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April Faith-Slaker

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WHAT WE KNOW AND NEED TO KNOW ABOUT PRO BONO SERVICE DELIVERY

April Faith-Slaker*

I. INTRODUCTION

There is something profoundly American about a vast network of individuals contributing their time and talent, aspiring for collective justice. Throughout the history of the American legal profession, law-related public service—an act that is simultaneously individualistic and communal—has been an important element of what it has meant to be a lawyer. Beyond monolithic laws, pro bono is a living, breathing form of justice, evolving with each generation and responding to each cry for help from the beleaguered and needy. Through pro bono the profession wages its own war on poverty and injustice, one act of service at a time.

But the other side of the story of this great tapestry of service is its porous reality, and the constant scrambling and gathering of resources to plug the holes through which injustice emanates. Regretfully, injustice is not a problem solved once and checked off a to-do list, but rather it sheds its skin and is reborn again and again, constantly requiring a renewed force of attorneys waiting in the flanks. This need for renewal of available and interested private attorneys is one of the great challenges, a topic to which many drops of ink have been dedicated.

Too often, the way pro bono is talked about in the profession centers around a phylogenetic account of “the pro bono attorney,” as though this problem is imprinted in our collective consciousness as being that of engaging one homogeneous group of service providers. In reality, the attorney population is rather heterogeneous and becoming more so as time passes. Furthermore—and arguably more importantly—focusing on the attorney population at the expense of how lawyers impact the client population and improve communities does a great disservice and, frankly, misses the mark.

This Paper presents a brief overview of what we know about pro bono, with the caveat and acknowledgment that much of our knowledge is focused on how, when, and why attorneys participate in pro bono and on how many hours they commit.¹ The infrastructure through which assistance is funneled to those in need is part of the equation that determines what services are rendered and whether they sufficiently meet the needs of the receiving population. But as we study and quantify these methods, it is also important to connect the dots to measure and understand the impact they have. In summarizing the available literature, this Paper also acts as a call—a challenge—to think, conceptualize, discuss, and research how all of this information relates to the client population.

* Senior Staff Attorney, American Bar Association Standing Committee for Pro Bono & Public Service.

1. See *infra* text accompanying notes 26–49.

II. WHY DO LAWYERS DO PRO BONO?

Research has shown that 80% of surveyed attorneys reported doing at least some pro bono services, with an average of 70.1 hours per year for those who had provided services.² To give a sense of what this looks like on an aggregate level, in 2013, pro bono service amounted to a total of 1,740,019 hours in Florida, 2,098,472 hours in Illinois, and 249,888 hours in New Mexico.³ Approximately 20% of the lawyer population, however, does not provide pro bono service at all.⁴

Literature on what motivates individuals to engage in public service has been studied from many different perspectives over the past several decades, with much of the writing on the topic categorizing motivation in terms of intrinsic versus extrinsic.⁵ Providing such services is related to one's intrinsic motives,⁶ disposition,⁷ needs,⁸ personality,⁹ and social and role identity.¹⁰ Extrinsic motives for volunteering include improvements to one's welfare,¹¹ gaining job experience,¹² meeting people with similar interests,¹³ increasing job opportunities,¹⁴ receiving praise,¹⁵ and avoiding potential negative consequences

2. *Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers*, 2013 A.B.A. STANDING COMM. ON PRO BONO & PUB. SERV. 5 (Mar. 2013), http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf.

3. *Reporting of Pro Bono Service, Standing Committee on Pro Bono and Public Service*, A.B.A., <http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html> (last updated June 16, 2015).

4. *Supporting Justice III*, *supra* note 2, at 5.

5. For a review, see MARK A. MUSICK & JOHN WILSON, VOLUNTEERS: A SOCIAL PROFILE 73 (2008) (citing JUSTIN D. SMITH, THE 1997 NATIONAL SURVEY OF VOLUNTEERING 64 (1998)).

6. David A. Harrison, *Volunteer Motivation and Attendance Decisions: Competitive Theory Testing in Multiple Samples from a Homeless Shelter*, 80 J. APPLIED PSYCHOL. 371, 386 (1995).

7. Louis A. Penner & Marcia A. Finkelstein, *Dispositional and Structural Determinants of Volunteerism*, 74 J. PERSONALITY & SOC. PSYCHOL. 525, 532-36 (1998).

8. Ken Culp III, *Motivating and Retaining Adult Volunteer 4-H Leaders*, 38 J. AGRICULTURAL ED. 1, 6 (1997) (showing that individuals also volunteer when they feel needed).

9. Arnold Bakker et al., *The Relationship Between the Big Five Personality Factors and Burnout: A Study Among Volunteer Counselors*, 146 J. SOC. PSYCHOL. 31, 43-44 (2006).

10. See Blake E. Ashforth & Fred Mael, *Social Identity Theory and the Organization*, 14 ACAD. MGMT. REV. 20, 35 (1989); see also Henri Tajfel & John C. Turner, *The Social Identity Theory of Intergroup Behaviors*, in PSYCHOL. OF INTERGROUP RELATIONS 20, 35 (S. Worchel & W.G. Austin eds., 1985).

11. MIKE N. MARTIN, VIRTUOUS GIVING: PHILANTHROPY, VOLUNTARY SERVICE, AND CARING 123 (1994).

12. Aydt Klein et al., *Understanding Volunteer Peer Health Educators' Motivations: Applying Social Learning Theory*, 43 J. AM. C. HEALTH 126 (1994).

13. *Id.*

14. See J. Keith Murnighan et al., *The Volunteer Dilemma*, 38 ADMIN. SCI. Q. 515, 534 (1993).

15. C. Daniel Batson et al., *Five Studies Testing Two New Egoistic Alternatives to the Empathy-Altruism Hypothesis*, 55 J. PERSONALITY & SOC. PSYCHOL. 52, 53 (1988) (citing C.D. Batson, *Prosocial Motivation: Is It Ever Truly Altruistic?*, 20 ADVANCES IN EXPERIMENTAL SOC.

associated with not helping.¹⁶ In almost all of the literature, altruism, learning and skill development, career building, and social motives have been found to be the main reasons for volunteering.¹⁷ However, motivations to volunteer have proven to be dynamic and situational, as public service has been shown to fulfill different needs and goals for different individuals at different times.¹⁸

