal aid services, they could not eliminate it. Recessions, such as the one we are in at the time of this writing, will reduce revenues to the legal services industry at the same time that they swell the ranks of the poor. The part of legal aid provided by pro bono may thus start to shrink at the same moment demand for legal aid begins to grow. Law firms that were deeply committed to public service could, for a time at least, keep staff idled by a recession occupied with pro bono service. But, whatever their value commitments or visions of professionalism, only firms that had in good times built up substantial surpluses would be able to donate labor for very long, and even those firms could not sustain this indefinitely.

The market-reliance of American-style civil legal assistance creates a predictably unreliable system for providing civil legal aid. What could change this is not a revival of lawyers’ commitment to classical professional values, but a creative redesign of the institution of legal aid itself, taking effective and efficient advantage of the enormous pool of talent and commitment among contemporary American lawyers.

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6. PRO BONO AS AN ELITE STRATEGY IN EARLY LAWYER CAREERS

RONIT DINOVITZER AND BRYANT G. GARTH

INTRODUCTION

The conventional argument for pro bono legal service—heard from the organized bar and scholars alike—is that lawyers have a moral obligation to perform such service. Pointing to the large unmet need for legal services, scholars argue that members of the bar must be enlisted as part of a moral commitment to serve people who otherwise cannot afford legal assistance (Rhode 2005). Others build a parallel argument that lawyers are obligated to provide pro bono legal services because of the monopoly they are granted over the provision of legal services (Christensen 1981; Sossin 2008). In other words, in order to sustain the legitimacy of the bar’s monopoly, lawyers must demonstrate a commitment to access to justice for disadvantaged individuals. From this vantage point, the goal is to encourage more lawyers to provide more pro bono services.

In contrast, a second literature recognizes pro bono as one aspect of market promotion (see Lochner 1975). This view posits pro bono work as a kind of “loss leader.” Pro bono introduces clients to the potential advantages that come from legal services, and at the same time it helps to sustain a network of referral business. This is most trenchantly highlighted in Richard Abel’s (1988) work which demonstrates how legal aid in England and in the United States helped to build the demand for legal services. And it is equally demonstrated by the fact that the movement to document the unmet “legal needs” of ordinary Americans through systematic surveys (e.g., American Bar Association 1994) was part of an effort to build demand for lawyers as the key agents for solving problems that may have a legal component (cf. Blankenberg 1999). Rather than focusing solely on the demand-side for pro bono legal services, work that emphasizes the beneficial economic consequences of pro bono demonstrates that the enterprise of providing free legal services is not separate from the business of making money and serving powerful clients.

These two general approaches—legitimacy and demand creation—can be assimilated into a Bourdieusian perspective on the legal profession. This perspective is especially relevant to exploring the dynamics of semi-autonomous fields such as law—spaces of competition involving “players” who compete according to the “rules of the game” of the field. Of particular interest according to this perspective is the social construction of the rules of the game within a
particular field, the kinds of capital that are valued in the field, and the behavior of those who compete for success. The voluminous literature on pro bono, which assiduously proclaims the goodness of those who do pro bono work, serves to build the field while re-enacting and supporting the behavior that the field encourages and rewards (see review in Rhode 2005).

Pierre Bourdieu’s 1998 lecture entitled “Is a Disinterested Act Possible?” provides a useful starting point to situate pro bono activity within the patterns of behavior of actors in the legal field. In contrast to the legal profession’s largely promotional and selfless view of pro bono, Bourdieu indicates that actors may invest in such “disinterested” activity while doing so “in accordance with their interests” (83). As a result, activity in a particular field may be at the same time interested (as opposed to disinterested) and altruistic. Within a Bourdieusian framework, then, one does not merely counterpose altruism to selfishness. Indeed, participation in some realms of social life requires actors to engage in what are apparently gratuitous, unprofitable, and altruistic acts, and an actor who has internalized the rules of the game of the field will spontaneously orient his or her strategies according to these underlying stakes and principles (76–77, 83). This orientation implies that the actor has a conscious or unconscious stake in the game, and a feel for what might advance his or her position within the game.

Yet if actors engage in “disinterested” activity, it is not because they necessarily expect any reward in doing so—much less a financial one—or because there is any rational cost-benefit calculation on their part. Rather, by participating in a field (such as law) where value is accorded to disinterested acts, agents internalize the importance, value, and expectation of engaging in these activities, and do not question their merit (Bourdieu 1998:77). This behavior, oriented toward the rules of the game of the field, is what Bourdieu (1977) refers to as “habitus.” In Bourdieu’s (1998:87) terms, “[i]n well-constituted societies of honor, there may be disinterested habitus, and the habitus-field relationship is such that, in the form of spontaneity or passion, in the mode of ‘it is stronger than me,’ disinterested acts can be carried out.” There are those who passionately conform to what honor dictates with no expectation of reward. Such well-meaning lawyers are easy to locate in the world of pro bono legal services. It is not that all behavior is pure, however; “[w]ithout doubt the social universes within which disinterestedness is the official norm are not necessarily governed throughout by disinterestedness: behind the appearance of piety, virtue, disinterestedness, there are subtle, camouflaged interests . . .” (87).

The notion of a field that makes disinterestedness a norm leads to the question of how that norm relates to the structure of rewards within the field. Again, in Bourdieu’s (1998:88) terms, “[i]f disinterestedness is sociologically possible, it can be so only through the encounter between habitus predisposed to disinterestedness and the universes in which disinterestedness is rewarded.” Bourdieu observed this behavior empirically, finding that individuals indeed acted according to the norm of disinterestedness fostered within the field. He further noted that
“[b]y ‘getting into line’ with the official norm, they managed to add profits provided by conformity with the universal to profits that an ‘interested’ strategy provides” (89). Thus, by conforming to the norm of disinterestedness, these individuals actually gained more economic reward than they would have if they had failed to act in a disinterested fashion. It might therefore be hypothesized that in certain fields “it is better to seem disinterested, as generous and altruistic rather than egotistical” (89).

In this chapter, we wish to draw on this theoretical perspective to better understand pro bono work in the legal field. First, as suggested in the preceding paragraphs, the legal field tends to be structured in order to reward those who work to sustain the legitimacy of the field as a whole. That means, to simplify a point that we will not develop here, that pro bono generally helps to legitimate a system whereby the overwhelming amount of resources work to sustain corporate power and clients with substantial economic means (Dezalay & Garth 2004; Gordon 2008). The rewards for altruism may be material or symbolic. They may accrue to those who have internalized the norms of the field or to those who hypocritically advance by pretending to embody the universal norm.

Second, drawing on more general applications of Bourdieu’s theory to the sociology of law, we posit that there is a division of labor within the legal field such that elites take the lead in promoting the ideals of the profession while also reaping the profits that come from those ideals (Dezalay & Garth 2004). They and their law firms, for example, compete to gain recognition for pro bono activity and public service (e.g., Cummings 2004).

Third, the rank and file of the profession typically do not have quite the same orientation to those ideals, because ordinary practitioners have to survive and make a living. They need in the first place to build a demand for their services. They are judged within the profession as a whole, however, according to a definition of pro bono that makes more sense in legitimating legal services to large corporate entities.

Fourth, the division of labor within the legal field tends to reinforce social advantage and disadvantage (Heinz & Laumann 1982). The strategy of investment in professional virtues is relatively more available to those who are socialized in the virtues of noblesse oblige and are in a position to implement the strategy (Garth 2004). Elite status is confirmed in part because of the enactment of legal virtue—and the apparent distance it provides from the pure commerce of providing legal services.

It is not just a matter, then, of seeing what the incentives are for pro bono in different legal environments. Of course, as scholars have shown, large law firms with substantial resources and programs for the encouragement of pro bono are bound to generate more pro bono than firms that have no such programs (Cummings 2004; Boucher in this volume). Similarly, the “pro bono” that takes place among solo and small-firm practitioners is more likely to be loss-leader marketing than pro bono in the large-firm sense, even though it still provides
services to individuals who cannot afford them (Levin in this volume; Lochner 1975; Seron 1996). The data we describe below certainly confirm these general findings. Following our Bourdieusian approach, the further questions we wish to explore involve who invests in pro bono, whether it is rewarded (or whether there is evidence of such rewards early in careers), and how that investment may relate to structures of hierarchy in the profession and society as a whole.

These questions can be loosely formulated into the following hypotheses:

1. Lawyers in larger corporate law firms, and elite lawyers more generally, will be more likely to do pro bono work;
2. Those from higher socioeconomic backgrounds or their proxy, elite schools, will express an orientation that predisposes them to pro bono service;
3. Pro bono is a career strategy that is rewarded materially and symbolically.

Although prior work has provided us with the context from which to explore these hypotheses, none of this work has been able to systematically address them. Below we describe a unique study of early legal careers that allows us to fully explore pro bono work within the context of the legal field.

THE AFTER THE JD STUDY

This chapter relies on the first wave of data from the After the JD (AJD) study, a national longitudinal survey of law graduates (Dinovitzer et al. 2004). The study is based on a sample representative of the national population of lawyers who were admitted to the bar in 2000 and who graduated from law school between June 1998 and July 2000. The sampling design used a two-stage process. In the first stage, the nation was divided into 18 strata by region and size of the new lawyer population. Each stratum was then divided into primary sampling units (PSU), with each unit comprised of a metropolitan area, a portion of a state outside large metropolitan areas, or an entire state, and one PSU was chosen within each stratum. The PSUs included all four “major” markets, those with more than 2,000 new lawyers (Chicago, Los Angeles, New York, and Washington, DC); five of the nine “large” markets, those with between 750 and 2,000 new lawyers (Boston, Atlanta, Houston, Minneapolis, San Francisco); and nine of the remaining, smaller markets (CT, NJ remainder, FL remainder, TN, OK, IN, St. Louis, UT, OR). In the second stage, individuals were sampled from each of the PSUs at rates that would, combined, generalize to the national population. In addition, the study included an oversample of 1,465 new lawyers from minority groups (Black, Hispanic, and Asian American). For purposes of the present analysis, we analyze data from the sample that combines the nationally representative sample of lawyers and the oversample of minority lawyers. These responses were weighted according to their appearance in the particular geographic region from which they were sampled.
The final sample included 9,192 lawyers in the 18 PSUs. Data collection was based on a mail questionnaire initially fielded in May 2002, with nonrespondents followed up by mail and phone (with the telephone survey using a somewhat abridged version of the mail questionnaire). Unfortunately, about 20 percent of sample members could not be located, and another 8 percent were not eligible for the study; but of the original sample members who were located and who met the criteria for inclusion in the study, 71 percent responded either to the mail questionnaire or to a telephone interview, for a total of 4,538 valid responses.

Analysis
We begin by offering an overview of the patterns of pro bono work in the AJD sample. Table 6.1 outlines the distribution of pro bono by practice settings. It is not surprising to find that across the profession, lawyers working in legal services and nonprofits report the highest average hours of pro bono work (261 hours and 80 hours, respectively), though the data suggest that some of these respondents count their regular work hours as pro bono work. Among those working in private law firms, the highest number of pro bono hours—as expected—is found among those working in the largest firms of over 251 lawyers, with about 70 percent of these lawyers engaging in some pro bono work. In these largest corporate law firms, lawyers performed an average of 73 hours of pro bono work in a 12-month period, which is a full 26 hours more than the

**Table 6.1 Pro Bono Hours by Practice Setting**

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amount of pro bono work in the settings with the next highest averages (firms of 101–250 lawyers and solo practice). In private law firms we find that pro bono hours decline as firm size declines, though it flattens out among the smaller and larger firms of between 2 and 100 lawyers. Another constituency that reports fairly high levels of pro bono is solo practitioners, with almost 80 percent of these lawyers reporting that they do some pro bono work, and with the average solo practitioner engaging in 47 hours of pro bono service over 12 months. As researchers have noted for some time, the nature of pro bono work for solo practitioners is quite different from that in corporate firms (Cummins 2004; Lochner 1975), but the AJD data do not differentiate across types of pro bono work.

Because the pressure to provide pro bono services is focused on lawyers in private practice (Boucher in this volume; Cummins 2004), and because some lawyers in the public sector do not differentiate between their regular work and pro bono work, or are limited in their ability to provide pro bono services (e.g., lawyers for government), the remainder of our analyses will focus on AJD lawyers who are working in solo practice and in private law firms. This narrowing of our focus will allow us to hold private practice setting constant, and to better explore who invests in pro bono and how that investment may relate to patterns of stratification in the profession.

We begin by considering the relationship between law schools and pro bono service. As we have shown elsewhere, there is a strong relationship between law school eliteness and the settings within which lawyers work, with graduates of the country’s most elite law schools obtaining positions in large corporate law firms (Dinovitzer & Garth 2007). Our prior analyses also indicated that the rank ordering of law schools is step-graded, with status indicators such as parental occupational prestige, working in a corporate law firm, and salary declining monotonically with law school rank. This pattern of stratification follows almost perfectly through into the arena of pro bono service. As indicated in Table 6.2, the average hours of pro bono peak at 90 hours for graduates of top-ten schools and decline to a low of 31 hours for the U.S. News category of tier three graduates; the anomaly is that graduates of U.S. News fourth tier law schools engage in more pro bono work than their counterparts from schools ranked 41st to 100th. It may be that graduates of the fourth tier are more committed to pro bono work (and we will explore this possibility further below) and will find ways to engage in public service even if their work settings do not explicitly promote or reward it. Alternatively, some may argue that this anomaly may be the result of market forces; fourth tier graduates may be relying on pro bono to account for unpaid client bills or to build up their client base, or perhaps they are not getting as much responsibility and client work as they would like in law firm settings.

The patterns of pro bono work by gender and race reveal some expected and some surprising patterns (Table 6.2): African American respondents engage in the most pro bono work per year (66 hours) and Hispanics (for no apparent reason) the least (37 hours), whereas women on average engage in about 4 more
hours of pro bono work per year than men (48 vs. 44 hours). Because practice settings are such strong determinants of participation in pro bono work, we also stratified the race and gender results by practice settings. The data indicate that Black lawyers on average engage in more pro bono service, but only in particular settings; in larger law firms (and especially in the largest law firms), Black lawyers engage in more pro bono work than other lawyers (106 hours in firms of over 251 lawyers compared to 72 hours for white lawyers in these firms), but in small and solo practice the averages are much more similar. Stratifying by firm size also demonstrates that Hispanic lawyers report some of the highest pro bono hours in the largest law firms (76 hours), but that Hispanic respondents working outside of the largest firms report lower pro bono hours than the average lawyer. Thus the earlier finding of lower pro bono hours among Hispanic respondents seems to be due, in large part, to the settings within which they work. We speculate that the higher rates of pro bono for Black lawyers, especially in large law firms, may derive from a greater commitment to “helping others”; alternatively, it may be that Black lawyers do not expect to be staying in these settings, and are gaining the skills and experience necessary to move elsewhere. The data for women, on the other hand, are much more

<table>
<thead>
<tr>
<th>LAW SCHOOL TIER</th>
<th>Pro Bono Hours (excluding zero)</th>
<th>Any or No Pro Bono</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean Median</td>
<td>Worked some pro bono</td>
</tr>
<tr>
<td>Ranked 1–10</td>
<td>89.58 50</td>
<td>71.00%</td>
</tr>
<tr>
<td>Ranked 11–20</td>
<td>59.33 40</td>
<td>68.30%</td>
</tr>
<tr>
<td>Ranked 21–40</td>
<td>45.71 20</td>
<td>57.80%</td>
</tr>
<tr>
<td>Ranked 41–100</td>
<td>37.17 20</td>
<td>60.60%</td>
</tr>
<tr>
<td>Tier 3</td>
<td>31.42 20</td>
<td>55.40%</td>
</tr>
<tr>
<td>Tier 4</td>
<td>41.3  20</td>
<td>54.70%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RACE</th>
<th>Pro Bono Hours (excluding zero)</th>
<th>Any or No Pro Bono</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>65.7  30</td>
<td>71.40%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>36.91 20</td>
<td>50.30%</td>
</tr>
<tr>
<td>Asian</td>
<td>51.06 30</td>
<td>51.90%</td>
</tr>
<tr>
<td>White</td>
<td>45.22 20</td>
<td>61.00%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GENDER</th>
<th>Pro Bono Hours (excluding zero)</th>
<th>Any or No Pro Bono</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>48.25 25</td>
<td>60.70%</td>
</tr>
<tr>
<td>Male</td>
<td>43.58 20</td>
<td>59.80%</td>
</tr>
</tbody>
</table>

Created from northweston on 2017-06-26 09:35:58.
consistent, with women reporting higher hours compared to men in all settings except for solo practice.

