

## THE BUSINESS CASE FOR PRO BONO

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Lawyers and law students often ask, “How do you find time to do pro bono work along with all the time you have to spend on regular business?” The answer, of course, is there are extremely strong business reasons for doing pro bono work. These are just a few of them.

### I. CLIENT RELATIONSHIPS ARE OFTEN FORMED AND STRENGTHENED THROUGH ACCESS TO JUSTICE WORK.

It is well documented that most lawyers get most new clients as a result of referrals from other lawyers.<sup>1</sup> Involvement in lots of types of bar

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<sup>1</sup> Cf. *Legal Trends Report*, CLIO 16 (2017), <https://files.clio.com/marketo/ebooks/2017-Legal-Trends-Report.pdf> (showing that most clients find lawyers through other lawyers, family, or

association work can produce close long-term relationships with lawyers who may become clients later on.<sup>2</sup> Access to justice work, however, tends to form more of these relationships, form them quicker, and form stronger relationships than most other types of bar association activity.<sup>3</sup> When lawyers are locking arms for access to justice causes and for clients who can't afford representation, they lock arms closer and faster in pursuit of extremely important common goals. Lawyers who work together in the interest of a low-income client often become fast friends.<sup>4</sup> Lawyers who work on rule changes, systemic reforms, or new technologies in the access to justice space tend to form strong and lifelong relationships as well.<sup>5</sup> These lawyers often refer new matters to their like-minded friends.

For example, the most significant class action I worked on from 2018 to 2020 was a case for a national insurance company. The call to handle that case came quite out of the blue from someone who I did not even know yet. The referral, however, came from a lawyer who sat at a table with me in a public library on a Saturday morning working together to help a pro bono client with her family law and probate problems. When her friend in the insurance company legal department called her to ask who she might retain to handle her class action, the lawyer I worked with at the Saturday clinic recommended me to her friend. That relationship has grown now to three cases, and that insurance company lawyer who first called me has been promoted to a very significant position in the legal department.

Another example would be a publicly-traded company whose leadership I met and became close friends with by working together on our Tennessee Supreme Court Access to Justice Commission.<sup>6</sup> Those relationships not only resulted in strong support for [abafreelegalanswers.org](http://abafreelegalanswers.org), the project which has

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friends); *see also* DOUGLAS DANNER ET AL., *Matters Referred from Other Counsel*, in 2 PATTERN DISCOVERY: TORT ACTIONS § 16:11 (2020).

<sup>2</sup> *See* Charles R. Toy, *Episodic Mentorship: A Professionalism Tool We Should Sharpen*, MICH. B.J., Dec. 2009, at 14.

<sup>3</sup> *See* Taylor Pendergrass, *Getting Something for Nothing: Pro Bono Is an Investment That Pays*, COLO. LAW, July 2005, at 85, 86.

<sup>4</sup> *See id.*

<sup>5</sup> *Cf.* Reena N. Glazer, *Revisiting the Business Case for Law Firm Pro Bono*, 51 S. TEX. L. REV. 563, 584 (2010) (discussing how pro bono work offers unique opportunities for socialization with attorneys who may not normally practice together).

<sup>6</sup> *See generally* *Access to Justice Commission*, TENN. ST. CTS., <https://www.tncourts.gov/programs/access-justice/access-justice-commission-0> (last visited Oct. 6, 2020).

captured my primary attention the last ten years, those relationships also produced a string of assignments from the company, resulting directly from the support from the General Counsel and other senior members of the company's legal department who became my friends from our access to justice work.

Many lawyers view pro bono as a false choice between helping people who desperately need it and casting about for clients and referral sources. Both are noble pursuits, but I find the access to justice work just as effective for client development, if not more effective.

## II. THE RELATIONSHIPS LAWYERS FORM DOING PRO BONO AND ACCESS TO JUSTICE WORK CAN BRING ABOUT HIGHER VISIBILITY AND EVEN LIFE-CHANGING CASES, FUNDAMENTALLY IMPROVING A LAWYER'S ENTIRE CAREER.