Literature on the legal profession and pro bono activity has similarly found both intrinsic and extrinsic motivators.¹⁹ The most recent comprehensive account of what motivates attorneys to provide pro bono services comes from the American Bar Association's 2012 survey of the nation's attorney population, as reported in *Supporting Justice III*.²⁰ The results of this survey indicate that attorneys overwhelmingly believe that pro bono is important and are more motivated by intrinsic than extrinsic factors when deciding whether to provide such services.²¹ Nine in ten attorneys indicated that they believe it is either somewhat or extremely important for attorneys to offer pro bono services, and nearly all believe that pro bono makes a difference in improving equal justice under the law.²² Intrinsic motivators, such as empathy with client needs and a sense of gratification when doing pro bono work, received the strongest agreement ratings.²³ The attorneys who had provided at least fifty hours of pro bono in the year prior to the survey were more likely to agree with these intrinsic motivator statements.²⁴ Likewise, in a 2003 survey by Deborah L. Rhode, it was

PSYCHOL. 65, 66 (1987); J.R. Meindl & M.J. Lerner, *The Heroic Motive: Some Experimental Demonstrations*, 19 J. EXPERIMENTAL PSYCHOL. 1, 16 (1983); William C. Thompson et al., *Focus of Attention Mediates the Impact of Negative Affect on Altruism*, 38 J. PERSONALITY & SOC. PSYCHOL. 291, 292 (1980)).

16. See, e.g., Robert B. Cialdini et al., *Empathy-Based Helping: Is It Selflessly or Selfishly Motivated?*, 52 J. PERSONALITY & SOC. PSYCHOL. 749, 759 (1987) (explaining how "sadness reduction" can motivate some to volunteer).

17. See, e.g., MUSICK & WILSON, *supra* note 5, at 56–63 (providing an overview of the functional theory of motivation).

18. E. Gil Clary et al., *Understanding and Assessing the Motivations of Volunteers: A Functional Approach*, 74 J. PERSONALITY & SOC. PSYCHOL. 1516, 1528 (1998); Allen M. Omoto & Mark Snyder, *Sustained Helping Without Obligation: Motivation, Longevity of Service, and Perceived Attitude Change Among AIDS Volunteers*, 68 J. PERSONALITY & SOC. PSYCHOL. 671, 673 (1995).

19. See *Supporting Justice III*, *supra* note 2.

20. *Id.*

21. *Id.* at 22 fig.18.

22. *Id.*

23. On a scale from 1-5, where a 5 indicated complete agreement, 70% of the respondents provided a 4 or 5 for the statement "I believe that pro bono clients really need my help" and 61% provided a 4 or 5 for the statement "Doing pro bono work is extremely gratifying." *Id.* at 20–21 fig.17.

24. On a scale from 1-5, where a 5 indicated complete agreement, 83% of the respondents who had provided at least 50 hours of pro bono the previous year provided a 4 or 5 for the statement "I believe that pro bono clients really need my help" and 76% provided a 4 or 5 for the statement "Doing pro bono work is extremely gratifying." *Id.* at 21.

found that the most common forces driving pro bono participation were intrinsic motivators, followed by a sense of obligation.²⁵

Extrinsic motivators, while relevant to pro bono participation, are rated by attorneys as less influential than intrinsic motivators.²⁶ Attorneys in the abovementioned ABA survey were asked about social motivators; approximately one-third of attorneys indicated that they would be influenced to take a case if they were offered a mentor or asked to take a case by a judge or colleague.²⁷ When presented with a list of potential incentives a referral organization could offer, just under half of the respondents indicated that they would be influenced by malpractice insurance and 41% would be influenced by free or reduced cost Continuing Legal Education (CLE) courses.²⁸ Formal recognition received the lowest rating, with only 16% indicating that they would be influenced by such an incentive.²⁹ Other research has found that engaging in pro bono and other public service can have a positive impact on career development by helping attorneys build legal skills and acquire clients.³⁰ Small firm and sole practitioners are especially likely to use pro bono specifically to enhance their skills and acquire future clients.³¹

Based on motivations alone, one would expect attorneys to commit more time to pro bono. But as reported in the ABA survey, there are several very significant deterrents relating to personal and work constraints.³² Lack of time was overwhelmingly cited as the reason for not being able to take a pro bono case; half of the attorneys cited family obligations.³³ Likewise, Rhode found that workload demands, family obligations, and billable hour expectations were

25. Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 J. LEGAL EDUC. 413, 446 (2003). Intrinsic satisfactions related to pro bono work received, on average, a 4.2 on a scale from 1-5, where a 5 indicated that statement was “very significant” in motivating an attorney to do pro bono. A sense of obligation to pursue pro bono received, on average a 3.7. *Id.*

26. *Id.*

27. *Supporting Justice III*, *supra* note 2, at 27 fig.23.

28. *Id.*

29. *Id.*

30. See Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations Among Lawyers*, 41 LAW & SOC’Y REV. 113, 132 (2007); LYNN MATHER ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES ON PROFESSIONALISM IN PRACTICE* 135 (2001); Cynthia Fuchs Epstein, *Issues Entrepreneurs: Charisma, Charisma-Producing Events, and the Shaping of Pro Bono Practice*, in PRIVATE LAWYERS & THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION 211, 222 (Robert Granfield & Lynn Mather eds., 2009); DEBORAH L. RHODE, *ACCESS TO JUSTICE* 165 (2005).

31. Granfield, *supra* note 30, at 132–33; see also MATHER ET AL., *supra* note 30, at 188 (explaining how small divorce firms’ clientele are more likely to need pro bono services); Scott L. Cummings & Ann Southworth, *Between Profit and Principle: The Private Public Interest Firm*, PRIVATE LAWYERS & THE PUBLIC INTEREST, *supra* note 30, at 183, 187–188 (evaluating private firms that are dedicated to serving public interests through pro bono efforts).

32. *Supporting Justice III*, *supra* note 2, at 30 fig.26.