The patterns we identify above highlight a stratification in pro bono service, with graduates of more elite law schools and corporate lawyers in the largest firms more likely to engage in pro bono work. These patterns are closely related to, and in part derive from, different orientations and dispositions toward engaging in pro bono work. As we show in Table 6.3, lawyers who perform the most pro bono work report that pro bono opportunities were an extremely important factor in their job choice: these lawyers report an average of 98.5 pro bono hours per year. In contrast, lawyers who rated pro bono as not at all important in their choice of first job reported an average of 34.5 pro bono hours. We also find that engaging in pro bono activities during law school is related to the number of pro bono hours lawyers perform once they are in the job market, with prior pro bono experience resulting in about 14 more hours of pro bono service per year. Finally, we analyze the patterns of pro bono based on respondents’ ratings of their desire to help individuals as a goal in their decision to attend law school. The results in Table 6.3 indicate that although the average pro bono hours are almost identical regardless of their desire to help individuals, 67 percent of respondents who indicated a desire to help individuals engaged in some pro bono work compared to 52.5 percent of those whose desire to help individuals was rated as irrelevant.

<table>
<thead>
<tr>
<th>Table 6.3</th>
<th>Pro Bono Hours by Importance of Pro Bono Hours to Job Choice, Engagement in Pro Bono During Law School, and Desire to Help Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pro Bono Hours (excluding zero)</td>
</tr>
<tr>
<td>Mean</td>
<td>.....</td>
</tr>
<tr>
<td>Pro bono not at all important in job choice</td>
<td>34.49</td>
</tr>
<tr>
<td>Pro bono extremely important in job choice</td>
<td>98.53</td>
</tr>
<tr>
<td>Did not engage in pro bono work in law school</td>
<td>40.32</td>
</tr>
<tr>
<td>Performed pro bono work while in law school</td>
<td>54.2</td>
</tr>
<tr>
<td>Desire to help individuals as a lawyer rated as “irrelevant”</td>
<td>48.04</td>
</tr>
<tr>
<td>Desire to help individuals as a lawyer rated as “very important”</td>
<td>48.73</td>
</tr>
</tbody>
</table>
Multivariate Models

The findings thus far provide a glimpse into the potential relationships between pro bono and the stratification of legal services. Further analyses are required to better determine both the sources of capital that drive pro bono service and the sources of capital that pro bono may produce. We begin with an analysis of the determinants of pro bono service. Respondents in the AJD survey were asked to report the number of pro bono hours they performed during the last 12 months; almost 40 percent reported that they performed no pro bono hours in this time period. As a result, the variable for pro bono hours is left censored, with a large proportion of 0 responses. In order to adjust for this censoring, we employ a Tobit regression. This technique provides us with both an estimate of the probability that an individual will engage in any amount of pro bono work (a nonzero result) and an estimate for the predictors of the number of pro bono hours for those who report any pro bono service. Finally, because there were a number of outliers (n = 8) in the respondents’ reports of pro bono hours, we top-coded pro bono at 400 hours.

We approach our analysis with a series of nested models, adding the explanatory variables in stages. In the first model, we control only for demographic characteristics (gender, race, and father’s occupational status); the second model introduces dummy variables for law school eliteness (relying on rankings published in the U.S. News and World Report, 2003) and law school grade-point average (GPA); the third model introduces variables for work hours and law firm size; and the fourth model introduces a range of variables that represent mechanisms that may lead some individuals to engage in more pro bono work than others. These include a dummy variable representing whether respondents were engaged with pro bono work while in law school; a variable that represents respondents’ ratings of whether they attended law school in order to help individuals (rated as 1 = irrelevant through 5 = very important); a variable that represents whether a respondent’s law firm allows him or her to count pro bono hours as billable time; and an interaction term that represents top-ten law graduates who work in the largest law firms. The interaction term is an important test of our hypothesis that engagement in pro bono is not merely the result of working in settings that facilitate pro bono, but rather is also produced by a particular orientation that is found among a subset of lawyers—in this case, elite law school graduates working in large law firms. The results are presented in Table 6.4.

The first model shows that despite the bivariate relationship seen earlier between race, gender, and pro bono hours, in the multivariate context we find only a weak significant effect for Hispanic respondents, who engage in fewer pro bono hours. The second model, as expected, shows a positive and significant effect for top-ten and top-twenty law school graduates, who engage in significantly more pro bono hours than graduates of fourth tier law schools. We also find a strong positive and significant effect for law school GPA, with higher GPAs corresponding to an increase in pro bono service. In this model, which...
### Table 6.4 Tobit Model of Pro Bono Hours

<table>
<thead>
<tr>
<th></th>
<th>(Model 1)</th>
<th>(Model 2)</th>
<th>(Model 3)</th>
<th>(Model 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>-3.966 (5.774)</td>
<td>-3.547 (5.764)</td>
<td>-4.351 (6.282)</td>
<td>2.784 (5.793)</td>
</tr>
<tr>
<td>Black</td>
<td>30.73 (18.59)</td>
<td>33.00† (18.24)</td>
<td>32.59† (17.34)</td>
<td>28.25 (16.54)</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-18.59† (9.810)</td>
<td>-16.16 (9.642)</td>
<td>-17.15* (7.614)</td>
<td>-17.43* (7.869)</td>
</tr>
<tr>
<td>Asian</td>
<td>-10.30 (9.850)</td>
<td>-14.44 (11.01)</td>
<td>-16.35 (10.61)</td>
<td>-15.02 (9.709)</td>
</tr>
<tr>
<td>Father’s occupational status</td>
<td>0.157 (0.221)</td>
<td>-0.0393 (0.214)</td>
<td>-0.105 (0.207)</td>
<td>-0.130 (0.181)</td>
</tr>
</tbody>
</table>

**LAW SCHOOL RANK (EXCLUDED CATEGORY IS SCHOOLS RANKED 41 OR LOWER)**

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Top ten law school</td>
<td>34.22† (16.80)</td>
<td>20.65 (18.65)</td>
<td>-11.25 (14.80)</td>
<td></td>
</tr>
<tr>
<td>Top 11–20 law school</td>
<td>14.24† (8.181)</td>
<td>10.05 (7.379)</td>
<td>7.730 (7.546)</td>
<td></td>
</tr>
<tr>
<td>Top 21–40 law school</td>
<td>-0.580 (7.629)</td>
<td>-2.127 (7.962)</td>
<td>-0.161 (6.934)</td>
<td></td>
</tr>
<tr>
<td>Law School GPA</td>
<td>34.43*** (7.303)</td>
<td>26.69** (7.473)</td>
<td>23.40** (7.715)</td>
<td></td>
</tr>
<tr>
<td>Work Hours</td>
<td>0.463 (0.298)</td>
<td>0.461† (0.242)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**PRACTICE SETTING (EXCLUDED CATEGORY IS SOLO & SMALL FIRM)**

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Private firm 21–100</td>
<td>-17.72** (5.004)</td>
<td>-13.14** (4.368)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private firm 101–250</td>
<td>-9.843 (10.36)</td>
<td>-5.991 (8.890)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private firm 251+</td>
<td>23.68* (10.17)</td>
<td>19.24† (9.953)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law school pro bono work</td>
<td>23.09** (6.718)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Desire to help individuals</td>
<td>7.128** (2.186)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pro bono hours as billable</td>
<td>40.49*** (8.675)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Top Ten*firm 251+</td>
<td>37.14† (19.68)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-3.996 (13.80)</td>
<td>-109.5** (33.02)</td>
<td>-101.5* (38.06)</td>
<td>-131.3** (39.74)</td>
</tr>
</tbody>
</table>
controls for practice settings and GPA, we find a positive and significant (though weak) effect for Black respondents, who engage in significantly more pro bono hours than their white counterparts. The third model introduces practice settings. As expected, respondents working in the largest law firms (with 251+ lawyers) engage in significantly more pro bono work compared to their counterparts working in solo or small law firms; in contrast, those working in medium firms of 21–100 lawyers engage in significantly less pro bono than their solo and small firm counterparts.

The fourth and final model introduces the range of mechanisms that might help to further contextualize the relationship between social position, dispositions, and pro bono hours. We find strong evidence that the trajectories that lead people to the most prestigious positions are strongly related to pro bono work, and that these trajectories are set quite early in lawyers’ careers. First, we find that the more strongly respondents identify helping individuals as an important goal in their decision to attend law school, the more pro bono hours they perform. This finding is in keeping with prior research (Granfield 1992; Erlanger et al. 1996) that identifies a relationship between an initial commitment to public interest and the likelihood that law graduates will pursue public interest jobs. We also find that new lawyers who engaged in pro bono work during law school perform more pro bono hours once they are in practice. Although these two findings support our contention that engagement in pro bono work is part of a broader orientation that is cultivated before lawyers enter the labor market, we also find that law firm programs themselves are important facilitators of pro bono work—respondents who work in firms where their pro bono hours count toward their billable hours engage in significantly more pro bono work than do respondents who do not have such programs available. Therefore, although an orientation to pro bono service is an important predictor of taking up this work, we do find evidence that, independent of this orientation, external programs that facilitate pro bono work are an important part of the story.

Finally, we consider the effect of the interaction term representing top-ten law graduates working in the largest corporate law firms, which is positive and significant (p < .10). This interaction effect suggests that pro bono service is not merely the result of working in large corporate law firms, where the average

<table>
<thead>
<tr>
<th></th>
<th>(Model 1)</th>
<th>(Model 2)</th>
<th>(Model 3)</th>
<th>(Model 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>70.88***</td>
<td>68.49***</td>
<td>66.40***</td>
<td>63.87***</td>
</tr>
<tr>
<td></td>
<td>(7.798)</td>
<td>(7.139)</td>
<td>(6.497)</td>
<td>(5.983)</td>
</tr>
<tr>
<td>Observations</td>
<td>1266</td>
<td>1266</td>
<td>1266</td>
<td>1266</td>
</tr>
</tbody>
</table>

Standard errors in parentheses

† p < 0.10, * p < 0.05, ** p < 0.01, *** p < 0.001


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pro bono hours are higher than in other settings. What we instead find is that elite law graduates working in the largest corporate law firms engage in significantly more pro bono work than their peers: this suggests that there is a structure to pro bono work that reflects the hierarchy of the profession, with elite law graduates bestowed with the role of *noblesse oblige*.

To this point, we have considered the structural positions and dispositions that relate to engaging in pro bono work. Yet to fully flesh out Bourdieu’s perspective, we need to also document whether the orientations and dispositions toward pro bono work themselves reflect and reinforce the hierarchy of the profession. As Bourdieu (1998) notes, dispositions—in this case attitudes toward pro bono—both reflect and legitimate social differentiation. The AJD survey asked respondents to rate the importance of pro bono work in their job choice. An analysis of responses to this question can help us to differentiate whether the responses reflect a social patterning that is consistent with our hypotheses. Confirming Granfield’s (2007) analysis of support for mandatory pro bono programs, we find a strong gender effect, with men significantly less likely than women to give high ratings to pro bono opportunities. With respect to our hypotheses, the results we present in Table 6.5 are remarkably clear: an ordinary least squares (OLS) regression predicting the importance of pro bono as a factor in lawyers’ job choice indicates that elite law graduates rate pro bono opportunities more highly than do graduates of lower-tier law schools, independent of characteristics such as race and gender. These results suggest that for elite law graduates, an orientation to service is inculcated before they even enter the labor force. This orientation is produced at least in part by the law schools themselves: we find that 50 percent of respondents who attended top-ten law schools reported engaging in pro bono work while in law school, compared to 23 percent of fourth tier graduates. Although support for pro bono among elite students is likely the result of the relative entrenchment of pro bono programs in elite law schools compared to nonelite schools (Association of American Law Schools 2001), elite law graduates carry these orientations with them into their job preferences and into their legal careers.

Taken together, our findings describe a system whereby an orientation toward pro bono service is especially inculcated, promoted, and nurtured in particular law schools, with these elite graduates going on to work in the country’s most prestigious and high-paying corporate law firms. These firms themselves continue to promote *noblesse oblige* by allowing their associates to count their pro bono hours as part of their billable hours, and as a result the elite law graduates continue to engage in pro bono work while at the same time serving business.

**PRO BONO AND ITS REWARDS**

An important part of our account is that pro bono service is not an end in itself. Engaging in pro bono work is part of the game of new lawyer careers, with
### Table 6.5 OLS Regression—Predicting Importance of Pro Bono Opportunities in Job Choice

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>SE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>-0.678</td>
<td>0.102</td>
</tr>
<tr>
<td>Black</td>
<td>0.308</td>
<td>0.222</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.653*</td>
<td>0.235</td>
</tr>
<tr>
<td>Asian</td>
<td>0.032</td>
<td>0.126</td>
</tr>
<tr>
<td>Father’s occupational status</td>
<td>0.006</td>
<td>0.004</td>
</tr>
<tr>
<td>Law school rank (excluded category is Tier 4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Top ten law school</td>
<td>0.795**</td>
<td>0.243</td>
</tr>
<tr>
<td>Top 11–20 law school</td>
<td>0.403*</td>
<td>0.184</td>
</tr>
<tr>
<td>Top 21–40 law school</td>
<td>0.075</td>
<td>0.185</td>
</tr>
<tr>
<td>Top 41–100 law school</td>
<td>-0.059</td>
<td>0.169</td>
</tr>
<tr>
<td>Tier 3 law school</td>
<td>-0.0008</td>
<td>0.167</td>
</tr>
<tr>
<td>Constant</td>
<td>2.841***</td>
<td>0.231</td>
</tr>
<tr>
<td>Observations</td>
<td>2615</td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>0.073</td>
<td></td>
</tr>
</tbody>
</table>

Standard errors in parentheses

† p < 0.10, * p < 0.05, ** p < 0.01, *** p < 0.001

Pro bono service functioning to provide far more than free legal services to those who could not otherwise afford them. We hypothesize that for some lawyers in private practice, engaging in pro bono service allows them to provide a moral meaning (cf. Lamont 2000) to their work in corporate law firms, with pro bono providing symbolic capital in the form of moral justification. For others, we expect that pro bono service can provide a more tangible form of capital, with pro bono serving as a form of training, giving new lawyers opportunities to meet with clients and go to court—opportunities that would not otherwise be available to junior associates in large law firms. And for others, pro bono may help to build stature and connections that lead to material and other career rewards over time.
Either way, we posit that pro bono work is often translated into other forms of capital, and analyzing these transformations can allow us to better understand the value of disinterestedness in new lawyer careers.

We explore these hypotheses by examining the relationship between pro bono work and four forms of job satisfaction, which we have described elsewhere (Dinovitzer & Garth 2007). The first form represents “job setting satisfaction,” consolidating ratings of recognition received at work, relationships with colleagues, control over the work, and job security. The second form is “work substance satisfaction,” which reflects the intrinsic interest of the work, including ratings of satisfaction with the substantive area of respondents’ work and opportunities for building skills. The third form, “social value satisfaction,” concerns the reported relationship between work and broader social issues (workplace diversity, opportunities for pro bono work, and the social value of the work). The fourth form, “power track satisfaction,” is comprised of two items: satisfaction with compensation levels and satisfaction with opportunities for advancement. We again rely on the subsample of lawyers working in private practice to estimate four separate models of job satisfaction—one each for satisfaction with job setting, substance of work, the social index, and the power track; the results are displayed in Table 6.6.