For example, one of my former students was in law school when the marriage equality cases were making their way to the United States Supreme Court.<sup>7</sup> My student was involved in this effort through the University of Tennessee's legal clinic.<sup>8</sup> It was decided that strategically they needed to get a lawyer with an image as an establishment lawyer to join the team of lawyers prosecuting these cases. My student unabashedly recommended none other than his father for the task. His father was a former President of the Nashville and Tennessee Bar Associations and was a distinguished wills and estate lawyer with a prominent firm in Nashville. You could not get any more establishment than this family of lawyers.

Even though he had no experience in the area, the father agreed to the assignment and ended up representing the Tennessee plaintiffs in the United States Supreme Court marriage equality case, *Obergefell v. Hodges*,<sup>9</sup> which held that there is a constitutional right for LGBT citizens to marry.<sup>10</sup> His representation in that case opened doors he had never imagined. His appearance before the Supreme Court made him a highly sought-after speaker, and the relationships he formed in the LGBT movement will enrich his professional and personal life for the rest of his life. There are many

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<sup>7</sup> See generally *Obergefell v. Hodges*, 576 U.S. 644 (2015).

<sup>8</sup> *Legal Clinic*, UNIV. OF TENN., <https://law.utk.edu/clinics/> (last visited Oct. 6, 2020) (the longest continually operating legal clinic in the country).

<sup>9</sup> 576 U.S. at 648.

<sup>10</sup> *Id.* at 681.

stories (on a somewhat less grand scale) of lawyers who handled high-profile cases, made new law in their states, and opened up areas of specialty which never would have opened up had their work been confined to paying clients.

### III. PRO BONO WORK CAN PROVIDE OPPORTUNITIES TO BECOME A BETTER, MORE EXPERIENCED, AND SEASONED LAWYER, WHICH MAY NEVER COME OR MAY NOT COME ALONG FOR YEARS ABSENT PRO BONO WORK.

More and more lawyers are being hired to join corporate legal departments right out of law school.<sup>11</sup> Young lawyers in big firms have always complained that it took a long time before they took their first deposition, tried their first jury trial, or handled their first appeal.<sup>12</sup> Pro bono work can solve that problem.<sup>13</sup> Phone calls to the bar association's pro bono coordinator or the Private Attorney Involvement Coordinator<sup>14</sup> for any Legal Aid program expressing an interest in taking a case that would afford these experiences will usually yield an opportunity in short order. A pro bono case, transaction, or entity formation can give a young lawyer, or a senior lawyer trying to break into a new field, the opportunity to get the all-important first and second experiences, which then serve as a springboard for other experiences.<sup>15</sup>

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<sup>11</sup> See *In-House Counsel*, CHAMBERS ASSOC., <https://www.chambers-associate.com/where-to-start/alternative-careers/in-house-counsel> (last visited Oct. 6, 2020).

<sup>12</sup> See Pam Jenoff, *Big Law Dreams*, 13 FLA. A & M U. L. REV. 183, 196–97 (2018) (suggesting that first-year associates more often handle “scut work, document production, and due diligence” rather than depositions and trials).

<sup>13</sup> See Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2357, 2361, 2365 (2010) (asserting that pro bono work provides individual attorneys training and career development).

<sup>14</sup> See *Private Attorney Involvement Coordinator*, NAT’L LEGAL AID & DEF. ASS’N, <http://www.nlada.org/node/23171> (last visited Oct. 6, 2020).

<sup>15</sup> See Richard Tabura, *Pro Bono Tips for Young Lawyers*, AM. BAR ASS’N (Oct. 24, 2018), <https://www.americanbar.org/groups/litigation/committees/mass-torts/practice/2018/pro-bono-tips-for-young-lawyers/>.

#### IV. ACCESS TO JUSTICE WORK ALSO FIGHTS BURNOUT, DEPRESSION, AND SUBSTANCE ABUSE.

It is no secret that our profession has some very unhappy lawyers, burned-out lawyers, and lawyers with substance abuse problems.<sup>16</sup> Research has shown that lawyers who do pro bono work and get back to the roots of why they went to law school to begin with are usually happier and less stressed.<sup>17</sup> They feel that their profession is more rewarding than those who do not do pro bono work.<sup>18</sup> Lawyers who are doing good for others, using the experience and education that we are fortunate to have, feel better about themselves, better about their profession, and better about their decision to become a lawyer.<sup>19</sup> There is joy in doing pro bono work that feeds our souls and keeps our morale where it should be.