33. On a scale from 1-5, where a 5 indicated “very discouraging,” 79% gave “lack of time” a 4 or 5 and 50% gave “commitment to family obligations” a 4 or 5. *Id.*

reported as the three most common barriers to pro bono service.³⁴ Aside from competing obligations, many attorneys are concerned about whether they have the appropriate skills in the areas needed by pro bono clients.³⁵ For these attorneys, without significant mentorship and support resources, this uncharted professional territory can be quite daunting. In the ABA survey, just under half (45%) of the respondents reported that a lack of skills or experience deterred them from taking a pro bono case.³⁶ Additionally, some studies have linked income to pro bono activity, suggesting that a lack of resources might make it harder for attorneys to provide pro bono, especially small firm attorneys who have to make resource trade-offs in order to take a pro bono case.³⁷ And finally, positional conflicts in which one takes on a case that is at odds with the interests or positions of other clients, have been cited as a deterrent.³⁸ For example, Norman W. Spaulding details informal processes employed by firms to screen out pro bono cases based on positional conflicts, often framed in terms of current and potential clients' expectations.³⁹

When, why, and under what conditions attorneys are inclined to donate legal services has implications for policy and program decisions regarding methods for engaging pro bono volunteers. Certainly, encouraging and cultivating pre-existing internal motivations rather than putting resources into developing external incentives might be a more effective approach. Much literature has shown that activities viewed instrumentally as a means to achieve extrinsic rewards are less likely to be sustained over time, especially once the rewards are discontinued.⁴⁰ In fact, in one study, civil rights lawyers who were motivated by internalized values were more likely to make substantial and sustained

34. Rhode, *supra* note 25. On a scale from 1-5, workload demands received a 4.5, family obligations received a 3.4, and billable hour expectations received a 3.0. *Id.*

35. *Supporting Justice III*, *supra* note 2, at 30.

36. *Id.*

37. Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 L. & SOC'Y REV. 79, 89 (2007); Steven A. Boutcher, *The Institutionalization of Pro Bono in Large Law Firms: Trends and Variation Across the AmLaw200*, in PRIVATE LAWYERS AND THE PUBLIC INTEREST, *supra* note 30, at 135, 149.

38. Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 116 (2004); John S. Dzienkowski, *Positional Conflicts of Interest*, 71 TEX. L. REV. 457, 531 (1993); Norman W. Spaulding, *The Prophet and the Bureaucrat: Positional Conflicts in Service Pro Bono Publico*, 50 STAN. L. REV. 1395, 1418 (1998). However, in the ABA survey, only 8% of respondents indicated that an issue or business conflict deterred them from taking a pro bono cases. *Supporting Justice III*, *supra* note 2, at 24 fig.20.

39. Spaulding, *supra* note 38, at 1414.

40. C. Daniel Batson et al., *Buying Kindness: Effect of an Extrinsic Incentive for Helping on Perceived Altruism*, 4 PERSONALITY & SOC. PSYCHOL. 86, 90 (1978); Carol M. Werner & Natasha McVaugh, *Service-Learning "Rules" that Encourage or Discourage Long-Term Service: Implications for Practice and Research*, MICH. J. CMTY. SERV. LEARNING 117, 123 (2000); see also Joan E. Grusec & Erica Redler, *Attribution, Reinforcement, and Altruism: A Developmental Analysis*, 16 DEVELOPMENTAL PSYCHOL. 525, 526-29 (1980) (noting how social reinforcement and attribution effect charitable motivations).

contributions than individuals responding to extrinsic rewards.⁴¹ And imposing external coercion, such as deadlines and sanctions, can undermine intrinsic motivations.⁴²

Though the drive to do pro bono can be positively influenced by external factors, this approach may be best considered in terms of working to remove or ease barriers rather than focusing on creating external incentives, given the relatively low levels of influence of external factors. To increase pro bono, well-designed programs can work to both cultivate intrinsic motivations, while using external factors to make opportunities more accessible. And, as a possible bonus, volunteering is believed to be associated with improved physical and mental health.⁴³ People who regularly engage in pro-social activities live longer, are happier and have higher self-esteem, have lower levels of stress and depression, and are physically healthier,⁴⁴ although these findings have not yet been replicated on the attorney population.

III. INSTITUTIONAL INFLUENCES

Lawyer participation in pro bono is not only related to motivators as discussed above, but also to institutional characteristics, such as cultural norms and workplace influences.⁴⁵ As Andrew Boon and Avis Whyte warn: to individualize pro bono would be to misunderstand the social, organizational, and political contexts.⁴⁶ That is, the pro bono behavior of the attorney population is more than a simple sum of individual decisions. To fully understand the pro bono landscape, a full account of the frameworks in which individual choices are embedded is necessary.

A body of institutional literature has demonstrated that cognitive, normative, and regulative forces shape the meaning and legitimacy of social practices,⁴⁷ providing several useful lenses for thinking about pro bono. Individual action is therefore structured by shared scripts that signal what motivations, actions, and

41. David Rosenhan, *The Natural Socialization of Altruistic Autonomy*, in ALTRUISM AND HELPING BEHAVIOR (Jacqueline Macaulay & Leonard Berkowitz eds., 1970).

42. Mark S. Sobus, *Mandating Community Service: Psychological Implications of Requiring Prosocial Behavior*, 19 L. & PSYCHOL. REV. 153, 161 (1995).

43. John Wilson & Marc Musick, *The Effects of Volunteering on the Volunteer*, 62 L. & CONTEMP. PROBS. 141, 152, 154 (1999); Marc A. Musick et al., *Volunteering and Mortality Among Older Adults: Findings from a National Sample*, 54 J. GERONTOLOGY 173, 178 (1999); Doug Oman et al., *Volunteerism and Mortality Among Community-Dwelling Elderly*, 4 J. HEALTH PSYCHOL. 301, 311 (1999).

44. See Wilson & Musick, *supra* note 43, at 152, 154; see also MUSICK & WILSON, *supra* note 5, at 494–97.

45. Andrew Boon & Avis Whyte, *Charity and Cheating Begin at Home: The Aetiology of the New Culture of Pro Bono Publico*, 2 LEGAL ETHICS 169, 190 (1999).

46. *Id.*

47. W. RICHARD SCOTT, INSTITUTIONS AND ORGANIZATIONS 33 (1995); see also Paul J. DiMaggio & Walter W. Powell, *Introduction*, in THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS (1991) (providing a brief overview of institutionalism).

decisions are valued and expected in particular environments.⁴⁸ Accordingly, the conditions under which attorneys choose to participate in pro bono and the types of services they provide are all shaped by these forces, which frame preferences and make salient specific types of behaviors over others.⁴⁹ The discussion below addresses the following contexts within which pro bono choices are shaped: communities of influence, workplace setting, law school pro bono programs, and the normative effects of ethical guidelines and administrative rules and procedures (e.g. required pro bono reporting).