The results for the model predicting respondents’ satisfaction with their job setting suggest some patterns seen before (Dinovitzer & Garth 2007): lawyers working in the large corporate law firms are less satisfied with their job settings than are lawyers working in small and solo practice, and lawyers working in the nation’s largest cities are less satisfied than those working elsewhere. On the other hand, we find that graduates of top-ten law schools are more satisfied with their job setting compared to graduates of fourth tier law schools, as are graduates of top-20, top-40, and top-100 law schools. Our main interest, however, is in examining the relationship between pro bono work and job satisfaction. In this model, and in the subsequent three, we rely on two variables for pro bono work because of the skewed nature of this variable. We include a dichotomous variable to reflect the large proportion of individuals who do not engage in any pro bono work, and we include a continuous variable to measure the effect of the actual number of pro bono hours worked. The results indicate diverging effects for these two variables: we find a significant positive effect for respondents who perform any pro bono work, indicating that doing some pro bono work compared to none significantly increases satisfaction with job settings. In contrast, the variable representing the number of pro bono hours is negative and significant, indicating that as pro bono hours increase, satisfaction with job settings decreases. These diverging effects present an interesting paradox: although engaging in pro bono work as a general matter increases satisfaction, working more pro bono hours actually counters this positive effect. We return to this point below.

The second model predicts satisfaction with substance of work. Here we find a significant and positive effect for GPA, with satisfaction increasing alongside GPA.
<table>
<thead>
<tr>
<th></th>
<th>Setting</th>
<th>Substance</th>
<th>Social Index</th>
<th>Power Track</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Male</strong></td>
<td>0.636</td>
<td>−0.347</td>
<td>0.411</td>
<td>0.469**</td>
</tr>
<tr>
<td></td>
<td>(0.480)</td>
<td>(0.296)</td>
<td>(0.247)</td>
<td>(0.160)</td>
</tr>
<tr>
<td><strong>White</strong></td>
<td>1.221</td>
<td>0.723</td>
<td>1.071*</td>
<td>−0.0633</td>
</tr>
<tr>
<td></td>
<td>(1.050)</td>
<td>(0.499)</td>
<td>(0.380)</td>
<td>(0.301)</td>
</tr>
<tr>
<td>Father’s occupational status</td>
<td>0.0173</td>
<td>0.00869</td>
<td>−0.00251</td>
<td>0.00809</td>
</tr>
<tr>
<td></td>
<td>(0.0159)</td>
<td>(0.00789)</td>
<td>(0.00678)</td>
<td>(0.00798)</td>
</tr>
<tr>
<td><strong>Law school GPA</strong></td>
<td>1.597</td>
<td>1.063*</td>
<td>0.0754</td>
<td>1.793***</td>
</tr>
<tr>
<td></td>
<td>(0.921)</td>
<td>(0.467)</td>
<td>(0.379)</td>
<td>(0.287)</td>
</tr>
</tbody>
</table>

**LAW SCHOOL RANK (EXCLUDED CATEGORY IS TIER 4)**

| Top ten law school       | 3.343***| 0.843     | 0.00921      | 0.573       |
|                          | (0.843)| (0.592)   | (0.811)      | (0.367)     |
| Top 11–20 law school     | 2.141* | 0.482     | 0.00869      | 0.722†      |
|                          | (0.871)| (0.637)   | (0.578)      | (0.393)     |
| Top 21–40 law school     | 3.430* | 0.951†    | 0.667        | 0.623*      |
|                          | (1.623)| (0.536)   | (0.493)      | (0.266)     |
| Top 41–100 law school    | 1.973* | 0.618     | −0.0105      | 0.217       |
|                          | (0.701)| (0.520)   | (0.542)      | (0.405)     |
| Tier 3 law school        | 1.982 | 0.472     | −0.467       | −0.111      |
|                          | (1.271)| (0.591)   | (0.484)      | (0.386)     |
| Major metro area         | −1.782*| −1.203*   | −1.271***    | −0.687†     |
|                          | (0.722)| (0.520)   | (0.220)      | (0.330)     |
| Work hours               | 0.0346| 0.0360*   | 0.00990      | 0.0192*     |
|                          | (0.0236)| (0.0167) | (0.00944)    | (0.00786)   |

**PRACTICE SETTING (EXCLUDED CATEGORY IS SOLO & SMALL FIRM)**

| Private firm 21–100      | −2.034† | −1.028    | −1.995***    | −0.0275     |
|                          | (1.048)| (0.702)   | (0.423)      | (0.369)     |
| Private firm 101–250     | −4.027***| −1.451†  | −2.078***    | 0.275       |
|                          | (0.961)| (0.710)   | (0.446)      | (0.550)     |
| Private firm 251+        | −3.688***| −1.362*   | −1.500**     | 0.455       |
|                          | (0.766)| (0.592)   | (0.475)      | (0.393)     |
| Pro bono hours           | −0.0120*| −0.00690* | 0.00445      | 0.000103    |
|                          | (0.00461)| (0.00311)| (0.00305)    | (0.00119)   |
| Any pro bono             | 1.700** | 0.748*    | 1.556**      | 0.394*      |
|                          | (0.485)| (0.351)   | (0.416)      | (0.156)     |
| Constant                 | 23.49***| 14.71***  | 11.15***     | 1.369       |
|                          | (2.530)| (2.367)   | (1.130)      | (1.251)     |

*Continued*
TABLE 6.6  FOUR OLS MODELS OF JOB SATISFACTION (cont’d)

<table>
<thead>
<tr>
<th>Setting</th>
<th>Substance</th>
<th>Social Index</th>
<th>Power Track</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observations</td>
<td>1204</td>
<td>1290</td>
<td>1181</td>
</tr>
<tr>
<td>$R^2$</td>
<td>0.070</td>
<td>0.047</td>
<td>0.156</td>
</tr>
</tbody>
</table>

Standard errors in parentheses
† $p < 0.10$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

The law school effects are mostly not present in this model, except for the positive and significant ($p < 0.10$) effect for graduates of top-40 law schools. We continue to find a negative effect for working in large cities and a surprisingly positive effect for work hours, and we again find that working in the largest law firms decreases satisfaction. The two pro bono variables display similar effects as before: engaging in some pro bono versus none increases satisfaction with the job setting, but the increase in pro bono hours decreases this form of job satisfaction.

The model for satisfaction with the social index suggests that white respondents are more satisfied with this aspect of their job, but we continue to find negative effects for those working in large cities and large law firms—though this time we find a negative effect for those working in medium-sized firms as well. Since the dependent variable in this analysis is satisfaction with the social value of work, the effects of pro bono do not diverge in this model. We find that engaging in any pro bono work compared to none significantly increases satisfaction with the social index, and although the variable for pro bono hours is positive, the effect is not significant.

The final model considers satisfaction with the power track—that is, satisfaction with compensation and opportunities for advancement. As expected, men are more satisfied than women with this aspect of their position. Satisfaction with the power track also increases along with GPA, with graduation from a top-20 and top-40 law school, and with increased work hours; satisfaction again decreases for those working in large cities. The effects of pro bono in this model are straightforward: engaging in any amount of pro bono compared to none increases satisfaction with the power track, whereas the number of pro bono hours does not have a significant relationship with this form of satisfaction.

Taken together, the four models of job satisfaction are instructive: engaging in some pro bono work (compared to none) provides a sense of satisfaction for respondents, regardless of how we measure satisfaction. But the models for setting and substance satisfaction suggest a more complex story: in both models, engaging in more pro bono hours significantly decreased satisfaction. The diverging effects of pro bono suggest that pro bono provides a symbolic good—it is not how much pro bono one does but the fact of doing it that provides lawyers
with job satisfaction. In this way, pro bono seems to provide a veneer of doing good for lawyers working in private practice, a form of symbolic capital that new lawyers can draw on to assuage their (dis)satisfaction with their new careers. Our models also suggest that pro bono may also provide a more tangible form of capital: we find that engaging in pro bono work increases satisfaction with the substance of work, which includes ratings of satisfaction with training and with the substantive area of work. Therefore, pro bono may be providing a form of training and engagement with substantive issues that new lawyers may not otherwise have access to, and which allows them to make sense of their own careers and their workplaces. This engagement may be making palatable an otherwise unpleasant status quo in the work lives of young associates. Law firms do not give associates enough interesting and challenging work, with the result that associates rely on pro bono work to fulfill their intellectual needs as well as their demands for more practical training.

Success in law firms, however, depends on an interaction between pro bono and serving paying clients. Too much pro bono may signal a lack of work from paying clients (or the partners who control access to them), or it may signal a perceived “lack of fit” with the business of the law firm that bodes poorly for the future. Yet some amount of pro bono is consistent with—and even necessary for—the fast track in the game of the legal profession, and the best players know just how much to do.

**DISCUSSION AND CONCLUSIONS**

Following a Bourdieusian approach, this article seeks to situate pro bono work within the broader legal field and to recognize that pro bono work, as an altruistic act, may carry with it a particular social and symbolic value—in Bourdieu’s terms, that there is an interest in disinterestedness. Our work is situated within a viewpoint that posits a division of labor within the legal field, with elites more likely than the rank and file of the profession both to promote the ideals of the profession and to reap the profits that come from those ideals; the elites are more likely to compete to gain recognition for pro bono activity and public service, and they are rewarded for it. Their engagement in pro bono work is not necessarily, however, a rationally determined action calculated in advance as an act for which they will be rewarded. As Bourdieu notes, ideals such as pro bono become part of the set of orientations and dispositions—the habitus—that is part of the elite lawyers’ game. Some individuals with a head start to elite status or with outsider aspirations to join the elite may also come to the same behavior, but from a different starting point. They may conclude opportunistically that professional success requires some investment in disinterestedness. Whatever their actual motives, the structure of the legal field leads them to act in a way that fulfills the ideals of the profession (and which at the same time legitimates the profession itself).
Our results provide support for this characterization of the legal profession. We find that although lawyers in large law firms engage in more pro bono work, not all large-firm lawyers equally perform this altruistic work. Indeed, our results suggest that elite law school graduates working in the largest corporate law firms engage in significantly more pro bono work than their peers—and this holds when controlling for a full range of factors including the incentives that law firms offer (e.g., counting pro bono work as billable time), work hours, and social background. We also find, in keeping with Bourdieu’s approach, that engaging in pro bono work is related to lawyers’ orientations toward legal practice. We find that individuals who rate pro bono work as an extremely important feature of their job engage in more pro bono hours, and we also demonstrate that elite law graduates are more likely than others to express this disposition.

Our work also explored the contention that there is a value to disinterestedness by investigating the relationship between pro bono work and job satisfaction. Again, our results suggest that engaging in pro bono work brings with it important symbolic and tangible capital for new lawyers. We find that engaging in some pro bono work versus none increases all forms of job satisfaction, but that increasing pro bono hours either decreases or has no effect on job satisfaction; this combination suggests that pro bono provides a symbolic form of capital that is divorced from how much pro bono work one actually does. The data also suggest that pro bono work likely functions in a more concrete way to increase lawyer satisfaction by offering new lawyers substantively interesting work and opportunities to engage with clients—features that are otherwise largely absent from their private law settings. Although we cannot delineate how pro bono relates to partnership decisions and attrition at large law firms because we are examining the early careers of lawyers, future analyses will be able to draw on the AJD study as it continues to follow lawyers. Three years into a career is too early to see material results of what are by definition long-term strategies, yet the data indeed suggest that some differentiation is already occurring.

Our analysis is of course incomplete in some respects as well. There is no doubt that, for many new lawyers, pro bono work can serve other ends that we have not yet examined. Pro bono may be a strategy for those who are more marginal, for those who are looking to leave their settings, or for those who know that their futures in the corporate sector are limited. Thus, although the power strategy requires corporate success and pro bono work, this is only one side of the story. We know too that not all pro bono work is equal, with some forms of pro bono providing more prestige than others, even within the large corporate firms (Garth 2004; Heinz et al. 2005). Paralleling Garth’s (2004:100–101) argument in the context of public service, high-prestige pro bono work is not equally available to all lawyers, and thus pro bono cannot equally bring prestige to all lawyers. Unfortunately, the AJD data do not allow us to sort and identify these different forms of pro bono work in our analyses.
Finally, despite documenting the value of disinterestedness, we must clearly also acknowledge that pro bono work provides a good in and of itself, regardless of the secondary value that it might bring to the lawyers who provide it. Therefore, we are not arguing that pro bono work is all a “shuck” simply because there is an interest in disinterestedness. What we are positing is that it is important to recognize the value of pro bono so that we can better understand positions of power within the legal profession and how that professional hierarchy is structured and maintained.

REFERENCES

7. THE INSTITUTIONALIZATION OF PRO BONO IN LARGE LAW FIRMS
Trends and Variation Across the AmLaw 200
STEVEN A. BOUTCHER

INTRODUCTION
Over the past decade, the practice and organization of pro bono publico has undergone dramatic changes within the American legal profession. The formalization of pro bono has been one of the major projects of the professional bar in recent years. Recent scholarship has illustrated the varied ways that pro bono has rapidly and profoundly changed in form over the past decade (Cummings 2004). Historically, the delivery of pro bono was idiosyncratic; however, pro bono is now a systematic enterprise throughout the legal profession. As Cummings (2004:4) notes, “Whereas pro bono had traditionally been provided informally—frequently by solo and small-firm practitioners who conferred free services as a matter of individual largesse—by the end of the 1990s pro bono was regimented and organized, distributed through a network of structures designed to facilitate the mass provision of free services by law firm volunteers acting out of professional duty.”

The institutionalization of pro bono and the increasing role of the private bar in providing legal aid to marginalized groups provides a great opportunity to analyze how pro bono operates within the context of large firms. Paradoxically, although the organized bar has spent a considerable amount of time, energy, and money to raise a professional pro bono consciousness and to mobilize lawyers to engage in more pro bono work, little empirical analysis exists on the topic (Sandefur 2007:101). Much of the empirical research that does exist on pro bono, usually in the form of surveys, tends to focus on individual lawyers’ motivations and attitudes, and not on the organizational characteristics that facilitate or

1. I have benefited from the comments and advice of Scott Cummings, David John Frank, Kelsy Kretschmer, David Meyer, Becky Sandefur, Carroll Seron, Mayer Zald, and the participants of the University of California, Irvine (UCI) Social Movement and Social Justice Workshop. I especially thank the editors of this volume, Bob Granfield and Lynn Mather, for their extremely helpful comments. I also wish to thank the Center for Organizational Research (COR) at UCI for providing funding, and the Law Firms Working Group for generously providing much of the data that appears in this chapter.
impede a law firm’s pro bono practice. The few analyses that do exist at the firm level are typically cross-sectional, that is, they do not examine pro bono practices over time (see Galanter & Palay 1995; Burke et al. 1994).

This chapter contributes to existing studies of pro bono by empirically examining the organizational and institutional factors that lead some firms to do more pro bono work. If large-firm pro bono is becoming institutionalized (Cummings 2004), there should be real observable effects in the pro bono practices of these firms. We would expect that one important effect of pro bono institutionalization is increased commitment of each firm in terms of the total hours devoted to pro bono. However, the process of institutionalization is mediated by specific organizational factors, such as the economic performance and geographic location of the firm. Thus, this chapter examines the overall trends in pro bono participation across the top 200 law firms between 1998 and 2005, and the organizational factors that facilitate, or impede, a firm’s pro bono commitment.

The institutionalization of pro bono is not only mediated by organizational factors specific to the law firm, but is also mediated by the organization of the profession itself. The legal profession is not organized around a single set of goals, but instead is driven by two distinct hemispheres differentiated by the type of client—one hemisphere represents large organizations, such as corporations, and the other primarily serves individuals (Heinz & Laumann 1982; Heinz et al. 2003). Even within each hemisphere, lawyers’ norms about professional practice are mediated by overlapping “communities of practice,” that is, the day-to-day networks of colleagues and local institutions that shape the norms of practice (Mather et al. 2001). Large law firms can be thought of as one community of practice where elite lawyers’ norms about pro bono practice are formed. Although the American Bar Association doesn’t distinguish between the different hemispheres of the legal profession in its definition of pro bono, research has shown that important differences exist in how lawyers approach pro bono work, which is related to the practice context (Lochner 1975; Seron 1996; Mather et al. 2001; see also Granfield 2007a). Specifically, large-firm pro bono targets organizations that assist the poor and other marginalized groups, whereas small-firm and solo practitioners primarily assist individuals.