#### V. PRO BONO WORK ALSO BENEFITS THE ENTITIES WHICH EMPLOY LAWYERS.

Preliminarily, it should be noted that many lawyers work for Legal Aid programs, other non-profit direct providers, or issues-related entities at lower pay than the private sector.<sup>20</sup> Although these lawyers generally make less money, I have not run into very many in the last forty years that were yearning to get out of their public service job and get into a law firm or a corporate legal department. Lawyers who work for these organizations love their work and are saints among us.

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<sup>16</sup> See Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 47–48, 50–52 (2016) (analyzing the prevalence of substance abuse and behavioral health problems amongst attorneys).

<sup>17</sup> Cf. Maria Z. Vathis, *100 Years of Excellence*, FED. LAW., Sept./Oct. 2019, at 3, 8 (noting that research “shows that regularly practicing acts of kindness and helping others . . . will ease depression [and] reduce stress”).

<sup>18</sup> E.g., Jesse H. Ruiz, *For the Public Good: With Privilege Comes Responsibility*, CBA REC., Sept./Oct. 2019, at 6, 7 (“[T]he most personally rewarding matter I had ever handled was not even a transaction—it was a pro bono litigation matter.”); accord Glazer, *supra* note 5, at 584.

<sup>19</sup> See Vathis, *supra* note 17, at 8.

<sup>20</sup> Sonia Weiser, *Lawyers by Day, Uber Drivers and Bartenders by Night*, N.Y. TIMES (June 3, 2019), <https://www.nytimes.com/2019/06/03/nyregion/legal-aid-lawyers-salary-ny.html>.

As noted above, a robust access to justice life, for any lawyer, reduces burnout, stress, and vulnerability to substance abuse problems.<sup>21</sup> These issues are significant problems for most, if not all, law firms and legal departments.<sup>22</sup> Support, encouragement, and recognition for this work from the leadership in those organizations can result in a happier and more productive legal workforce.<sup>23</sup>

Institutional support for pro bono work also reduces turnover.<sup>24</sup> Lawyers who work in organizations with a strong pro bono culture tend to stay longer because they do not want to leave that positive, supportive culture.<sup>25</sup> Recently, for example, the Tennessee Valley Authority Office of General Counsel launched a pro bono initiative for all lawyers in the legal department.<sup>26</sup> Obviously, the TVA feels that this program will not only benefit the lawyers who work there but will also benefit the organization through lower turnover rates and happier and more productive members.<sup>27</sup>

Pro bono work can bring great notoriety and recognition to a legal department or a law firm.<sup>28</sup> Law firms, individual lawyers, and legal departments often receive very significant and very well-deserved honors for their commitment to access to justice. Almost all state supreme courts have some form of recognition for pro bono work.<sup>29</sup> State access to justice commissions always have some form of pro bono recognition.<sup>30</sup> Local, state,

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<sup>21</sup> See generally David M. Bateson & Tim Hart, *Combating Attorney Burnout*, BENCH & B. MINN., Dec. 2007, at 22 (discussing how burnout is a psychological condition caused largely by work environment).

<sup>22</sup> See *id.* at 23 (discussing the significant economic costs associated with attorney burnout).

<sup>23</sup> See *id.* at 25.

<sup>24</sup> See Esther F. Lardent, *Making the Business Case for Pro Bono*, 2000 PRO BONO INST. 6 (noting that pro bono opportunities can serve as a “training vehicle” and that effective training can prevent “costly turnover”); Bateson & Hart, *supra* note 21, at 25.

<sup>25</sup> See Lardent, *supra* note 24, at 9–10.

<sup>26</sup> *Generating Justice: TVA’s New Pro Bono Program*, CHATTANOOGAN (Sept. 18, 2020), <https://www.chattanooga.com/2020/9/18/415370/Generating-Justice-TVAs-New-Pro-Bono.aspx>.

<sup>27</sup> See *id.*

<sup>28</sup> Lardent, *supra* note 24, at 10.