A. *Communities of Influence*

As the legal profession has become more differentiated and stratified in recent years,⁵⁰ researchers have shown increasing interest in the effects of lawyers' "communities of practice" on lawyers' professional values.⁵¹ Rather than making decisions about professional behavior, such as pro bono service, solely according to either personal motivations or unified professional norms, research shows that attorneys are influenced by socially constructed communities, which provide cues and scripts about appropriate behavior and professional ideals.⁵² These communities can be based on networks within a physical space (those with whom attorneys have their closest contact on a daily basis) or networks based on identity (those with whom attorneys most closely identify, whether by workplace environment, political or religious affiliation, ethnicity, gender, etc.).⁵³

A number of researchers have identified ways in which the legal profession has developed distinct networks of association, communication, and influence.⁵⁴

48. See PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* 54-55 (1967); SCOTT, *supra* note 47, at 35, tbl.3.1; Paul Colomy, *Neofunctionalism and Neoinstitutionalism: Human Agency and Interest in Institutional Change*, 13 SOC. FORUM 265, 294 (1998). James G. March & Johan P. Olsen, *The New Institutionalism: Organizational Factors in Political Life*, 78 AM. POL. SCI. REV. 734, 734 (1984); John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOC. 340, 343 (1977).

49. See Meyer & Rowan, *supra* note 48, at 343.

50. JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 6 (2005); JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* 379 (1982); see JEROME CARLIN, *LAWYERS ON THEIR OWN: THE SOLO PRACTITIONER IN AN URBAN SETTING* 115 (1962).

51. MATHER ET AL., *supra* note 30, at 6 (coining the phrase "communities of practice"); see also Austin Sarat, *Enactments of Professionalism: A Study of Judges' and Lawyers' Accounts of Ethics and Civility in Litigation*, 67 FORDHAM L. REV. 809, 818 (1998); Robert Nelson & David Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES* 177, 179 (Robert L. Nelson et al. eds., 1992).

52. MATHER ET AL., *supra* note 30, at 176.

53. *Id.*

54. Anthony Paik et al., *Lawyers of the Right: Networks and Organization*, 32 L. & SOC. INQUIRY 883, 912 (2007). See generally DAVID KNOKE, *POLITICAL NETWORKS: THE STRUCTURAL PERSPECTIVE* 27 (1990) (analyzing social structures influence on political behavior); EDWARD O.

In studying divorce lawyers, for example, Lynn Mather and others found that professional norms vary according to personal identities, shared clientele, common work organizations and locales.⁵⁵ In an urban context, John P. Heinz and others identified three sectors into which lawyers organized: liberals, trial lawyers, and corporate lawyers.⁵⁶ In a rural context, Donald D. Landon demonstrated the strong influence of local community, influencing the character of cases, clients and manner of delivery of services.⁵⁷ Ronit Dinovitzer and Bryant G. Garth argue that social background shapes expectations and perceived professional opportunities and is therefore a component of stratification in the legal profession.⁵⁸

Furthermore, social advantage and disadvantage is reinforced in the legal field through socialized orientations and dispositions.⁵⁹ Pro bono work may be translated into other forms of capital, whether that is through symbolic capital in the form of moral justification, through opportunities to meet with clients and go to court, or by building stature and connections that might lead to career rewards over time.⁶⁰ Heinz and others summarized the results of two studies on stratification and voluntary associations, and found that income and attendance at an elite law school were positively associated with being active in a voluntary association.⁶¹ Robert Granfield and Philip Veliz found that lawyers are more likely to participate in pro bono if they are connected to other lawyers who also perform pro bono service.⁶² Elizabeth A. Hoffman found that mentors have a positive effect on attorneys' level of commitment to pro bono.⁶³ Granfield found a number of demographic effects; though he points out that the effects of gender and race are largely indirect. Although women and minorities are more likely to

LAUMANN, BONDS OF PLURALISM: THE FORM AND SUBSTANCE OF URBAN SOCIAL NETWORKS 199 (1973) (examining social structures and networks in urban settings); EDWARD O. LAUMANN & FRANZ U. PAPPI, NETWORKS OF COLLECTIVE ACTION: A PERSPECTIVE ON COMMUNITY INFLUENCE SYSTEMS 9 (1976) (analyzing collective action among social networks).

55. MATHER ET AL., *supra* note 30, at 62.

56. John P. Heinz et al., *The Constituencies of Elite Urban Lawyers*, 31 L. & SOC'Y REV. 441, 451 (1997).

57. Donald D. Landon, *Lawyers & Localities: The Interaction of Community Context and Professionalism*, 70 AM. B. FOUND. RES. J. 459, 484 (1982).

58. Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 L. & SOC'Y REV. 1, 43 (2007).

59. *Id.*

60. Ronit Dinovitzer & Bryant G. Garth, *Pro Bono as an Elite Strategy in Early Lawyer Careers*, in PRIVATE LAWYERS & PUBLIC INTEREST, *supra* note 30, at 115, 131 [hereinafter *Pro Bono as an Elite Strategy*].

61. HEINZ ET AL., *supra* note 50, at 210–11.

62. Robert Granfield & Philip Veliz, *The Social Basis of Volunteer Legal Work: Predictors of Pro Bono in Legal Practice* 35–36 (unpublished manuscript) (on file with Baruch College Center for Nonprofit Strategy and Management Working Paper Series), https://www.baruch.cuny.edu/spa/centers-and-institutes/center-for-nonprofit-strategy-and-management/documents/GranfieldVeliz_TheSocialBasisofVolunteerLegalWorkPredictorsofProBonoinLegalPractice.pdf.

63. Elizabeth A. Hoffman, *Legal Education and Early Career Mentoring: Mid-Career Attorneys' Pro Bono Commitment*, 14 INT'L. J. LEGAL PROF. 81, 93 (2007).

endorse the value of pro bono,⁶⁴ stratified realities within legal practice may limit opportunities to put these ideals into action.⁶⁵

More still needs to be understood about social communities of influence and how pro bono work is translated into capital within these communities. For example, among non-elites, what are the strongest shapers of communities of practice and into what types of capital is pro bono translated? Are the types of capital into which pro bono work is translated related to specific types of pro bono cases? Can mentorship programs be implemented across communities of influence or is it more effective to work within such communities? More research on determinants of communities of practice, how pro bono is translated to capital, and the impact of these factors on the type and quality of services provided is needed.

B. Practice Setting

Research has demonstrated that practices and conventions, such as pro bono norms, can become institutionalized within the organizational setting.⁶⁶ As organizations seek legitimacy within a larger institutional environment, specific practices and policies may be adopted (the formation of pro bono departments within large law firms, for example).⁶⁷ The economic, social, and political all influence norm formation with regard to pro bono, as increasingly such activity is being shaped by the needs of the law practice.⁶⁸

The established practices and conventions have been shown to vary according to workplace setting and size.⁶⁹ Small firm attorneys and sole practitioners, who are most likely to be constrained by resources, tend to define and view pro bono work in terms of opportunities to enhance legal skills and generate new clients.⁷⁰ One study showed that small-town divorce lawyers tend to create professional identities based on the experiential dimensions of practicing, which are rooted in familiarity with local traditions and culture.⁷¹ Many solo and small firm lawyers include in their definition of pro bono instances in which they have written off or written down fees after a client has

64. Granfield, *supra* note 30, at 128, 130; *Pro Bono as an Elite Strategy*, *supra* note 60, at 120–22.

65. See Fiona M. Kay & John Hagan, *Raising the Bar: The Gender Stratification of Law-Firm Capital*, 31 AM. SOC. REV. 728, 728 (1998); *Pro Bono as an Elite Strategy*, *supra* note 60, at 122.