I begin this chapter with a discussion of the development and institutionalization of pro bono within large firms, noting the important factors that have contributed to the rise of pro bono within this segment of the legal profession. I then outline some of the central themes of sociological neo-institutionalism, which provide the theoretical frame for the chapter. Next, I discuss my data and methods and then examine the trends in the amount of hours that large firms commit to pro bono for the top 200 firms between 1998 and 2005, as ranked by

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2. Many surveys have been conducted by professional groups such as the American Bar Association’s Pro Bono Center and various state bar associations.
The American Lawyer. Finally, I report the results of my analysis and conclude with a discussion about pro bono in large firms.

THE INSTITUTIONALIZATION OF PRO BONO

Over the past decade, the topic of pro bono publico has experienced a renaissance within the legal profession (Cummings 2004; Rhode 2005). The topic of large-firm pro bono is everywhere. Large firms routinely report their pro bono activities on their websites and in their annual reports. Professional organizations, such as the ABA’s Center for Pro Bono, the National Association for Legal Career Professionals (NALP), and Georgetown Law Center’s Pro Bono Institute monitor the pro bono work of large firms, in addition to giving awards to firms and individual lawyers for their pro bono achievements (Cummings 2004:14). The Pro Bono Institute monitors the Pro Bono Challenge, where large firms (currently more than 150 firms) can sign up to commit either 3 or 5 percent of their total billable hours toward pro bono (www.probonoinst.org/challenge.php; see also Cummings 2004). An annual Equal Justice Conference brings together pro bono managers and other professionals to discuss means of increasing legal access for the poor. This conference includes workshops where new pro bono managers can learn how to successfully structure their firms’ programs, and also provide networking opportunities where firm managers can “speed date” with potential nonprofit pro bono clients (www.equaljusticeconference.org). The Association of Pro Bono Counsel (APBCo), dedicated to the development of pro bono counsel within large firms was formed in 2006 and now has close to 100 members (www.probonocounsel.com). Even a recent book, Monkey Girl, showcased the pro bono involvement of two partners from the Philadelphia firm Pepper Hamilton in the intelligent design case, Kitzmiller v. Dover (Humes 2007).

These developments appear to mark the presence of a genuine pro bono movement, which has swept the legal profession in response to longstanding criticisms that American lawyers were stunting on their professional responsibilities to serve the poor and other marginalized groups (e.g., Kronman 1993; Linowitz 1994; Rhode 2005). The current push to institutionalize pro bono takes its cues from the aspirational guidelines that define a lawyer’s professional responsibility. There is no standard definition of acceptable pro bono; rather, the American Bar Association suggests a guideline for lawyers to follow. For example, Model Rule 6.1 of the ABA’s Model Rules of Professional Conduct states that all lawyers have a duty to provide legal assistance to those who cannot afford it on their own. The Model Rule was revised more than 30 times between the initial adoption and the current revision, which passed in 2002 (Pearce 2001). Currently, the rule states, “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” (quoted in Granfield
and Mather in this volume:4). This definition of pro bono outlines the professional bar’s aspiration for all lawyers, regardless of practice site, which has led some to argue that the ABA’s definition is an elite definition of pro bono (see Levin in this volume). However, the recent mobilization of large numbers of lawyers to provide pro bono services does not result from the formalization of the Model Rules. To some extent, lawyers have always had the ethical responsibility to provide equal access to the poor, yet have done so idiosyncratically. Instead, the contemporary movement to institutionalize pro bono results from the convergence of several important factors that have emerged over the last halfcentury within the state, the legal profession, and the law firm.

As part of the general trend toward decentralizing governmental support for social services, federal funding for legal services has decreased sharply since the early 1980s. Beginning with President Reagan, who tried to eliminate all federal funding of legal services when he first came to office, the federal government severely cut its support of the Legal Services Corporation (LSC), which has funded numerous legal service organizations to assist the poor. The reduction in funding was coupled with the restriction of whole classes of cases and activities that grantee organizations could not engage in, such as abortion cases, redistricting cases, class-action lawsuits, criminal defense, and lobbying activities (Houseman 2002). The current system of civil legal assistance in the United States is no longer primarily centralized through the federal government, but funded in a piecemeal fashion from a variety of different sources (Sandefur in this volume). The private bar has become one vital source of civil legal assistance funding—so substantial, in fact, that by the late 1990s, the increasing recruitment of private lawyers to assist the poor meant that pro bono legal work had become the “largest component of civil legal assistance in the United States” (Sandefur 2007:85; see also Cummings 2004).

Responding to the restructuring of federal legal services and the longstanding critiques of increasing commercialization of the legal profession, the bar has been a major contributor in building the current pro bono movement. As Cummings notes, “the organized bar played a central role in building the institutional structures of pro bono during this time, investing heavily in organizing nonprofit pro bono programs and promoting private-sector volunteerism in large law firms. This constituted a dramatic shift in position: Whereas the organized bar had historically offered only meager support for pro bono practice, by the end of the millennium it had become pro bono’s most stalwart supporter” (2004:18). Organizations such as the American Bar Association (ABA) Standing Committee on Pro Bono and Public Service and the Pro Bono Institute at Georgetown Law Center have focused on facilitating lawyers’ commitment to pro bono. Two main fronts in particular were the target of this new pro bono movement: law schools and large law firms.

Within law schools, formalized pro bono programs and curricula have sprung up across the country. As of August 2007, 35 law schools had a mandatory graduation
requirement that involved pro bono or some form of public service; 110 schools had a formal voluntary program that was not mandatory for graduation; and 24 schools had no formal program but had student pro bono groups (see Adcock in this volume; American Bar Association 2007). These programs are designed with the goal of socializing students with a commitment toward public service. However, although the efforts of these programs should be applauded, recent empirical studies have shown no statistical difference between graduates of mandatory programs and their peers in rates of pro bono participation after graduation (Granfield 2007b; see also Rhode 2005).

There is evidence that suggests that the pro bono movement has had a more significant impact on large-firm practices than in law schools. In terms of individual participation rates, large-firm lawyers do more pro bono work than lawyers in other work settings. A recent study found that law offices of over 251 lawyers did three times more pro bono work on average than smaller offices (those with fewer than 100 lawyers), and more than 1.7 times more than solo practitioners (Dinovitzer et al. 2004). The main reason for the difference between large and small firms is closely tied to the evolution of the big firm. During the second half of the twentieth century, there has been an explosion in the growth and number of large firms (Abel 1989; Galanter & Palay 1991; Nelson 1988; Heinz et al. 2005). Initially centered in New York City, large firms sprang up in other metropolitan areas across the country (Hobson 1986; Galanter & Palay 1991). The growth of large firms has led them to increasingly specialize, routinize, and bureaucratize their organizational structures (Galanter & Palay 1991; Nelson 1988; Heinz et al. 2005).

One consequence of the rapid growth of the big firm was the demand for large numbers of associates from elite schools. However, during the 1960s and 1970s, the rise of the public interest field, competition with the legal services movement, and increased social movement activism drew elite law school graduates away from the big firm in search of jobs where they could pursue social change (Auerbach 1976:278–279; Powell 1988:161–165; see also Cummings 2004:13). In response to this new competition, some large firms began to formalize pro bono programs in order to recruit elite students (Handler et al. 1978:123). However, as the lure of social activism began to recede during the 1970s and 1980s, large firms no longer felt pressured to pursue organized pro bono programs, and commitment to pro bono waned (Handler et al. 1978:123).

It wasn’t until the turn of the twenty-first century that a new wave of formalized pro bono departments took off as large firms saw their profits soar and the number of large firms increased (Cummings 2004). However, the new pro bono

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3. These numbers represent returned surveys of law school pro bono programs as of August 2007, which included responses from 169 total schools. http://www.abanet.org/legalservices/probono/lawschools/pb_programs_chart.html#definitions.
wave was markedly different from its predecessor of the 1960s. For example, Joel Handler and his colleagues identified only 24 formalized programs in large firms in 1973 (Handler et al. 1978:123), but now pro bono departments can be found in many of the top firms across the country. Pro bono departments function like other legal departments and centralize the administration of a firm’s pro bono practice (Cummings 2004). These programs, often staffed by a pro bono manager, implement and structure the firm’s pro bono practices as well as provide rotating opportunities that connect associates with a network of non-profit organizations. Although the institutionalization of pro bono within the private bar provides much-needed legal assistance to the poor, it also provides beneficial outcomes for the firm. Pro bono entrepreneurs, bar leaders, and firm managers are quick to tout the business case for pro bono. Increased commitment to pro bono, they argue, leads to successful retention of good associates, provides learning opportunities where associates can diversify their legal training, and provides good publicity for the firm (see Dinovitzer & Garth in this volume; Lardent 2000; Epstein 2002:1693–1694).

Markedly different from earlier attempts to organize pro bono in the 1960s and 1970s, the current pro bono movement is structured upon important changes in the state, the profession, and the law firm. Furthermore, the institutional landscape from which the current movement receives its support provides much firmer ground for the movement to grow. These changes provide ample reason to analyze what effect the current institutional movement has on the pro bono commitment of the legal profession. Largely for reasons of data availability, but also because the profession has directed a lot of attention toward elite lawyers, I focus on large law firms—specifically, the top 200 firms as ranked by The American Lawyer. Although this group constitutes a small subset of the legal profession, it is one of the pillars of the contemporary pro bono movement and allows me to examine the efficacy of the profession’s directed efforts to institutionalize pro bono over the past decade.

**Sociological Neoinstitutionalism and Large-Firm Pro Bono**

The study of institutions and institutionalization is a common area of empirical analysis within sociology. An institution “represents a social order or pattern that has attained a certain state or property,” and institutionalization refers to the process by which this occurs (Jepperson 1991:145). Often, sociologists will refer to institutionalization as the process by which elements of social structure or human interaction become taken for granted. Thus, institutionalization can refer to both macro and micro processes, and these processes are conceived as relatively stable elements that are self-generating and self-“policing” (Scott 2008; Jepperson 1991). For example, important life-course events such as marriage or going to college are commonly referred to as institutions because they are decisions often taken for granted among individuals of a certain place and class. Institutions are rule-like in our perception of them because they constrain our behavior. However, they are
not overtly coercive; rather, institutions constitute behavior by prescribing action based on a shared set of knowledge. The sociological definition of an institution differs from the definition used in other disciplines—such as political science, for example, in which an institution is often referred to as a formal organization or association (e.g., the United Nations) (Jepperson 1991).

Sociological neoinstitutionalism has had a big impact within the field of organizational behavior. Some of the early statements focused on formal organizations and organizational fields (see Meyer & Rowan 1977; Zucker 1977; DiMaggio & Powell 1983). These studies examined how components of formal organization become institutionalized and diffused throughout an organizational environment. Meyer and Rowan (1977) defined institutions as “rationalized myths” within an organization, referring to the rule-like conventions that coordinate action within the organization. For example, the formalization of a pro bono department is institutionalized to the extent that it becomes rationalized as a common feature within the modern law firm. Institutionalists stress that the adoption of these structures is not based on concerns over organizational efficiency or the interests of rational actors; rather, the structures are often adopted because organizations seek legitimacy within their environment. This description evokes the external environment of an organization—organizations do not simply make decisions in a vacuum, but implement structures relative to other similarly situated actors in their environment. However, formal adoption of a policy or department is often divorced from real practices on the ground. This is commonly referred to as “loose coupling” (see Meyer & Rowan 1977). This occurs because organizations often seek legitimacy within their professional field and will create formal policies in symbolic compliance with professional ideals (Edelman 1990; 1992).

Empirical studies of institutional theory have largely focused on the adoption and subsequent diffusion of new organizational practices across a field or the decoupling of formal policies from informal practices within an organization. However, very little is known about how similarly situated firms vary in their response to institutional pressures (Westphal & Zajac 2001; see also Oliver 1991). This study examines variation in pro bono commitment among large law firms during a period of high levels of institutional activity. As argued above, by the late 1990s, institutional activity surrounding pro bono was very dynamic, with the creation of new managerial roles, firm departments, and professional organizations devoted to expanding pro bono commitment throughout the legal profession. Among large law firms, pro bono commitment will be mediated by existing organizational arrangements within each firm. In particular, I analyze three organizational characteristics that might mediate the institutionalization of pro bono: economic performance, organizational structure, and geographic location.

I expect that these characteristics will affect a firm’s pro bono commitment in different ways. In terms of economic performance, pro bono hours actively compete
for billable hours. To the extent that firms are able to generate more billable hours, I expect that firms will do so at the cost of pro bono. However, I also expect that firms with higher profits can afford to do more pro bono than firms with lesser profits. Regarding organizational structure, I expect that larger firms will do more pro bono than smaller ones. Organizational scholars have long argued that firm size is related to increased formalization and complexity of the workplace (see Blau & Schoenherr 1971; Sutton & Dobbin 1996). I expect that larger firms are more apt to respond to changes in the institutional structure of pro bono and have the resources to do more pro bono work. Furthermore, I also expect that increases in the number of partners and associates will provide more incentives and opportunities for pro bono because pro bono is often touted as a means to recruit and train associates, and partners are often responsible for bringing pro bono contacts to the firm. In terms of geography, I expect that firms in the Northeast will be more committed to pro bono than firms in other regions of the country. The Northeast is the birthplace of the large firm and there may be an imprinting effect among these firms with respect to pro bono. Northeastern firms are also more likely to be densely connected to each other, and in that case are more likely to monitor each other’s pro bono behavior.

DATA AND METHODS

I follow both Burke et al. (1994) and Galanter and Palay (1995) in using data collected and reported by The American Lawyer (see also Lancaster et al. 2008). The American Lawyer collects annual data on various organizational measures related to the top 200 firms, such as gross revenue, profits per partner, geographical location, and pro bono performance.4

The dependent variable for this study is a firm’s commitment to pro bono. I measure this as the average pro bono hours per lawyer. The dataset contains a maximum set of 1,309 observations across a total set of 224 law firms. The data are unbalanced, meaning that each firm contributes a different number of observations and contributes at different intervals.5 This is partly because of some firms not reporting data when surveyed by The American Lawyer but also because of the way that The American Lawyer ranks the firms in the top 200. Because The American Lawyer ranks each firm based on gross revenue, the annual ranking of

4. In part, this study emulates past empirical studies of large-firm pro bono by Burke et al. (1994) and Galanter and Palay (1995). However, this study differs in important methodological ways. Most importantly, the present analysis examines a longer time period than the two previous studies, and I include more firms.

5. This is in contrast to a balanced dataset, in which each firm would contribute the same number of observations across the same set of years. In practice, unbalanced datasets are common as a result of subject attrition or missing data.
firms can change depending on how well (or badly) a law firm does the previous year. For example, a firm ranked 180th in 1998 could fall off the list in 1999, only to reappear again later.

I operationalize pro bono commitment as the average pro bono hours worked per lawyer. This measure differs from attitudinal measures of commitment commonly used in pro bono surveys. However, my measure allows me to get at the aggregate behavioral dimension of pro bono activity within the firm. Unfortunately, this measure does not allow me to say anything about the individuals within the firm doing pro bono work. Furthermore, I am unable to say anything about what type of pro bono work these firms are doing; for example, whether these hours represent large civil rights cases or pro bono assistance in neighborhood legal clinics, or whether the work is transactional or litigation. However, I believe that my measure of commitment sufficiently allows me to answer the question posed at the beginning of this chapter: What are the organizational and institutional factors that lead some large firms to do more (or less) pro bono work?

I regress several independent variables on the dependent variable. In order to test for the relationship between economic performance and pro bono, I use two different measures: the percent change in revenues and profits per partner, based on data from The American Lawyer. I use the percent change in revenue as opposed to gross revenues in order to normalize across the field of firms. Gross revenue is highly correlated to the size of the firm—larger firms have higher revenues. Profits per partner taps into the profitability of the firm, which is independent of the revenues of the firm—larger firms could conceivably have higher costs as a result of hiring more personnel, which can feed into profitability. I do a log transformation of profits per partner because the variable is skewed.

In order to test for the relationship between organizational structure and pro bono, I use the percent change in the number of associates in the firm and the percent change in the number of partners. Previous analyses aggregated these two variables into one organizational size variable. However, growth in associates and growth in partners should be conceived as separate processes (e.g., Galanter & Palay 1991). I also control for the overall size of the firm. I do a log transformation of the overall size of the firm because the variable is skewed.