<sup>29</sup> E.g., *Supreme Court of Texas Pro Bono Program*, ST. B. TEX. APP. SEC., <http://tex-app.org/DrawOnePage.aspx?PageID=81> (last visited Oct. 7, 2020).

<sup>30</sup> Deborah Smith, *Access Brief: Court-Supported Pro Bono Service*, NAT’L CTR. FOR ST. CTS. 1, 2 (Mar. 2014) [nsc.contentdm.oclc.org/digital/api/collection/legserv/id/58/download](http://nsc.contentdm.oclc.org/digital/api/collection/legserv/id/58/download); see also, e.g., *Supreme Court Pro Bono Recognition Program*, TENN. ST. CTS.,

and national bar associations also give out awards for public service and pro bono work.<sup>31</sup>

For example, the Pro Bono and Public Service Committee of the American Bar Association gives the national Pro Bono Publico Award.<sup>32</sup> I am blessed to know several of the award-winning individual lawyers and have friends in organizations who have received that award. I know they consider it to be their highest honor. They know that this honor will follow them for the rest of their lives. Institutions with leadership who have begun new initiatives and programs tend to keep them because successive leadership does not want to stand watch over the dismantling of such a program, and because it would be such a disappointment to the lawyers who do that work.<sup>33</sup>

Pro bono work on an individual or institutional level is work that, although not mandatory, is an important core value as expressed in the Model Rules of Professional Conduct.<sup>34</sup> The profession's commitment to equal access to justice is embodied in the Preamble to the Rules of Professional Conduct.<sup>35</sup> The Preamble, Sections one and seven, establish pro bono work as a clear core value for all lawyers, not just litigators, not just young, not just senior, but all lawyers, to devote time and resources to the improvement of the judicial system and access to justice for all of our citizens.<sup>36</sup> Rule 6 also contains expressions of support for pro bono work as something that all lawyers should make part of their careers.<sup>37</sup>

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<https://www.tncourts.gov/ProBonoRecognition#:~:text=The%20Court%20honors%20all%20attorneys,by%20the%20Tennessee%20Supreme%20Court>. (last visited Jan. 9, 2021).

<sup>31</sup> E.g., Catherine Galloway, *Commission Honors Houston Attorney Gwendolyn Dawson with the Corporate Counsel Pro Bono Award*, TEX. ACCESS TO JUST. COMM'N (June 25, 2018), <https://www.texasatj.org/commission-honors-houston-attorney-gwendolyn-dawson-corporate-counsel-pro-bono-award>; see also *President's Committee on Access to Justice: President's Pro Bono Service Awards*, N.Y. ST. BAR ASS'N, <https://nysba.org/awards-competitions/presidents-committee-on-access-to-justice-presidents-pro-bono-service-awards/> (last visited Jan. 9, 2021).

<sup>32</sup> *Pro Bono Publico Award*, AM. BAR ASS'N, [https://www.americanbar.org/groups/probono\\_public\\_service/projects\\_awards/pro\\_bono\\_publico\\_award/](https://www.americanbar.org/groups/probono_public_service/projects_awards/pro_bono_publico_award/) (last visited Oct. 7, 2020).

<sup>33</sup> See Cummings & Rhode, *supra* note 13, at 2359, 2361.

<sup>34</sup> MODEL RULES OF PRO. CONDUCT r. 6.1 (AM. BAR ASS'N 2020).

<sup>35</sup> *Id.* at Preamble § 1.

<sup>36</sup> *Id.* at Preamble §§ 1, 7.

<sup>37</sup> *Id.* at r. 6.1.

So, pro bono work, on both an institutional and an individual level, carries out the highest ideals expressed in the rules of professional conduct. When business leaders, media, and elected officials, for example, see a lawyer, legal department, or firm carrying out this ideal, it creates a positive image for the institution and for the individual lawyers. The public sees lawyers as “doing their part” to make society better for everyone. This type of work is one of the most important weapons in the fight for a positive image for our profession—something that benefits all of us economically.

So, the next time someone asks, “How can you afford to do pro bono with everything else that you have to do?” just tell them, “I cannot afford not to do it, and I can’t imagine a successful and rewarding professional life without it.”