66. See Boutcher, *supra* note 37, at 135 (quoting Cummings, *supra* note 38, at 4).

67. Meyer & Rowan, *supra* note 48, at 352.

68. See STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 129–130 (2004).

69. Granfield, *supra* note 30, at 131; see SCHEINGOLD & SARAT *supra* note 68, at 129.

70. Granfield, *supra* note 30, at 132–33 (citing JEROME CARLIN, *LAWYERS ON THEIR OWN: THE SOLE PRACTITIONER IN AN URBAN SETTING* (1962)).

71. *Id.* at 120 (citing AUSTIN SARAT & WILLIAM FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS* (1995)).

failed to pay,⁷² suggesting that their definition of the pro bono client is more closely intertwined with their paying client population than it would be for large firm practitioners.⁷³ Given this focus on local economy and culture, it is no surprise that small firm and sole practitioners have also tended to be less supportive of mandatory pro bono proposals.⁷⁴

On the other end of the spectrum, it is the big law firms that have driven the institutionalization of pro bono in professional culture, especially over the past several decades.⁷⁵ Between 1998 and 2005, the total pro bono hours produced by the nation's largest law firms increased by nearly 80%.⁷⁶ Scott L. Cummings describes the institutionalization of pro bono and cites a number of reasons for this growth: the accommodation of pro bono to traditional advocacy norms; the dismantling of state-subsidized legal services; cultural values supporting volunteerism and civic engagement; the growth of large firms; and the role of pro bono in attracting law school graduates⁷⁷ and improving a firm's status and reputation.⁷⁸

In 1992, *The American Lawyer* began reporting on the pro bono activity of the AmLaw 100 firms, leading to further institutionalization of pro bono in the larger law firm setting.⁷⁹ In 1993, the ABA initiated "The Law Firm Pro Bono Challenge," which called on big firms to contribute 3-5% of their billable hours to pro bono, with publicized rankings of the most successful law firms.⁸⁰ Large firms have subsequently dramatically increased their formal pro bono policies and establishment of pro bono manager positions within the firm.⁸¹ However, some more recent publications on the topic have criticized large firms for their waning involvement in public service.⁸²

72. See CARROLL SERON, *THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS* 132 (1996); Leslie C. Levin, *Pro Bono Publico in a Parallel Universe: The Meaning of Pro Bono in Solo and Small Law Firms*, 37 HOFSTRA L. REV. 699, 701 (2009).

73. See Levin, *supra* note 72, at 701.

74. Granfield *supra* note 30, at 139.

75. Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2357, 2365 (2010).

76. *Id.* at 2376 (citing Boutcher, *supra* note 37, at 145 & fig.7.2).

77. Cummings, *supra* note 38; see also Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 L. SOC'Y REV. 11, 27 (1978) (citing F. RAYMOND MARKS ET AL., *THE LAWYER, THE PUBLIC, AND PROFESSIONAL RESPONSIBILITY* 204-05 (1972)).

78. Cummings, *supra* note 38, at 6, 18, 39.

79. *Id.* at 40.

80. *Id.*

81. Cummings & Rhode, *supra* note 75, at 2372.

82. Greg Winter, *Legal Firms Cutting Back on Free Services for Poor*, N.Y. TIMES, Aug. 17, 2000, at A1; Susan Beck, *The Justice Gap: How Big Law is Failing Legal Aid*, AM. LAW. (June 29, 2015), <http://www.americanlawyer.com/id=1202730102717/The-Justice-Gap-How-big-Law-Is-Failing-Legal-Aid>.

Through the formalization of pro bono, law firms are having a significant effect on the pro bono commitments of lawyers.⁸³ Some research has suggested that large firm lawyers have more opportunities to engage in prestigious pro bono activities⁸⁴ and derive a greater symbolic value from pro bono work than small firm attorneys.⁸⁵ But it is unclear if pro bono activity is the result of social capital in the large firm environments, or if workplace normative influences have developed. Applying a social capital lens would suggest that association with other lawyers who participate in pro bono as well as whether the firm provides support for volunteer activities are main drivers of such activity in large firms. Because of the institutionalization in many large firms, attorneys in this setting would be more likely to associate with attorneys doing pro bono, have more law firm support for it, and have greater information and access to opportunities.

Typical assessments of pro bono by practice setting focus on quantifying hours contributed by attorneys,⁸⁶ and therefore little is known about how professionals in the various practice settings select cases, set agendas, distribute resources, or train and supervise in pro bono cases. For example, the impact of employer policies that either permit or restrict the use of organizational resources and time need to be examined in more depth to determine whether such policies can lead to an expansion of pro bono activity in the legal profession. Also, some scholars have noted the weakening of law firm cultures over time, as firms grow and become more dispersed over larger geographic regions; yet little is known about how this might impact pro bono activity.⁸⁷ As law firm cultures become more disparate, will this lead to greater local or global economic influences? How do influences exogenous to the law firm impact law firm culture, and how does this vary by law firm size and concentration?

C. Law Schools

Another avenue through which lawyers are socialized and public service norms and values may be transmitted is through legal education. Some studies conducted pre-1990 suggested that elements of the law school environment might actually undermine public service norms.⁸⁸ Debra Schleef finds evidence

83. Cummings, *supra* note 38, at 6.

84. Bryant G. Garth, *Noblesse Oblige as an Alternative Career Strategy*, 41 HOUSTON L. REV. 93, 100 (2004).

85. *Pro Bono as an Elite Strategy*, *supra* note 60, at 131–32.

86. See Boutcher, *supra* note 37, at 144.

87. Steven A. Boutcher, *Rethinking Culture: Organized Pro Bono and the External Sources of Law Firm Culture*, 8 U. ST. THOMAS L.J. 108, 116 (2011); Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1871 (2008).