I also test the geographical location of each firm. Although large firms typically have offices in many locations, I use the headquarters city or the largest office listed. I then coded each firm as belonging to its corresponding census region: Northeast, South, Midwest, and West. The only exception to this case is for law firms located in Washington, DC, which I code as Northeast. In the subsequent analyses, the Northeast is the reference category.

In order to analyze the relationship between the three organizational characteristics and large-firm pro bono, I perform a cross-sectional time-series analysis. Traditional ordinary least squares (OLS) regression is an inconsistent and inefficient method for analyzing panel data due to correlation of the error terms
(Alderson & Nielsen 2002; Greene 2003; Hsiao 1986). Two common methods in social science research for analyzing panel data are the fixed effects and the random effects models. In this analysis, I use the random effects model because fixed effects regression removes any time-invariant independent variables from the analysis. Because one of my key variables of interest is the geographic location of each firm, which does not change over time, I cannot use fixed effects models. Thus, the fixed effects model can be substantively interpreted as throwing out all between-firm variation (see Brady 2003:564). Furthermore, I found evidence of autocorrelation in my error terms and added controls for it.

**TRENDS IN PRO BONO PARTICIPATION ACROSS LARGE LAW FIRMS**

This section analyzes the trends in pro bono performance across the top 200 firms as ranked by *The American Lawyer* (herein referred to as the AmLaw 200) between 1998 and 2005. First, I examine the total number of pro bono hours contributed by the AmLaw 200 firms. Next, I examine the average hours of pro bono per lawyer across the organizational field. This measure is a better indication of large-firm pro bono participation because it controls for the size of the firm. The total number of firms represented each year varies depending on the number of responses that *The American Lawyer* receives. Between 1998 and 2005, the response rate for the AmLaw 200 varied from a low of 84 percent (167 firms reporting out of the possible 200) in 1998 to 100 percent (all 200 firms reporting) in 2005.

Figure 7.1 shows the total number of hours reported each year by all of the firms in the dataset. In 1998, over two million hours of pro bono were contributed by 167 firms for which data is available. This value rose steadily to almost double by 2005, when nearly 3.8 million hours were contributed by the AmLaw 200. Although this trend line shows that total participation, measured in absolute hours, increased throughout the time period, this could be the result of factors other than institutionalization, such as growth in the total number of lawyers in each firm or an increase in the response rate of the firms over time.

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6. A common statistical test for deciding between fixed effects and random effects models is the Hausman specification test (1978), which compares the consistent fixed effects model to the efficient random effects model (StataCorp 2007). This test gave further support in my use of the random effects model.

7. I use a general least squares estimation method and control for first-order autocorrelation. Specifically, I use the “xtregar” command in Stata version 10, which implements the methods developed by Baltagi and Wu (1999). This method allows for unbalanced panels and automatically corrects for autocorrelation where the disturbance term is first-order autoregressive (StataCorp 2007).

8. Although data are available for the top 100 firms prior to 1998, I begin my analyses in 1998 in order to include the AmLaw 200.
Figure 7.1 Total Pro Bono Hours, 1998–2005

Figure 7.2 shows three trend lines in terms of the average hours of pro bono per lawyer. The solid bold line is the average across all of the top 200 firms. The other two lines are trends for the top 100 firms (AmLaw 100) and the second 100 firms (AmLaw 200). The average across all firms does appear to gradually increase over the time period—rising about 5 hours on average between 1998 and 2005.

Figure 7.2 Average Hours of Pro Bono per Lawyer, 1998–2005
These trends indicate that average hours of pro bono per lawyer increased for the top firms, whereas the second group of firms actually decreased their average commitment over the time period. Furthermore, Figure 7.2 shows that the average hours per lawyer failed to reach the professional bar’s aspirational mandate of 50 hours per lawyer stated in the Model Rule 6.1. Thus, although the top 100 firms appear to have taken seriously the call for increased pro bono, it wasn’t until 2005 that these firms reached the 50 hour per lawyer threshold. I turn next to the results of my analyses.

RESULTS

Table 7.1 shows the results of my statistical analyses. I ran three models to analyze large-firm commitment to pro bono. The first model included all of the firms in the dataset. I then ran two additional models with the same set of variables, but distinguished between the top 100 firms (AmLaw 100) and the second 100 firms (AmLaw 200) in light of the diverging trends in commitment to pro bono (see Figure 7.2).

Model 1 shows the results for all of the law firms in the dataset. This model shows that the percent change in revenues has a negative and significant effect on pro bono commitment. However, profits per partner have a positive and significant effect on pro bono. These different effects indicate that these two economic variables potentially operate in distinct ways—profits per partner is more indicative of internal economic processes within the organization, whereas change in revenues is more indicative of the demand for legal services from corporate clients. The negative effect of gross revenues provides support for the suggestion that billable hours are competing with pro bono hours and that firms that can generate more billable hours will do so at the cost of pro bono (see also Lancaster et al. 2008). However, after controlling for change in revenue, profits per partner has a positive effect on pro bono, which suggests that firms where partners make more money have a higher commitment to pro bono. Model 1 also shows that larger firms do more pro bono, but the percent change in partners or associates has no statistical effect. Furthermore, model 1 shows that firms in the South, Midwest, and West do significantly less pro bono work on average than firms in the Northeast.

Model 2 tests the same variables in model 1 but only for the AmLaw 100 firms. Percent change in revenue, profits per partner, and firm size are again all statistically significant and in the same direction as for model 1. The composition of partners or associates is not significant. Moreover, for the top 100 firms, Midwestern and Southern firms do significantly less pro bono work than Northeastern firms, but there is no significant difference between the Northeast and the West.

Model 3 tests the same set of variables for the AmLaw 200 firms (firms ranked 101–200). This model shows that most of the previously significant variables no
### Table 7.1: Effects of Selected Organizational Characteristics on Large-Firm Pro Bono Participation, 1998–2005

<table>
<thead>
<tr>
<th>Model 1: All Firms</th>
<th>Model 2: AmLaw 100</th>
<th>Model 3: AmLaw 200</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent Change in Revenue</td>
<td>-11.642***</td>
<td>-16.061***</td>
</tr>
<tr>
<td>(2.751)</td>
<td>(3.672)</td>
<td>(4.804)</td>
</tr>
<tr>
<td>Profits per Partner</td>
<td>5.438***</td>
<td>8.665***</td>
</tr>
<tr>
<td>(1.679)</td>
<td>(3.672)</td>
<td>(2.613)</td>
</tr>
<tr>
<td>Total Number of Lawyers</td>
<td>10.510***</td>
<td>10.010***</td>
</tr>
<tr>
<td>(2.018)</td>
<td>(2.858)</td>
<td>(4.153)</td>
</tr>
<tr>
<td>Percent Change in Associates</td>
<td>0.009</td>
<td>0.016</td>
</tr>
<tr>
<td>(0.049)</td>
<td>(0.021)</td>
<td>(0.021)</td>
</tr>
<tr>
<td>Percent Change in Partners</td>
<td>-0.023</td>
<td>0.002</td>
</tr>
<tr>
<td>(0.036)</td>
<td>(0.050)</td>
<td>(0.055)</td>
</tr>
<tr>
<td>South</td>
<td>-12.661**</td>
<td>-11.599†</td>
</tr>
<tr>
<td>(4.310)</td>
<td>(5.954)</td>
<td>(5.279)</td>
</tr>
<tr>
<td>Midwest</td>
<td>-11.628**</td>
<td>-10.285†</td>
</tr>
<tr>
<td>(4.034)</td>
<td>(5.916)</td>
<td>(4.992)</td>
</tr>
<tr>
<td>West</td>
<td>-9.465*</td>
<td>-6.490</td>
</tr>
<tr>
<td>(4.264)</td>
<td>(5.787)</td>
<td>(5.393)</td>
</tr>
<tr>
<td>Constant</td>
<td>-91.494***</td>
<td>-130.258***</td>
</tr>
<tr>
<td>R-Squared Within</td>
<td>0.092</td>
<td>0.160</td>
</tr>
<tr>
<td>R-Squared Between</td>
<td>0.141</td>
<td>0.067</td>
</tr>
<tr>
<td>R-Squared Overall</td>
<td>0.141</td>
<td>0.100</td>
</tr>
<tr>
<td>N</td>
<td>1309</td>
<td>759</td>
</tr>
</tbody>
</table>

* *p < .05, **p < .01, ***p < .001, †p < .10 (two-tailed tests)

(GLS Random Effects Corrected for First-Order Autocorrelation; Standard Errors in Parentheses)

longer have a statistical effect among these firms. Percent change in revenue, profits per partner, and firm size have no statistical effect on pro bono commitment. Similarly, the composition of partners and associates has no effect on pro bono commitment. However, as in model 1, the South, Midwest, and West all do significantly less pro bono work than the Northeast.

**Discussion and Conclusion**

For over a century, critics have routinely expressed concerns about the increasing commercialization of the large law firm (see, e.g., Berle 1933; Stone 1934; Linowitz 1994; Kronman 1993; Nelson & Trubek 1992). The increasing connections to business were thought to be antithetical to the professional obligation to
serve the public good. As one commentator noted over 75 years ago, “The complete commercialization of the American bar has stripped it of any social functions it might have performed for individuals without wealth” (Berle 1933:342, quoted in Galanter & Palay 1991:17). This concern was similarly shared by former Chief Justice Harlan Fiske Stone, who worried that the increasing commercialization of the large firm “has made the learned profession of an earlier day the obsequious servant of business and tainted it with the morals and manners of the marketplace in the most anti-social manifestations” (Stone 1934:6–7, quoted in Galanter & Palay 1991:18). Thus, large firm practice was seen as nothing more than a business itself and as being in conflict with lawyers’ professional duty to serve the public good (see also Nelson 1988). These repeated concerns over the increasing commercialization of the profession have regularly led to renewed calls for greater professionalism, although these calls have often produced lackluster results (see, e.g., Solomon 1992:148–149).

The current movement to institutionalize pro bono is embedded in the latest professional outcry against the commercialization of legal practice. Critics of the private bar are quick to point out that pro bono is on the decline while profits continue to soar among large firms (see, e.g., Rhode 2005). What is different about the contemporary critique is that large firms appear to have gotten the message. As I have argued in this chapter, large firms have reoriented their approach to pro bono through the restructuring of their pro bono practices. However, as noble as their efforts appear to be, institutionalized pro bono still remains a distant reality among many of the richest firms. Thus, although many of these firms have created elaborate departments and programs to illustrate their support for pro bono, there remains a gap in overall commitment in terms of hours. This gap is most striking among the second 100 firms, which have decreased their overall commitment to pro bono over the last decade (see Figure 7.2). But even the richest 100 firms have only recently reached the professional bar’s mandate of 50 hours of pro bono per lawyer.

The gap between pro bono structure and practices on the ground lends support to the idea that the current pro bono movement is more symbolic than substantive (cf. Meyer & Rowan 1977). Pro bono becomes a way for elite firms to distinguish themselves within the profession. As Dinovitzer and Garth argue (in this volume), pro bono is a story of elite lawyers; large firms can promote the professional ideal because they have the revenues to do so. Thus, arguments that pro bono is institutionalized among large firms are only partially accurate. Pro bono practice is far from being a taken-for-granted feature of the modern firm, although there is evidence to suggest that the contemporary pro bono movement is radically different from earlier waves (Cummings 2004). It’s more accurate to think about pro bono as being in the process of becoming institutionalized—albeit only among certain firms—with this process mediated by specific organizational and institutional characteristics. Hence, this study analyzed a variety of organizational characteristics to understand which factors facilitate and hinder pro bono commitment among large law firms.
The most important organizational factors are associated with the economic performance of the firm. The results of my analysis indicate that change in revenue has a negative effect on pro bono commitment. Billable hours are in direct competition with pro bono hours, and firms that can generate higher revenues through increased billing will do so to the cost of their commitment to pro bono. Similarly, firms with higher profits per partner do more pro bono work. Taken together, these two findings provide evidence for the commercialization thesis: large firms are businesses and, like any business, are oriented toward maximizing profits. This does not necessarily mean that economic engagement is antithetical to public service. Indeed, as I have shown, firms that generate higher profits per partner do more pro bono, precisely because they can afford to do so. Nonetheless, this has important implications for the delivery of legal services to the poor. As the federal government continues to decentralize the delivery of social services, legal services will remain vulnerable to the economic realities of private corporations (see also Cummings 2004; Sandefur 2007). The current rhetoric surrounding professional obligations appears to be secondary to the economic realities that drive the contemporary pro bono system.

These findings also provide evidence that institutions and markets are more connected than previously theorized. Much of institutional theory has separated the institutional sphere from the economic sphere (Powell 1991). However, institutional developments can be mediated by economic and competitive factors (see Sherer & Lee 2002). Large firms might create new pro bono structures, such as the creation of a department and the hiring of staff to oversee the firm’s pro bono practice, but the economic realities of the firm mediate the implementation of these practices.

I found relatively little evidence that the personnel characteristics of large firms affect pro bono commitment. The overall size of the firm has a positive effect on pro bono commitment. Firm size is indicative of formalization, and more formalized firms are able to react to institutional changes more quickly. However, the percent change in the composition of associates or partners has no statistical effect on pro bono participation. This finding provides some evidence to suggest that large firm pro bono is not driven from below by interested associates or by concern for keeping associates happy. Associates might report that they are interested in pursuing pro bono work when they look for jobs, but the structural realities of the workplace can have an important mediating effect on what associates actually do after being hired. Thus, there is no indication that pro bono is driven by internal labor market demands.

My results do suggest that geography matters for pro bono commitment. I find that firms in the Northeast do more pro bono work on average than firms in other geographic regions. This effect remains after controlling for economic performance and firm size, which indicates that the institutional development of pro bono is more robust in the Northeast than in other regions of the country. We might expect this to be the case because New York City has traditionally been
the home of the large firm, although this trend has shifted over the past couple decades (see Smigel 1969; Galanter & Palay 1991). Moreover, large firms are more densely located in the Northeast, with many firms located in Boston, New York City, and Washington, DC. The close proximity of these firms to each other might create a facilitative environment regarding pro bono practice, as partners in these firms potentially interact more frequently and monitor each other’s behavior more closely—for example, through sitting on the boards of the same nonprofit organizations. This geography effect also provides evidence that endogenous organizational factors can work in tandem with exogenous factors in facilitating institutional developments (see also Sherer & Lee 2002).

Finally, this study shows that the organizational field of large firms is not a homogeneous entity. There exists a clear divergence in pro bono commitment between the top 100 firms and the second 100 firms. The decline in commitment to pro bono among the second group of firms indicates that real differences exist even among this elite segment of the legal profession. Moreover, this also indicates that there are potentially different “communities of practice” within this relatively small subset of the legal profession (Mather et al. 2001). It’s possible that firm leaders between these two groups differ in their attitudes toward pro bono. However, further research is needed to understand the motives and values toward pro bono among firm leaders across these two groups.

REFERENCES


8. PRO BONO AND LOW BONO IN THE SOLO AND SMALL LAW FIRM CONTEXT

Leslie C. Levin

Introduction

Over the last 35 years, the organized bar increasingly has provided pro bono legal assistance to the more than 50 million people of limited means in the United States.1 Much attention has been devoted to the pro bono efforts of the largest law firms, which now contribute millions of hours of pro bono service annually to individuals and organizations that could not afford to hire lawyers (Raymond 2008). But the lawyers in the largest firms comprise only about 20 percent of the lawyers in private practice (American Bar Association (ABA) Standing Committee on Pro Bono and Public Service 2009:2). Lawyers in solo and small (2- to 5-lawyer) firms, who comprise more than 60 percent of all private practitioners (Carson 2004:8–9), contribute more time and in greater numbers to the pro bono legal representation of persons of limited means than any other group of lawyers (Heinz et al. 2005:131; Ruggiere & Carpanzano 2008:10, 13).

The pro bono efforts of these lawyers have not received focused attention, even though they are different in many respects from the pro bono experiences of other lawyers. As Robert Granfield has observed, “pro bono work means something different to lawyers across different organizational sectors within the hierarchy of the legal profession” (2007a:141). Indeed, solo and small firms differ significantly from larger firm settings with respect to the ways in which pro bono work is found and performed, the motivations and incentives for performing it, the types of work performed, and the supports available for this work.

Just a few examples of the differences suffice to make this point. In large law firms, pro bono work has been thoroughly institutionalized (Boutcher in this volume). A lawyer or administrator runs the firm’s pro bono program. Pro bono work performed by large firms is typically performed entirely free of charge and is supplied to clients different from those ordinarily served by the firm. Firm lawyers may be given time off to work exclusively on pro bono matters while still receiving

1. More than 50 million people are eligible to receive civil legal services from programs that are funded by the Legal Services Corporation (Legal Services Corporation Report 2007:2). These numbers do not include undocumented immigrants living in the United States who may fall below the federal poverty guidelines but are not eligible for legal assistance from LSC-funded programs.
full compensation. They may devote enormous resources to a single case. Large law firms view their pro bono programs as critically important to recruitment of new associates and firm marketing. Consequently, some large-firm lawyers may feel direct pressure from their colleagues or their clients to perform pro bono work (Boon & Whyte 1999:187–188; Rhode 2005:168).

In contrast, lawyers in solo and small firms do not have the support staff or associates that are available to large-firm lawyers to help them with pro bono work. Some of the pro bono work performed by solo and small-firm practitioners is received from referrals by organized pro bono programs designed to provide free legal services to the poor, but more often it comes through friends, family, and existing clients (ABA Standing Committee on Pro Bono and Public Service 2005:14). Because their compensation is very directly tied to what they earn on an hourly or flat-fee basis, every hour these practitioners spend performing pro bono work affects their monthly take-home income. Many consider themselves to be doing pro bono when they perform “low bono” work, which involves the provision of legal services at reduced rates to individuals, including regular clients, who cannot otherwise pay (Stull 2004). Thus, the very meaning of pro bono in the solo and small-firm context is different than in the large-firm setting. Moreover, the firm cultures of solo and small firms, and the motivations of lawyers in such firms for taking pro bono cases, are often very different from those in large-firm practices. Pro bono is rarely important for small-firm recruiting, and may actually be discouraged by firm partners because of economic concerns (Mather et al. 2001:151–153).

It would be a mistake, however, to think of solo and small-firm lawyers as a monolithic group, even in the context of pro bono. They vary considerably in the types of clients they represent, in their level of administrative support, and in their economic success (Landon 1990; Seron 1996; Levin 2001). Some are essentially cause lawyers who deliberately choose to represent underserved populations (Kelly 1994; Cummings & Southworth in this volume). Other lawyers build practices serving middle-class and wealthier clients in personal plight areas such as family law, landlord-tenant law, or criminal law, which are areas in which underserved populations also need legal assistance. Still others represent organizations and work in the same practice areas found in large law firms (Levin 2004:325). Solo and small-firm lawyers do, however, share common concerns about bringing in new business and being able to service their clients’ matters diligently and competently. Cash flow is also a constant concern and can make it difficult for these lawyers to hire as much administrative support as they need (Mather et al. 2001:141; Levin 2004:323–324, 343–345). These concerns

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2. The terms “low bono” and “reduced-fee pro bono” are used interchangeably throughout this chapter to refer to the provision of legal services at substantially reduced fees to persons who cannot otherwise afford them.
can raise special challenges when these lawyers contemplate taking on pro bono work.

This chapter examines pro bono in the solo and small-firm context. It will consider the political and marketing environment in which the organized bar’s pro bono rule evolved and the ways in which the rule is presently viewed by solo and small-firm practitioners. It will also look at data that provide some insight into the meaning and practice of pro bono in solo and small law firms as a professional value, as a part of running a business, and even as a revenue source. In doing so, the chapter reveals how low bono work performed for individuals who cannot afford a lawyer is insufficiently recognized and valued by the organized bar. Finally, the chapter will consider how the obligation to perform pro bono work may be inculcated in solo and small-firm lawyers, and will provide some suggestions for how pro bono might be conceptualized, encouraged, and organized so that these practitioners can perform it more easily.

THE HISTORY, POLITICS, AND MARKETING OF PRO BONO IN PRIVATE PRACTICE: DUAL PERSPECTIVES

While U.S. lawyers have reportedly always provided some free legal services to clients who were unable to pay, the bar has not shared a common understanding of the term “pro bono publico” (Marks et al. 1972:8; Abel 1989:129; Cummings 2004:10). The term was understood to mean free legal work or work performed at reduced rates, but it also included work for the community that was nonlegal in nature. For solo and small-firm lawyers, pro bono publico often meant working for nonpaying clients or for those who were simply unable to pay. In contrast, lawyers at large law firms often gave their time to endeavors such as sitting on symphony boards and other civic activities that might lead to new corporate business (Marks et al. 1972:8, 10; Abel 1989:129–130; Rhode 2005:115). Only relatively recently has the lawyer’s obligation to perform pro bono work for individuals of limited means come to be taken seriously by large segments of the legal profession.

History and Bar Politics
It was not until the late 1960s that efforts began in earnest to encourage lawyers to view pro bono work for persons of limited means as a professional value (Powell 1988:161–162; Maute 2002:119–128). By the early 1980s, as funding for the Legal Services Corporation (LSC) was being cut (Adcock in this volume), the organized bar began to embrace this type of pro bono as a professional value. This can be seen most clearly in the adoption by the ABA in 1983 of Model Rule 6.1, which articulated the official view that providing pro bono service to persons of limited means is a professional value (Marks, et al. 1972:15–16; Maute 2002:123–124). Since then, large law firms increasingly have provided the
resources and prestige to promote pro bono as an important professional goal (Cummings 2004:32; Boucher in this volume).

The elite bar’s efforts to elevate the provision of pro bono service from a professional goal to an actual obligation highlight some of the differences between pro bono as practiced in large law firms and in solo and small firms. Large firms, which have more resources to devote to pro bono, have been more open to mandatory pro bono proposals, including minimum hour requirements, whereas solo and small-firm lawyers have generally opposed them.3 Thus, in 1979, the ABA’s Kutak Commission considered a 40-hour per year mandatory pro bono rule, or its dollar equivalent (Schneyer 1989:701), which was vigorously opposed by a number of groups, including solo and small-firm lawyers. The latter were concerned about their ability to meet mandatory minimums and resented the efforts by large-firm lawyers to impose requirements on them that they may not be able to meet or “buy out.” This same dynamic was played out in New York at around the same time when the elite Association of the Bar of the City of New York made a similar mandatory pro bono proposal (Powell 1988:162–164), and again in the early 1990s, when the Association of the Bar supported a mandatory pro bono rule, but it was opposed by the New York State Bar Association because of the reactions of solo and small-firm attorneys (Greshin 1989:2; Behar 1992:2; Crider 2004:9–10). Solo and small-firm lawyers strongly opposed a mandatory pro bono rule and saw it as something that the elite of the bar was attempting to foist upon them (Seron 1996:129–130). This feeling was no doubt exacerbated by the fact that at that time, the New York Lawyer’s Code of Professional Responsibility defined “pro bono” as free legal services to individuals of limited means, but did not include reduced-fee services of the sort solo and small-firm practitioners often provide to their clients who are unable to pay.

Today the provision of pro bono services to persons of limited means is an aspiration of the legal profession, but is still not a true bar norm, as evidenced by the fact that many lawyers continue to perform no pro bono work for these individuals. The bar’s reluctance to embrace pro bono as a core value is reflected in ABA Model Rule 6.1, which states that a “lawyer should aspire to render at least” 50 hours of pro bono services per year, but does not require it. The Comment to Rule 6.1 stresses that the pro bono responsibility “is not intended to be enforced through disciplinary process.” It is telling that no state has adopted a requirement that lawyers perform pro bono work, and several states have diluted ABA Model Rule 6.1 by removing annual target hours or the emphasis on serving

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3. This is not intended to suggest that elite lawyers were necessarily more concerned about helping underserved populations. Rather, the insertion of pro bono requirements in ethical codes is part of the professionalism project, and has symbolic significance in demonstrating the profession’s concern about moral standards, wholly apart from the reality (Powell 1988:173).
individuals of limited means (Connecticut Rule 6.1; Kansas Rule 6.1; Michigan Rule 6.1).

The current ABA Model Rule 6.1 (a) reflects the large-firm view of pro bono. It places the greatest emphasis on rendering the “substantial majority” of legal services “without fee or expectation of fee” to persons of limited means or to organizations in matters that are designed to address the needs of persons of limited means. Although Model Rule 6.1 (b) (2) states that lawyers should provide “any additional services” through “delivery of legal services at a substantially reduced fee to persons of limited means,” the structure of Rule 6.1 conveys that this is a less valued and desirable method of rendering pro bono service. A few states, such as Florida and Illinois, equate “pro bono” work exclusively with free legal services or with a monetary contribution to a legal aid organization (Rules Regulating the Florida Bar 4-6.1; Illinois Supreme Court Rule 756 (f)). In some states, lawyers can discharge their pro bono obligations “collectively,” which in larger firms allows for one or more lawyers to work on pro bono matters that may be attributed to others lawyers in the firm (Arizona Rule 6.1 (c); Virginia Rule 6.1 (b)).

Pro Bono and the Market
As previously noted, pro bono in the solo and small-firm context often arises from the everyday work of these lawyers, when a person who needs help walks in the door or a client is no longer able to pay. Although the lawyers may accept the work because it will allow them to improve their skills, because they hope it will later help them build their client base (Lochner 1975:460), or because even a reduced fee will help them with their cash flow, most of them do not deliberately seek out this type of work. It is not viewed by most of these lawyers as helpful for recruiting other lawyers or for marketing themselves or their firms.

In contrast, the opportunity to perform pro bono work in large law firms was of some importance in recruiting new associates in the late 1960s, and pro bono work had become institutionalized in some large firms during the 1970s (Marks et al. 1972:85–92; Handler et al. 1975:1388; Galanter & Palay 1992:52). Although many of the largest law firms performed some pro bono work during the 1980s, the commitment to pro bono work was relatively modest, with a few notable exceptions (Abel 1989:130; Vielmetti 1989:1). This commitment grew in the 1990s, and in 1993, in order to promote pro bono activity among large law firms, the American Bar Association instituted the Law Firm Pro Bono Challenge, which called upon firms of over 50 lawyers to devote 3 percent of their total billable hours annually to providing legal assistance to persons of limited means (Dean 1993:3). After a period of retrenchment from pro bono initiatives by large firms

4. See Granfield and Mather (in this volume) for the full text of ABA Model Rule 6.1.
because of rising salary costs (Cummings 2004:38–39), in 2002, The American Lawyer started to calculate its “A-List” of large law firms based, in part, on pro bono performance. Once large firms started being ranked in this fashion by The American Lawyer, it appears that their pro bono efforts shot up. Stories abound of large-firm efforts to increase pro bono participation due, at least in part, to the AmLaw rankings (Sandburg 2006; Hallman 2007). For large law firms, pro bono work is important for associate hiring, retention of lawyers, training, improved client relationships, and business development (Lardent 2000; Justus 2003:366–372). For these reasons, pro bono efforts are now prominently advertised on firm websites, in firm newsletters, and in news announcements.

The definition of pro bono work remains contested even within the elite bar, and the reasons appear to be more related to marketing than to moral philosophy. Questions have arisen over whether it is appropriate for large firms to report as “pro bono” work performed on cases in which court-awarded attorneys’ fees were retained by the firm (Kolker 2006). Controversies have also arisen, for example, over whether Winston & Strawn’s work on former Illinois Governor George Ryan’s criminal case, to which the firm devoted a 20-person legal team, could properly “count” as pro bono under The American Lawyer definition, when Ryan earned an annual pension of $195,000 and was not “poor” (Kolker 2006). After discovering “a few examples of overreaching,” The American Lawyer spent a year devising a common definition of “pro bono” (Press 2007). The new definition refers to activities of the firm “undertaken normally without expectation of fee not in the course of ordinary commercial practice” including (but not limited to) “the delivery of legal services to persons of limited means.” The provision of legal services to various organizations where payment of standard legal fees would significantly deplete the organization’s economic resources is also considered “pro bono.”

PRO BONO PARTICIPATION AND ATTITUDES

Most of the data about pro bono work by the legal profession come from the American Bar Association, The American Lawyer, and state bar surveys that are based on self-reports of pro bono participation. This survey data must be viewed with caution. The terminology used in some of the surveys is vague and comparisons are difficult because the studies are measuring somewhat different activities. For example, New York’s most recent study of pro bono participation does not include low bono services provided to persons of limited means, yet many other studies do. Lawyers in different states are differently situated with respect to the urgency and the obviousness of the unmet need. Natural and man-made disasters may account for unusual levels of pro bono activity in certain jurisdictions during some time periods.

It is also likely that there is some response bias, because those who participate in pro bono activities are more likely to respond to surveys than are those who do
not (Heberlein & Baumgartner 1978:458; Martin 1994:333; Groves et al. 2004:25). State reports based on state-mandated pro bono reporting may be more accurate because of the high response rate, although cognitive biases may still produce an overstatement of pro bono work actually performed. The pro bono participation in the jurisdictions with mandatory reporting may also not be generalizable to pro bono experiences throughout the United States, because reporting requirements may increase actual pro bono participation or at least reports of participation. Nevertheless, the studies do provide some insight into the relative levels of pro bono participation, the bar’s views toward pro bono work, and the ways in which such work is performed in solo and small-firm practice.

General Trends

The most recent nationwide survey of pro bono participation by lawyers, which was conducted by the ABA in 2008, indicated that in the preceding 12 months, 73 percent of respondents provided free legal services to persons of limited means or to organizations that serve the poor (ABA Standing Committee on Pro Bono and Public Service 2009:10). This number, which was based on a telephone survey of 1,100 lawyers, appears to be high. Other state studies and reports during roughly comparable time periods estimate that the percentage of lawyers who provide free legal assistance, directly or indirectly, to benefit underserved populations ranges from 33 percent to 58 percent (2007 Pro Bono Contributions of Wisconsin Lawyers 2008:3; Ruggiere & Carpanzano 2008:9; Illinois Attorney Registration and Disciplinary Commission 2009:6–7). A smaller but still significant percentage of lawyers report doing pro bono in the form of reduced-fee work for underserved populations (Casey & Co. 2002:11; Montana Voluntary Pro Bono Reporting 2002–2003; Ruggiere & Carpanzano 2008:13; 2007 Pro Bono Contributions of Wisconsin Lawyers 2008:17). In some jurisdictions, almost as many hours of reduced-fee services were provided to persons of limited means and organizations that serve the poor as hours of free legal services (Ruggiere 2006:12; 2007 Pro Bono Contributions of Wisconsin Lawyers 2008:17).

The studies consistently show that more lawyers in private practice perform pro bono work than in-house lawyers or government attorneys (Heinz et al. 2005:131; ABA Standing Committee on Pro Bono and Public Service 2009:10–11; Maryland Administrative Offices of the Courts 2008:24). More lawyers in solo and small firms and in the largest firms do pro bono work than those in firms of 6 to 50 lawyers (Maryland Administrative Offices of the Courts 2008:20–21). Older lawyers are more likely to perform free pro bono work than are younger attorneys (ABA Standing Committee on Pro Bono and Public Service 2005:16;

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5. “Indirect services” are the provision of legal services to civic, religious, or other organizations in matters designed primarily to address the needs of persons of limited means.
Standing Committee on Pro Bono Legal Services 2006:App. G). Middle age and older attorneys may perform more hours, on average, of pro bono legal services at substantially reduced fees than other lawyers (Ruggiere & Carpanzano 2008:14).

**Pro Bono Participation by Solo and Small-Firm Lawyers—The Numbers**

State bar statistics provide a clearer picture of the nature and extent of pro bono participation in solo and small-firm settings. For example, a Maryland report of the pro bono service of all admitted lawyers revealed that a higher percentage of lawyers in rural areas—who tend to practice in solo and small firms—rendered pro bono services than lawyers in other regions (Maryland Administrative Offices of the Courts 2008:9, 21). A larger percentage of solo and small-firm practitioners engaged in some pro bono work than lawyers in other private practice settings: 77.3 percent of solo practitioners and 70.6 percent of small-firm members did pro bono work, as compared to 68.4 percent of lawyers in firms of over 50 lawyers. The largest number of pro bono hours was devoted to family/domestic practice and almost 70 percent of the family law bar provided pro bono service (2008:15–16).