88. See generally Robert V. Stover, *Law School and Professional Responsibility: The Impact of Legal Education on Public Interest Practice*, 66 JUDICATURE 195, 201 (1982) (finding in a study that 33% of students entering law school were interested in public interest jobs, but only 16% were

that through the law school experience, students learn “vocabularies of motive” related to how lawyers should balance profits, responsibilities to stakeholders, ethical concerns, and their own expressions of self-interest or self-sacrifice.⁸⁹ Robert V. Stover finds that students shift from conceiving of justice as tied to substantive issues such as gender, race, and class to defining justice using procedural terms.⁹⁰ In a study of Denver University Law School, 33% of students initially indicated interest in public service work, but by the final law school term, the figure dropped to 16%.⁹¹ In a study from the University of Wisconsin-Madison, 28% of one entering class felt that opportunities to do pro bono were irrelevant to their job choices; by the end of their second year, this figure grew to 56%.⁹² Finally, James M. Hedegard found that altruism dropped significantly within the first year of law school.⁹³ Although many of these studies did not determine whether or how law schools might be responsible for these shifts, the expectations of peers and professors were found to be related to attitude changes.⁹⁴

In order to reverse these trends and to inculcate service norms, the idea of law school pro bono programming has grown considerably across the country.⁹⁵ In 1987, Tulane Law School instituted the first law school pro bono requirement.⁹⁶ In the early 1990s, many other law schools began implementing service learning pro bono programs and mandatory graduation requirements.⁹⁷ In 1996, the ABA amended its accreditation standards to encourage law schools to provide pro bono opportunities and address obligations of faculty to the public;⁹⁸ and, in 2005, it made law school efforts mandatory rather than

still interested by their final quarter of law school) [hereinafter *Law School and Professional Responsibility*].

89. Debra Schlee, *Empty Ethics and Reasonable Responsibility: Vocabularies of Motive Among Law and Business Students*, 22 L. & SOC. INQUIRY 619, 620 (1997) (quoting C. Wright Mills, *Situated Action and Vocabularies of Motive*, 5 AM. SOC. 904 (1990)).

90. See ROBERT V. STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 96–97 (1989).

91. *Law School and Professional Responsibility*, *supra* note 88, at 201.

92. Erlanger & Klegon, *supra* note 77, at 27 tbl.4.

93. James M. Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, 1979 AM. B. FOUND. RES. J. 791, 835 (1979).

94. Schlee, *supra* note 89, at 619.

95. Melanie Kushnir, *Building and Sustaining an Effective Law School Pro Bono Program with a Baker's Dozen Tips*, 39 SYLLABUS: A.B.A. SEC. LEGAL EDUC. & ADMISSION TO B. 5, 5 (2008), http://apps.americanbar.org/legalservices/probono/lawschools/docs/building_and_sustaining.pdf.

96. Cynthia Adcock, *Shaped by Educational, Professional, and Social Crisis: The History of Law Student Pro Bono Service*, in PRIVATE LAWYERS & THE PUBLIC INTEREST, *supra* note 30, at 25.

97. *Id.* at 38–39.

98. *Id.* at 44.

aspirational.⁹⁹ Today, nearly all accredited law schools have some type of organized voluntary or mandatory pro bono program.¹⁰⁰

In theory, participation in such a program will enhance commitments to public service throughout an individual's professional life.¹⁰¹ Educational experts, mostly studying service programming at the undergraduate level, have expressed support for this hypothesis.¹⁰² They argue that, through service learning, students will experience improved moral reasoning and empathetic responses; will develop a better understanding of social problems and consequences; will better be able to find constructive channels for altruism; and will engage in volunteer activity later in life.¹⁰³ Studies on the effectiveness of such programs, however, have produced mixed findings.¹⁰⁴ There is some evidence that service learning has a positive effect on academic performance, sensitivity to social issues, and reported commitments to pro-social behaviors, but it is not clear if this translates to behavioral differences in the future.¹⁰⁵ In one study, a mandatory service learning program increased willingness to volunteer for those who had pre-existing pro-social inclinations, but not for those who did not.¹⁰⁶ In fact, the latter reported being less willing to volunteer after participating in the program.¹⁰⁷

Studies of the long-term impact of law school pro bono programs on future pro bono activity do not yet exist, and short-term impact studies have found minimal effects of such programs.¹⁰⁸ For instance, Granfield measured general support for pro bono, motivations for performing pro bono, and perceived benefits of pro bono work for lawyers who graduated from three law schools

99. See Kushnir, *supra* note 95, at 5.

100. See *Law School Public Interest and Pro Bono Programs-Summary Chart*, A.B.A. (June 27, 2014), http://apps.americanbar.org/legalservices/probono/lawschools/pb_programs_chart.html.

101. For literature on service learning, see Lisa Dicke et al., *Successful Service Learning: A Matter of Ideology*, 10 J. PUB. AFF. EDUC. 199 (2004); Katherine Karl & Barbara Peat, *A Match Made in Heaven or a Square Peg in a Round Hole? How Public Service Educators Can Help Students Assess Person-Environment Fit*, 10 J. PUB. AFF. EDUC. 265 (2004); Jerri Killian, *Pedagogical Experimentation: Combining Traditional, Distance, and Service Learning Techniques*, 10 J. PUB. AFF. EDUC. 209–24 (2004); Maria J. D'Agostino, *Fostering a Civically Engaged Society: The University and Service Learning*, 14 J. PUB. AFF. EDUC. 191 (2008).

102. See CHARLES C. MOSKOS, *A CALL TO CIVIL SERVICE: NATIONAL SERVICE FOR COUNTRY AND COMMUNITY*, 114 (1988); Marilyn W. Smith, *Community Service Learning: Striking the Chord of Citizenship*, 1 MICH. J. COMMUNITY SERV. LEARNING 37–43 (1994).

103. Jeremy Cohen, *Matching University Mission with Service Motivation: Do the Accomplishments of Community Service Match the Claims?*, MICH. J. COMMUNITY SERV. LEARNING 100–02 (1994).

104. *Id.* at 103.

105. Anne Colby et al., *Higher Education and the Development of Civic Responsibility*, in *CIVIL RESPONSIBILITY AND HIGHER EDUCATION* xxxv (Thomas Ehrlich ed., 2000).

106. Arthur A. Stukas et al., *The Effects of "Mandatory Volunteerism" on Intentions to Volunteer*, 10 PSYCHOL. SCI. 59, 63 (1999).