Likewise, the State Bar of Texas surveyed 500 members about their pro bono activities and found that 76.7 percent of rural lawyers provided free direct or indirect legal services to benefit the poor (Ruggiere & Carpanzano 2008:10). Urban lawyers in small firms (1–5 lawyers) were more likely to perform free legal direct or indirect services to the poor than were lawyers in other practice settings. Urban small-firm lawyers (44.5 percent) and rural lawyers (54.7 percent) also were significantly more likely to provide legal services at substantially reduced fees than were lawyers in other practice settings (2008:13).

Not only do more solo and small-firm lawyers provide free and reduced-fee services to the poor than other lawyers, but the average number of hours they provide may rival or exceed the average number of hours devoted by lawyers who perform pro bono in other practice settings. Comparisons are admittedly difficult, especially because large-firm lawyers—who are required to keep detailed track of their billable and nonbillable time—may keep more accurate records than solo and small-firm lawyers. Nevertheless, Missouri lawyers in solo and small (1- to 9-lawyer) firms who perform pro bono reported devoting substantially more time, on average, to providing free legal help to the poor than did large-firm lawyers who performed pro bono (Casey & Co. 2002:33). Wisconsin solo lawyers and Missouri solo and small-firm lawyers who performed pro bono provided substantially more reduced-fee hours to individuals of limited means than did large-firm lawyers who performed pro bono (Casey & Co. 2002:32–33; 2007 Pro Bono Contributions of Wisconsin Lawyers 2008:17).

The most common reason cited by all lawyers for not doing more pro bono work was lack of time (Kaye & Lippman, 2004:17; Modell 2005; ABA Standing Committee on Pro Bono and Public Service 2009:23; Kelly Carmody & Associates
Some small-firm lawyers who represent low-income clients on a regular basis believe that they do “de facto” pro bono work and could not take on any more pro bono work (Rhode 2005:135). Lack of administrative support may also discourage pro bono work by some solo and small-firm lawyers (Ruggiere 2006:41).

Qualitative Research on Pro Bono in the Solo and Small-Firm Context

There are a few studies of solo and small-firm lawyers that provide deeper insight into their pro bono practices and attitudes. In his 1972 study of lawyers in Erie County, New York, Philip Lochner (1975:436–437) found that solo lawyers did not seek out no-fee and “low fee” work, which often came to them through business or professional contacts who knew someone who needed a lawyer. Most of the clients were middle- or lower-class individuals who were young or who held clerical jobs or jobs as skilled or unskilled manual laborers. These clients were not usually the genuinely poor, but rather the “temporarily disadvantaged” who lacked the savings to pay for a lawyer (1975:443, 449–452). The predominant reason why the lawyers took these clients was the hope that the current no-fee/low-fee client would become a paying client or that it would otherwise help their business. Less often, lawyers took on this work for charitable reasons or because of a sense of obligation to the community or to the ethnic group to which the attorney belonged. The amount of time spent on these pro bono matters was generally less than the time afforded a paying client, and the effort expended was, at times, not as high (1975:456, 459).

Lochner’s observations are consistent with Carroll Seron’s study of lawyers in solo and small (under 15-lawyer) firms in the New York City area. Seron (1996:130–131) reported that these lawyers viewed the professional obligation to be of service as an individual moral obligation that grew out of their day-to-day work with individual clients. Almost all of the lawyers she interviewed claimed to have done pro bono work as they defined it. Although they strongly opposed mandatory pro bono, these lawyers often viewed themselves as doing pro bono work when their clients could not pay for their legal services. Some of this pro bono was planned, as when a lawyer decided at the outset of the representation to charge a reduced fee or no fee; more often, it was unplanned. Some of these lawyers also viewed their contingent fee work or their paid work as appointed counsel in criminal cases as a type of pro bono work (1996:129–133).

Likewise, Lynn Mather et al. (2001) reported in Divorce Lawyers at Work that virtually all the lawyers they interviewed—who were predominantly solo and small-firm lawyers in New England—provided services to some needy clients who were unable to pay the full fees for legal assistance. Although some of their

6. This opposition to mandatory pro bono apparently continues to the present. According to a recent study, solo and small-firm attorneys are significantly less likely to support mandatory pro bono than larger-firm lawyers (Granfield 2007a:132).
pro bono work came from bar-organized referral systems, the work often came from people who simply showed up in the lawyers’ offices. Some divorce lawyers took on needy clients knowing that they could not pay or could only pay a discounted fee, while a larger group reported feeling an obligation to continue representing a paying client who could no longer afford the lawyer’s fee. Most of this informal pro bono work was performed by solo practitioners and those who were already representing lower-income and moderate-income clients. Divorce lawyers in the largest firms were least likely to reduce their fees (2001:135–138).

Two findings from Divorce Lawyers at Work are particularly important. First, divorce lawyers who worked in firms sometimes encountered significant pressure from partners and employees to turn down pro bono work, because if a client could not pay, it affected the entire firm. Firm policies and procedures sometimes limited billing decisions or were used as a “scapegoat” to explain the firm’s financial requirements (2001:137, 151–153). Second, the financial challenges of running a law practice and the conventional wisdom about good office management practices left some lawyers who provided reduced-fee pro bono assistance feeling that it reflected poor office management. As noted by Mather et al., there is little bar recognition for this type of pro bono work, and the law office management literature consistently advises on how to collect fees promptly and ensure full payment from clients. Thus, lawyers who provided reduced-fee assistance were just as likely to report guilt as pride in connection with their pro bono work (2001:138–139, 151).

In contrast, Michael Kelly (1994), in his Lives of Lawyers, described a small firm, which he called Marks & Feinberg, that deliberately sought to assist low-income clients. The founding partners of the firm had worked for not-for-profit legal defense funds before forming their partnership, which primarily did criminal defense work and civil rights litigation. The lawyers’ criminal defense work was comprised of “blue collar” defense and occasional court-appointed first-degree murder cases. The civil rights and discrimination litigation was conducted primarily in cases in which statutory attorneys’ fees were available if the firm prevailed (1994:156). These lawyers had no budgeting system and no way of systematically measuring whether their caseload could generate enough profit to sustain the firm. Not surprisingly, they perpetually struggled to financially “squeak by” (1994:162, 170).

These studies of solo and small-firm lawyers provide some insight into the manner in which pro bono work is viewed and provided by these practitioners. They reveal that pro bono work often grows out of the lawyers’ existing practices and their personal relations, rather than out of deliberate efforts to seek out legal work that will benefit the poor. This observation is consistent with Seron’s (1996:130) finding that solo and small-firm lawyers’ view of their professional responsibility obligations is “firmly located within a framework of their day-to-day caseload of clients” rather than in some socially based commitment to a collective good.
THE DELIVERY OF PRO BONO SERVICES BY SOLO AND SMALL-FIRM PRACTITIONERS

Exploration of the different mechanisms through which solo and small-firm lawyers deliver pro bono services further highlights some of the differences between the pro bono experiences of these lawyers and the elite bar. These delivery mechanisms, which are often embedded in fee-generating activities for solo and small-firm lawyers, can help to provide a deeper understanding of the meaning of pro bono in this practice setting.

Occasional Planned No-Fee Pro Bono

Lawyers in solo and small-firm practice, like large-firm lawyers, participate in formal bar, court, or legal services pro bono programs in which individuals of limited means are referred to volunteer attorneys who provide their services free of charge. They often provide pro bono work in their own areas of expertise. In some cases, solo and small-firm lawyers, like larger-firm lawyers, may volunteer to assist with other organized projects such as those that provide assistance to death row clients or detainees at Guantanamo Bay.

Some of the planned pro bono work also comes to solo and small-firm lawyers through friends and family, or from individuals who simply walk in the door “and tug at your heartstrings” (Stull 2004). This may be especially common in rural areas, where lawyers personally know many of the people in the community (Renaud 2000). It is unclear how much of this pro bono work benefits the poor and how much of it goes to individuals who are more solidly middle class. As Lochner (1975) noted, the lawyers who provided pro bono services for individuals referred to them by their business associates, friends, and families often represented middle-class individuals who were going through hard times, rather than truly indigent clients.

Formal Reduced-Fee Programs

Solo and small-firm attorneys also provide reduced-fee services through formal programs designed to assist individuals of limited means. Reduced-fee programs take two forms. In the first, the lawyer receives the reduced fee from the government or a legal services organization and the lawyer provides legal representation without cost to the client. In the second, which is often run by a bar association, legal services organization, or other nonprofit organization, the lawyer receives the reduced fee directly from the client. These programs are grouped together because they both result in lawyers being paid a reduced fee.

7. The term “planned” pro bono is used to describe matters that the lawyer agrees to take on at the outset of a representation on a free or reduced-fee basis. It contrasts with “unplanned” pro bono, which arises when lawyers provide free or reduced-fee services at some point after the representation commences because their clients can no longer pay.
through a formal program that is designed to benefit low-income clients. The programs are also explicitly recognized as pro bono activities under ABA Model Rule 6.1, although they are in a less preferred category than the provision of free legal services (ABA Rule 6.1 Comment 7).

Perhaps the best-known example of a reduced-fee program in which the government pays the lawyer is court-appointed counsel for indigent clients in criminal cases. These lawyers typically serve on a panel of criminal defense lawyers who are willing to serve as appointed counsel at fixed rates. The compensation rates mostly range from $60 to $100 per hour and some have had capped maximums (Spangenberg Group 2007). Appointed counsel work is undertaken by lawyers while building their practices, by more experienced lawyers to supplement their income from their established law practices, and by other lawyers who simply seek to provide access to justice for indigent clients.

A few jurisdictions have also institutionalized judicare programs, which pay private attorneys a low hourly fee to provide legal services to low-income individuals in civil cases. One such program, which started in 1966, is Wisconsin Judicare. Judicare is funded by the Legal Services Corporation as well as the state, and uses the private bar to represent low-income persons who would qualify for assistance from LSC-funded programs. If the case is approved, the lawyer is paid a low hourly fee ($45 per hour) for the work performed for eligible clients (Wisconsin Judicare 2008).

In other instances, some lawyers provide reduced-fee services at low fixed rates through formal programs that require low- and moderate-income clients to pay the reduced fees directly to the lawyers. For example, the Maryland Legal Services Corporation has launched the Child Custody Representation Project to provide representation to low-income individuals in contested child custody cases. Lawyers are paid $50 per hour and an amount not exceeding $1,000 per case, and may report the work in their annual pro bono reports (Hurley 2005). Similarly, the Oregon State Bar has instituted a Modest Means Program that refers individuals who earn up to 200 percent of the poverty guidelines to lawyers who provide legal services in the areas of family law, landlord–tenant law, and criminal defense at a rate of no more than $60 per hour. It bills itself as a “low bono” alternative for clients who cannot qualify for free legal services (Oregon State Bar).

Little information has been gathered systematically about which lawyers participate in these programs and for how long. It seems likely, however, that solo and small-firm lawyers, who disproportionately practice in personal plight areas, are the primary providers of these reduced-fee legal services.

**Low Bono Law Practices**

A third way in which solo and small-firm lawyers deliver legal services to persons of limited means is through law practices that are consciously positioned to serve low-income individuals. During the last dozen years, law schools and other
groups have worked with solo and small-firm practitioners to organize and support “low bono” law firm practices that provide discounted fee work to clients and take on other cases that may produce revenue through fee-shifting statutes. For example, the Law School Consortium Project is a network of 16 law schools that helps solo and small-firm attorneys who are interested in serving low- and middle-income communities and in finding an economically viable way in which to do so (Lowbono.org 2008). It created the Community Legal Resource Network, which includes about 800 solo and small-firm practitioners and provides support for these lawyers through mentoring, listservs, and discounted support services such as electronic research and insurance (Cooper 2002; Dhillon 2008). A survey of the practitioners in the network revealed that on average, 42 percent of the matters were handled on a low bono/discounted basis, 37 percent were full-fee, 7 percent were fee-shifting cases, and the remainder was free legal work. The lawyers characterized slightly more than half of their clients as “impoverished” or “low income” (Law School Consortium Project 2005:2).

Not surprisingly, these practices can be economically difficult to sustain. For example, when one Consortium member was asked to describe the difference between her previous practice at a not-for-profit organization that represented immigrants and her current practice as a solo practitioner, she responded:

[I]n terms of the professional context and my client base is similar—a lot of the people who end up being clients could easily be clients of the office. Some of them are a little—[are] more on their feet financially, but not always. I mean I’m making some—somewhat more—doing better financially but I’m not . . . I think the phrase that’s come up is this is low bono [laughs]—just a little—I mean I’m not—[my] financial situation is not sort of like starkly different in some ways.\(^8\)

Maintaining these practices takes a toll on the lawyers. Working in personal plight areas such as family or immigration law can be emotionally draining. Cases may be complex, but hourly fees are low. Vacations are hard to take and difficult to afford. Burnout is a problem because it can be difficult to sustain the pace with so little remuneration and so many demands on the lawyer.

**Unplanned Pro Bono: Nonpayers Who Become Pro Bono Clients**

When a lawyer has a client who can no longer afford to pay her fees, the lawyer may find herself providing free or reduced-fee legal work, but not always for those who are indigent and not in an entirely voluntary sense. In some cases, the lawyer may feel a desire or a moral commitment to continue to represent the client. In other cases, the lawyer may not feel such a desire or commitment, but cannot readily withdraw from representing the client, especially when litigation

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8. Interview with Attorney in Queens, NY.
is ongoing. Social relations within small communities may also make withdrawal difficult. Ethical obligations to handle client matters competently may require lawyers to continue to perform some legal work, even when it becomes apparent that the client will be unable to pay. The cases handled on this basis may not receive the same attention as paying matters.

Solo and small-firm lawyers who perform free or reduced-fee work under these circumstances sometimes view it as pro bono work, although it is not recognized as such under ABA Model Rule 6.1(a), which only includes work undertaken without expectation of a fee. Not only are these efforts not recognized by the elite bar, but they are actively discouraged within some circles. As one well-known author of law office management books for solo and small-firm lawyers advises, “you should withdraw from a case as soon as clients give you the indication that they’re not going to live up to their fee agreement” (Foonberg 2004:329). Not surprisingly, even though there may be some altruism involved in the continuing willingness to represent the client for little or no compensation, this type of work is often viewed as a failure of the lawyer’s business management skills.

IMPLICATIONS AND IDEAS FOR SERVING PERSONS OF LIMITED MEANS

The preceding description of the pro bono practices of solo and small-firm practitioners reconfirms Heinz and Laumann’s observation that there are two distinct sectors of the U.S. legal profession: one represents individuals and the other represents large organizations (Heinz et al. 2005:29). Not only do the lawyers who practice in these sectors serve different types of clients and practice in different office environments, but their conception and performance of pro bono work also differ in important respects. This does not mean that there are not significant differences in pro bono practices among solo and small firms based on their clientele, their financial resources, and their commitment to performing pro bono work. Nevertheless, the pro bono experiences among those firms are more similar to each other than they are to the large-firm pro bono experience.

Moreover, Model Rule 6.1, which was promulgated by the historically elite ABA, reflects the views and practices of the elite (corporate) segment of the profession, and not those of solo and small-firm lawyers. As will be discussed below, to the extent that the ABA’s Model Rule 6.1 has come to reflect the dominant view of what pro bono means in practice, it minimizes the important contributions of solo and small-firm lawyers. It may actually operate to discourage some of the free and reduced-fee work that would otherwise be performed. Thus, one important question to consider is whether to revise Rule 6.1 to reflect a less elite view of pro bono and to place some of the day-to-day contributions of solo and small-firm lawyers in a more positive light. A second question is how to increase
the participation of solo and small-firm lawyers in pro bono activities that will address more of the critical legal needs of persons of limited means.

Redefining Pro Bono
In order to encourage more pro bono work by solo and small-firm practitioners, it is important to consider redefining “pro bono” in a way that recognizes the realities of practice in that setting, and gives the contributions of these lawyers a positive meaning. As previously noted, ABA Model Rule 6.1 (a) provides that “[a] lawyer should aspire to render at least (50) hours of pro bono publico legal services per year” and that “[i]n fulfilling this responsibility, the lawyer should provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to persons of limited means.” “Persons of limited means” are “those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs” (ABA Model Rule 6.1 Comment 3). The LSC guidelines make eligible those who earn at or below 125 percent of the federal poverty level guidelines, which in 2009 was $27,563 for a family of four. The poverty guidelines are extremely low and based on outdated methodology (Ruggles 1999; Citro & Michael 1995). In 2009, even 200 percent of the poverty guidelines only amounted to an income of $44,100 for a family of four (45 CFR Part 1611, App. A). Individuals earning less than that amount fall within the definition of the “working poor” (Acs et al. 2000; U.S. Census Bureau 2008a).

The pro bono practices of solo and small-firm lawyers highlight a problem that has been largely ignored by the elite bar: many Americans—and not just those whose incomes are easily measured in relation to the federal poverty guidelines—cannot afford the legal fees charged by lawyers for the important legal problems that arise in their everyday lives. Many solo and small-firm lawyers are confronted with this reality on a regular basis and attempt to address some of the needs of those individuals while still earning a living. In order to encourage more pro bono work by lawyers in solo and small law firms, their provision of free and reduced-fee services to certain individuals should be recognized as providing a valued service, in order to combat the perception that such work simply reflects poor law office management practices and should be avoided. This requires four changes in the ABA’s current pro bono rule.

First, the term “person of limited means” needs to be defined more expansively. The current definition—which is limited to people with income and assets that are no more than “slightly above” 125 percent of the poverty guidelines—excludes many individuals who genuinely cannot afford lawyers. In cases where important personal rights or relationships are at stake (e.g., criminal, employment, family, or immigration law), or where entitlements (e.g., social security or workers’ compensation) or housing are at issue, the definition of “persons of limited means” should be expanded. It should also not be linked to the federal poverty guidelines, which do not account for significant variability in the cost of...
living in the continental United States. Instead, “persons of limited means” should be defined as individuals whose income and assets are less than two-thirds of the state’s median family income. This approach would allow for a more realistic definition of the persons who genuinely cannot afford a lawyer than is provided by percentages tied to the federal poverty guidelines. For example, two-thirds of the median family income for a four-person family in Arkansas and Mississippi is just under $37,000; in New York and California, it is approximately $51,500 (U.S. Census Bureau 2008b).

Second, legal work for a substantially reduced fee should not be relegated to a secondary position in the Model Rules—or worse, excluded altogether from the definition of “pro bono” under some state bar rules. Treating free legal work as the most favored form of pro bono reinforces the status hierarchies in the profession and devalues a good deal of the work that solo and small-firm lawyers perform for underserved populations. There is admittedly good reason to encourage “no-fee” legal work by those who can perform it. But Model Rule 6.1 also conveys that no-fee pro bono is the “purest” form of pro bono, when in fact the “purity” of the motivations underlying no-fee pro bono work is debatable. Many large-firm lawyers draw precisely the same salaries for their pro bono work as for their paying work, even if no fee is charged for the work performed for their pro bono client. In contrast, reduced-fee pro bono performed by solo and small-firm lawyers can require a significant sacrifice. To the extent that the Model Rules seek to convey the values of the profession, they should not communicate that the reduced-fee work of solo and small-firm lawyers is less highly valued than the no-fee work performed in large law firms.

Third, the Comment accompanying ABA Model Rule 6.1 that states “services rendered cannot be considered pro bono if an anticipated fee is uncollected” deserves reconsideration. Obviously, a lawyer who performs legal work believing she will be paid, and then is unable to collect the fee, has not undertaken the work with an altruistic motive. But what “counts” as pro bono for large-firm lawyers is not based entirely on a lawyer’s altruistic motives, as evidenced by the fact that some large-firm lawyers undertake pro bono work, at least in part, for recruiting and marketing reasons. In some circumstances, such as when a low-income client becomes unemployed during the course of the representation and the solo or small-firm lawyer continues to represent the client without an expectation of full payment, this type of behavior should be encouraged and viewed by the bar as pro bono. The fact that this may happen with some frequency in certain types of solo and small-firm practices—or that it arises out of the lawyer’s day-to-day work—does not change the fact that the lawyer is at that point working free of charge or at reduced rates for a client who would not otherwise be able to obtain legal assistance.

Finally, there is a danger that if the definition of pro bono is expanded to include clients with somewhat higher incomes and situations where lawyers originally expected to be paid, some lawyers will claim that they have performed
“pro bono” work in situations where the term should not be applied. One way to minimize this occurrence would be to define what it means to perform work at a “substantially reduced fee.” For example, a “substantially reduced fee” might be defined as a reduction by 50 percent or more of the rate typically charged a middle-class client for the same legal service in the community. In addition, the work should only be considered pro bono if performed for persons of limited means (as defined above), if the matter involves fundamental legal rights, and if the reduction occurred because a client became unable to pay, rather than because of a fee dispute or other disagreement with the client.

Other Factors Affecting Pro Bono Participation
Although rules of professional conduct inform lawyers’ understanding of the norms of the profession, a rule change alone—and particularly an exhortatory rule—will not, standing alone, significantly alter lawyer conduct. In order to identify effective strategies for encouraging solo and small-firm practitioners to perform pro bono work and to make it easier for them to do so, it is important to consider the other factors that are likely to affect their ability, opportunity, and willingness to perform pro bono work. Those factors most likely include the lawyer’s existing clientele, individual personal factors, and the lawyer’s workplace and communities of practice.

A lawyer’s regular clientele will directly affect the extent to which the lawyer is exposed to lower-income individuals who need legal assistance and the ability of the lawyer to draw on his or her existing knowledge base to assist such individuals. Thus, some solo and small-firm practitioners will perform pro bono work simply because the opportunity directly presents itself and the lawyer knows how to help. Lawyers who work in low-bono private practices routinely encounter the opportunity to serve low-income clients and draw on their existing legal knowledge to help them. A second and much larger group is other solo and small-firm lawyers who serve individual clients in personal plight matters, but who primarily represent middle-class and wealthier clients. These lawyers are likely to receive referrals or “walk-in” clients who are seeking pro bono assistance. They also encounter clients who started the representation intending to pay, but who have a reversal of circumstances before the end of the representation that render full payment impossible. There is also a third group of solo and small-firm attorneys who mostly represent organizations and work in practice areas found in larger corporate law firms. These lawyers are less likely in their regular practices to encounter low-income individuals who present legal problems that they can readily address.

Of course, even when the opportunity to perform pro bono work presents itself in a regular practice, not all lawyers will agree to perform the work. A lawyer’s willingness to provide pro bono assistance will also vary based on individual personal factors including, *inter alia*, financial circumstances, level of office support, career stage, and family commitments. Thus, new lawyers who do not yet
have a full practice may be willing to take on pro bono work to gain experience, contacts, and possibly—down the road—paying clients. For other lawyers, pressures to pay the rent and support staff may trump the willingness to provide free legal work, especially where paying clients are available. In solo practices, where there is no one else but the lawyer to do the work, and often limited support staff, pro bono work may not feel “possible.”

It seems clear, however, that even opportunity and individual factors do not entirely account for the decision to perform pro bono work. Lawyers consistently report that the main reasons they perform pro bono work are a sense of satisfaction and a sense of obligation (Granfield 2007b:1399; Rhode 2005:136; Ruggierré 2006:44). From where does this sense of obligation arise? Recent research suggests that it may not come from pro bono experiences in law school. As Granfield (2007b:382–385, 1391) has noted, workplace may be a stronger predictor of pro bono work in practice than law school socialization. Workplace settings account for differences in volunteer behavior and “[s]uch differences are likely due to the institutionalized norms, values, pressures, and constraints that exist within distinct workplaces” (Granfield 2007a:142). Other scholars have also suggested that the greatest external influence on altruistic behavior by lawyers is probably the “practice site” (Boon & Whyte 1999:172–173).

In solo and small-firm practice, however, the “workplace” is not necessarily the discrete law firm. Solo attorneys often share a suite with other lawyers. Even small firms sometimes share office space with other lawyers. Solo and small-firm lawyers learn from watching other lawyers in a variety of contexts (Seron 1996:8–9; Levin 2001:879–880). They are socialized not only in the office spaces that they occupy, but also in court and in other places where they observe colleagues (Carlin 1966:166–67).

For this reason, it may be useful to think about the communities of practice within which these lawyers operate and how they might affect the lawyers’ views of pro bono. Mather et al. found that divorce lawyers, who often practice in solo and small-firm settings, are heavily influenced by their communities of practice—that is, “the groups of lawyers with whom lawyers interact and to whom they compare themselves” who help shape the decision-making of lawyers through collegial influence and controls (2001:6,14). Particular norms and choices of divorce lawyers are linked to communities of practice and are shaped by them. Thus, it is useful to consider how the communities of practice of solo and small-firm lawyers may contribute to creating their views of pro bono work and any sense of obligation to perform it.

Presumably the lawyers who deliberately build low bono practices and join networks such as the Community Legal Resource Network are part of a community that reinforces the value of providing legal services to underserved populations. But for other solo and small-firm lawyers, there may be few positive messages that would communicate a sense of obligation to perform pro bono work. No doubt some lawyers observe pro bono work performed by others in
their offices. But much of it may not be perceived as pro bono work, because it receives little or no recognition by the organized bar or from peers. Moreover, free work or reduced-fee work performed for clients who are unable to pay may not be discussed much among office colleagues. For these lawyers, such work may be perceived as a sign of poor law office management rather than as a positive societal contribution. In addition, for solo and small-firm lawyers with organizational clients, pro bono opportunities may not naturally present themselves within their offices or communities of practice. In the absence of a culture that encourages reaching out for pro bono work—or special knowledge about how to perform it—pro bono is less likely to be undertaken by these lawyers.

**Strategies for Increasing Pro Bono Participation**

Local and specialty bar associations could play an important role in promoting pro bono work among solo and small-firm lawyers. Many solo and small-firm practitioners belong to at least one voluntary bar association, and it is often a local or specialty bar association rather than an elite one (Levin 2004:333). For some solo and small-firm lawyers, these bar associations play an especially important role in their socialization, their professional development, and their advice sharing (Levin 2005). These local and specialty bar associations—and not the elite bar groups—are the locus of community for some solo and small-firm lawyers. Pro bono initiatives and awards by these groups could convey a powerful and positive message.

An example of a specialty bar effectively promoting pro bono by its members can be found in the relatively recent efforts of the American Association of Justice (formerly known as ATLA). Prior to 2001, the plaintiffs’ personal injury bar, which is comprised mostly of solo and small-firm lawyers, did not have a culture of actively promoting pro bono work for persons of limited means. This changed when ATLA organized a large pro bono project known as “Trial Lawyers Care,” which provided free legal services to over 1,700 victim-families making claims based on the events of September 11, 2001 (Trial Lawyers Care Project 2004:5–6). This pro bono initiative involved 1,100 trial lawyers who might not otherwise have performed pro bono work and suggests one way in which a specialty bar can help to promote a sense of obligation to perform pro bono.

Local bar associations and specialty bars that are composed primarily of solo and small-firm lawyers could also do more to organize short-term pro bono projects that benefit individuals of limited means. An example would be American Immigration Lawyers Association’s Citizenship Day, on which immigration lawyers make themselves available to individuals who have questions about their eligibility for U.S. citizenship. Bar associations could encourage pro bono participation by lawyers who do not work in personal plight areas by offering on-site training on the day of the activity to enable those lawyers...
to assist individuals with legal problems that fall outside the lawyers’ usual practice areas.

Another way to increase pro bono activity among solo and small-firm lawyers is for local and specialty bar associations to actively promote the view that certain reduced-fee legal work is “pro bono.” One way to do this is to create more reduced-fee lawyer referral programs for individuals of limited means. These programs could offer lawyers training and “mentors” who would be available to answer questions, and could be advertised as an opportunity for lawyers not only to perform an important service, but also to gain experience while building a practice. Bar associations could also sponsor programs in which lawyers could discuss the best ways to manage their planned and “unplanned” reduced-fee pro bono. If the provision of pro bono—including low bono—is actively discussed and promoted by these bar associations, it could help alter negative perceptions about taking on this work.

Local bar associations could also help to increase pro bono participation among solo and small-firm lawyers by working to address the malpractice insurance problem. Lawyers in solo and small-firm practice were more likely than lawyers in other settings to believe that free malpractice coverage for pro bono work would encourage lawyers to perform pro bono (Rhode 2005:135; Brown 2006:App. B; ABA Standing Committee on Pro Bono and Public Service 2009:20–21). Lawyers who receive pro bono referrals from legal services organizations are often covered by the organization’s malpractice policy, but many solo and small-firm practitioners do not take on pro bono work through these formal referrals. Some of them do not have legal malpractice insurance, even for their paying clients, or do not have coverage to practice in areas outside their usual areas of expertise. This is a significant problem that would be more effectively addressed at the collective bar association level rather than by individual lawyers.

Finally, bar associations could advocate for rule changes that would permit solo and small-firm lawyers to provide unbundled services, which is likely to increase their willingness to provide pro bono assistance. Unbundled services, or “discrete task representation,” occurs when an attorney provides a specific service to a client who is otherwise handling an action pro se. Unbundled services may include, inter alia, reviewing a client’s papers, preparing a set of papers, conducting some factual investigation, or other limited activities. Solo and small-firm lawyers have cited the ability to “unbundle” services as a factor that would encourage pro bono participation (Brown 2006:App. B). Some jurisdictions have been resistant to permitting lawyers to provide unbundled legal services because of concerns that the client will be inadequately protected or that the court will be misled as to whether the individual is actually proceeding pro se. Nevertheless, an increasing number of states have accepted this practice (ABA Standing Committee on Delivery of Legal Services 2008). Enabling solo and small-firm lawyers to limit the scope of their assistance to discrete tasks may
encourage them to perform some pro bono services for individuals who cannot afford—but desperately need—some legal assistance that these lawyers would not otherwise be permitted to provide.

CONCLUSION

The meaning of pro bono in solo and small-firm practice is often fundamentally different in those settings than in large law firms. Notwithstanding the differences between the large-firm and small-firm pro bono experience, pro bono as a professional value may be an area in which large-firm and small-firm lawyers can share more common ground than the differences suggest. The core concept underlying ABA Model Rule 6.1—that lawyers should aspire to perform pro bono work for individuals who genuinely cannot afford a lawyer—is a concept about which many lawyers can generally agree. Disagreements arise mostly from the bar’s official definition of “pro bono,” which currently reflects the views of the bar elite and has the unintended consequence of causing even solo and small-firm lawyers to denigrate much of the reduced-fee work they perform for needy clients.

The definition of “pro bono” has important implications, not just for the unity of the bar’s vision, but for the poor, for the working poor, and for the middle class, as well. Lawyers’ fees can be expensive, and it is not just the poor or near-poor who sometimes find themselves unable to pay for legal services. When solo and small-firm lawyers provide pro bono assistance for individuals of limited means, the lawyers still need to pay their rent and their office staff. They may need to “make up” for what they lost in income by increasing the fees they charge their paying clients. Yet these paying clients are often middle-class individuals who, like the poor and near-poor, need legal assistance but struggle to pay for it. If all of these people are to obtain access to justice, they need to be able to afford their lawyers.

Ultimately, by looking at pro bono in the solo and small-firm context, we can observe the fault lines in the delivery of legal services in the United States. The LSC and other experts are in complete agreement that existing legal services programs and pro bono performed by the private bar will not address all of the unmet needs of the more than 50 million individuals who are eligible for LSC-funded programs. There are, in addition, millions more who do not qualify for assistance from LSC-funded programs, but who genuinely cannot afford a lawyer. As more lawyers are devoting their time to representing organizations, and the cost of legal services is increasing in the United States, it is unclear how even the average individual will afford legal representation in the future. Closer examination of the solo and small firm experience with providing free and reduced-fee services may help us to identify productive strategies to address those needs. In the end, however, significant reform in the delivery of U.S. legal
services will be needed to ensure that most individuals can obtain legal assistance with their important legal needs in the future.

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