107. *Id.*

108. Granfield, *supra* note 30, at 131.

with mandatory pro bono requirements.¹⁰⁹ Although the programs did result in greater endorsement of the value of pro bono, compared to those who did not participate in mandatory pro bono work during law school, participants were no more likely to perform pro bono in practice.¹¹⁰ Rhode likewise found no significant association between law school programs and pro bono activity.¹¹¹

Skepticism about the impact of law school programs on future pro bono activity is often framed in terms of the disconnect between the school environment and the practice of law, such that norms developed through legal education may not carry over to the law practice setting.¹¹² Longitudinal studies need to be conducted to test the enduring impact of these programs on future lawyer behavior. Additionally, it is unclear which features of a law school pro bono program most successfully cultivate pro-social behavior. And finally, there is no literature teasing out the difference between mandatory and voluntary programming in the law school environment.

D. Mandatory Pro Bono Efforts

A final lens through which to view pro bono activity is that of regulative effects on the legal profession's engagement with pro bono. There has been considerable debate—and considerable resistance—within the profession regarding whether pro bono should be made mandatory for all licensed attorneys.¹¹³ The ABA's Code of Professional Responsibility, as adopted in the 1970s, provided aspirational considerations for pro bono as a "basic responsibility," but no rule reinforced or mandated such service.¹¹⁴ The impact of this code was not well studied or documented, but some survey research suggests that only a small number of lawyers subsequently made significant pro bono contributions.¹¹⁵ The idea of mandatory pro bono reportedly originated in 1972, when an American Bar Foundation study by F. Raymond Marks and colleagues examined public interest activity and suggested that public service be required as a condition of licensure.¹¹⁶ In 1983, debates over the new ABA Model Rules of Professional Conduct ensued over a proposed requirement of 40

109. *Id.* at 121, 124.

110. *Id.* at 131.

111. Rhode, *supra* note 25, at 457.

112. Erlanger & Klegon, *supra* note 77, at 13 (citing Rue Bucher et al., *Differential Prior Socialization: A Comparison of Four Professional Training Programs*, 48 SOC. FORCES 213 (1969)).

113. See Adcock, *supra* note 96, at 34.

114. *Id.* at 33.

115. See Joel F. Handler et al., *The Public Interest Activities of Private Practice Lawyers*, 61 A.B.A. J. 1388, 1389 (1975).

116. Barlow F. Christensen, *The Lawyer's Pro Bono Publico Responsibility*, 6 AM. B. FOUND. RES. J. 1, 3 (1981) (citing F. RAYMOND MARKS ET AL., *THE LAWYER, THE PUBLIC, AND PROFESSIONAL RESPONSIBILITY* 288–93 (1972)).

hours per year of pro bono service.¹¹⁷ Opposition to the requirement was so strong that the adopted rule included only an aspirational mandate for an unspecified amount of public service.¹¹⁸ This rule was revised in 1993 to specify 50 hours of pro bono per year as an aspirational goal, although this too was not accomplished without considerable debate.¹¹⁹

Many jurisdictions have considered mandatory pro bono reporting requirements, but only nine have imposed them.¹²⁰ Another thirteen states have implemented voluntary reporting requirements.¹²¹ New York recently instituted a rule requiring law students to perform 50 hours of pro bono work as a condition of bar admission, but so far this state is an anomaly.¹²² We have little evidence, unfortunately, regarding the effectiveness and impact of reporting programs. Florida reports that annual pro bono hours grew by approximately 80% a decade after the mandatory reporting program was instituted, but the research did not control for other factors that might have influenced participation over that time period.¹²³ Rebecca L. Sandefur found, based on a multistate study, that policies that requested or required lawyers to report pro bono hours were not correlated with pro bono participation.¹²⁴

117. See Adcock *supra* note 96, at 34 (quoting Dennis A. Kaufman, *Pro Bono: The Evolution of a Professional Ethos*, PBI EXCHANGE, Summer 1992, at 16).

118. *Text of Initial Draft of Ethics Code Rewrite Committee*, LEGAL TIMES OF WASH., Aug. 27, 1979, at 26.

119. MODEL RULES OF PROF'L CONDUCT r 1.6 (AM. BAR ASS'N 1984). ABA Model Rule 6.1 currently begins: "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." *Id.* And Comment [1] reads: "Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases." *Id.*

120. See *Reporting of Pro Bono Service*, *supra* note 3. States that have mandatory pro bono reporting requirements include Florida, Hawaii, Illinois, Indiana, Maryland, Mississippi, Nevada, New Mexico, and New York.

121. *Id.* States that have voluntary pro bono reporting requirements include Arizona, Connecticut, Georgia, Kentucky, Louisiana, Michigan, Montana, Ohio, Oregon, Tennessee, Texas, Virginia, and Washington.

122. Mosi Secret, *Judge Details a Rule Requiring Pro Bono Work by Aspiring Lawyers*, N.Y. TIMES, Sept. 20, 2012, at A25.

123. Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know—and Should Know—About American Pro Bono*, 7 HARVARD L. & POL'Y REV. 83, 94 n.37 (2013).

124. Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 L. & SOC'Y REV. 79, 100 (2007).

IV. THE PRO BONO CLIENT

We know very little about when, why, and how attorneys provide pro bono, to whom these services are being provided, and, most importantly, the impact these services have on the clients. We know that the majority of pro bono services are provided to individuals of limited means, as opposed to organizations that address the needs of persons of limited means.¹²⁵ But even that statement is not as conclusive as it might first sound, as the concept of “limited means” and the very definition of pro bono are subject to interpretation. Moreover, we know very little about the interactions between these clients and attorneys and how these services impact the clients’ lives.

Setting a research agenda for studying the impact of pro bono should include a range of topics. Specifically, research is needed addressing the following: how the marketing and selection processes determines who receives assistance; the quality of assistance provided; the short and long-term consequences for the clients; and how these services compare to other available service alternatives. Additionally, under an ecological view, social communities are indirect clients of pro bono and therefore the impact—both social and economic—on pro bono clients’ communities needs to be measured and understood.

Understanding the marketing and selection processes that determine who receives assistance involves understanding the needs of the client population as well as the types of cases pro bono attorneys select. Client need is a difficult question to study, as many legal needs may go unrecognized or unmet. A 1994 study by the American Bar Association found that 47% of low-income households had at least one legal need in a given year,¹²⁶ yet many of those legal needs never made their way to a lawyer. In what instances, then, do clients end up being matched with a private attorney for pro bono services? Is there a type of client or case that is more likely to be successfully matched with a pro bono attorney? How do the above-discussed findings about the attorney population affect with this process? Would an expansion of pro bono attorney services expand the variety of clients served or would it expand only a limited type of client or case?

The quality of the services provided by pro bono attorneys is another topic that requires answers from the research community. A fundamental step in addressing this topic involves defining the goals of service. In a domestic violence case, for example, success of a case could be defined as having obtaining a protection order or it could be defined by some measure of client safety over a specified period of time. The goal of a housing conditions case might be defined in terms of health outcomes, rather than the specific legal

125. *Supporting Justice III*, *supra* note 2, at vii.

126. *Legal Needs and Civil Justice: A Survey of Americans*, A.B.A. (1994), <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf>.

remedy obtained. And who determines whether these goals were met—the attorney, the client, or a third party agency? What objective criteria can be used? How do attorney motivations, matching processes, and skill sets matter for how and whether services accomplish specified outcomes? Is an attorney motivated by empathy and a sense of duty more likely to provide zealous advocacy than an attorney motivated by career development? Is there a difference in quality of services provided according to communities of practice, workplace setting, law school experience, or regulative conditions?

In addition to determining whether effective services were provided, there are a number of ways to assess the short- and long-term impact on the client. Certainly, whether the client's problem was solved is a starting point, but measuring and understanding what that did for the client's life—for his or her overall safety, economic conditions, health, housing, employment status, etc.—provides a much more robust picture of the impact of such services. Furthermore, the educational component might also be considered: did the process educate the client to improve his or her ability to make good decisions related to the legal problem or other legal issues in the future? Did the process help the client feel empowered from having asserted agency through the legal process¹²⁷ or disempowered by needing to reach out for help?¹²⁸ Did the process instill a sense of trust in the fairness of the system for the client?¹²⁹ Does pro bono service, as opposed to representation by a staff civil legal aid or other organized program, influence any of these factors?

As a policy matter, the efficiency and effectiveness of pro bono as compared to other service delivery options is important to understand. Costs associated with the various service delivery methods, as well as their relative effectiveness, should be compared. While pro bono services are theoretically cost-effective because donated time is fundamental to the process, there are a number of other costs associated: the cost of referral and selection, resource costs, training and education, and time away from billable hours. How does the cost-to-effectiveness ratio of pro bono services compare to other types of service delivery? Are there ways of making improvements to either the costs or effectiveness for any of these methods? Does effectiveness vary according to motivations, communities of practice, workplace setting, law school experience, or regulative conditions? And of course, expanding pro bono or encouraging participation of attorneys who otherwise would not have participated does not

127. See David M. Engel & Frank W. Munger, *Rights, Remembrance, and the Reconciliation of Difference*, 30 L. & SOC. REV. 7, 46 (1996).

128. See Kristen Bumiller, *Victims in the Shadow of the Law: A Critique of the Model of Legal Protection*, 12 SIGNS 421, 433 (1987); Karen Secombe et al., "They Think You Ain't Much of Nothing": *The Social Construction of the Welfare Mother*, 60 J. MARRIAGE & FAM. 849, 853 (1998).

129. Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT'L J. PSYCHOL. 117, 117 (2000); see generally TOM R. TYLER ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY* 75 (1997) (suggesting that "people evaluate their own outcomes by comparing them with the outcomes of others" in a procedural justice system).

automatically lead to a simple augmentation of services. Would engaging more reluctant members of the Bar change institutionalized pro bono norms? Would engaging more reluctant members of the Bar reduce overall efficiency?

A final topic to consider in expanding the research agenda to encompass the impact of services is consideration of the *community* as an indirect client of pro bono. A number of economic benefits studies have been conducted in the civil legal aid arena, showing the ratio of dollars spent by legal aid to dollars flowing into the local economy.¹³⁰ This approach has not been replicated in the pro bono arena, likely because its decentralized nature makes economic measurements like this quite difficult. Still, encouraging better documentation by pro bono attorneys of time spent, resources used, and the financial and social outcomes for the client would be a great way to start thinking about the aggregate impact of pro bono. Beyond economic conditions, social measures might reveal improvements to communities in terms of stable housing, improved education and job security, and family stability, just to provide some examples. Crossing disciplinary boundaries to determine how pro bono services fare in terms of community development and wellbeing could be a very exciting new area of inquiry, the findings of which would be invaluable to the legal services profession as they make tough decisions about allocation of legal resources for the poor.

V. CONCLUSION

Taken together, our current and best knowledge about pro bono shows us a rather complex picture made up of a confluence of personal, professional, and institutional factors. The pro bono attorney tends to stand at the center of this picture, with his or her motivations, resource constraints, and professional life informing the answer to the question of whether this particular person will provide pro bono service, and for how many hours. Without more information, though, programs and policies meant to increase pro bono participation and ultimately provide better access to justice for the impoverished population rest on little more than speculation. We *hope* these policies work; we *hope* these efforts chip away at injustice.

This Paper is peppered with questions requiring further research. But one deeply frustrating trend is the dynamic and situational nature of the pro bono landscape, such that the solution the problem of effectively getting these types of services from private attorneys to people who need help seems to be a moving target. The tectonic plates of the profession, which determine where the bursts of pro bono activity will emerge and when they will be dormant, are constantly

130. Laura K. Abel & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 SEATTLE J. SOC. JUS. 139, 143 (2010) (citing *The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential*, PERRYMAN GRP. 24 (Feb. 2009), <http://nlada.org/D45/Documents/1236008203.14/Final%20Econ%20Impact%20Study%2002-12-09.pdf>).

shifting. Large law firms are growing and merging, diffusing over larger geographic regions, and becoming less connected to local concerns and needs. The legal profession more generally has experienced an increased flow of new attorneys, a consequent proportional decrease of available jobs, and all of this in the context of crushing student loan debt. Technology and communication has changed the way services can or should be delivered and received. And the profession has yet to fully catch up.

Meanwhile, it is notable that we have even less to say about the developments of the impoverished population's legal needs and the methods by which we can best reach them. We know that the vulnerable and disadvantaged experience high rates of civil justice situations, but many do not make it to, much less through, the doors of the legal system. For those who do make it through, we have almost no knowledge of their experiences as they are ushered through the complex web of referrals, convoluted forms and pleadings, impossible fees to be paid, and unfamiliar court procedures. Surely, their social and legal dynamics are no less complex or interesting than the attorneys, yet they receive less attention from the research community.

Finally, a great need lies in the translation of knowledge from research discourse to that of the legal profession. A gap still remains between how research questions are framed and answered and the informational needs of the legal profession. To implement pro bono policy and program changes, the lines of communication need to be opened, whether that means increased contact between the professions, or a cross pollination of experts from one discipline to another. Either way, to the vulnerable population in need of legal assistance, the best expert knowledge is only as good as its translation from ink to practice.

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