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The Lawyer's Role in a Contemporary Democracy, Promoting Access to Justice and Government Institutions, Rethinking the Public in Lawyers' Public Service: Pro Bono, Statgic Philanthropy, and the Bottom Line

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Professor of Law and Director of the Center on the Legal Profession, Stanford Law School. A version of this essay appears in Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession (Robert Granfield & Lynn Mather eds., forthcoming 2009). The comments of Paul Brest and survey by Brent Harris are gratefully acknowledged.

RETHINKING THE PUBLIC IN LAWYERS' PUBLIC SERVICE: PRO BONO, STRATEGIC PHILANTHROPY, AND THE BOTTOM LINE

*Deborah L. Rhode**

INTRODUCTION

> Law firms . . . do not support pro bono unless there is a business reason to do so. The bottom line on this question is the bottom line.[1]

The preamble to the American Bar Association's (ABA) Model Rules of Professional Conduct declares, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."[2] One of those responsibilities is the commitment to provide unpaid service "pro bono publico"—for the good of the public. But in practice, pro bono has never been only about what is good for the public; it has also been about what is good for lawyers. What will enhance their reputation, experience, contacts, and relationships? The occasional disjuncture between public and professional interests in charitable work is the focus of this essay. In particular, the concern is that lawyers' own pragmatic interests have marginalized more socially responsible considerations and resulted in inadequate evaluation, strategic planning, and accountability.

That is not to discount the extraordinary contributions of time and talent that thousands of lawyers make. Nor is it to overlook the equally impressive increase in pro bono contributions over the last decade.[3] But it is to argue against complacency. It is a shameful irony that the country

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1. Am. Bar Found., *New Approaches to Access to Legal Services: Research, Practice, and Policy*, RESEARCHING L., Summer 2005, at 6 [hereinafter *New Approaches*], *available at* http://www.americanbarfoundation.org/uploads/cms/documents/rlmoserfund.pdf (quoting Stephen Daniels, Senior Research Fellow, American Bar Foundation) (internal quotation marks omitted).

2. MODEL RULES OF PROF'L CONDUCT pmbl. (2007).

3. Nate Raymond, *A Silver Lining*, AM. LAW., July 2008, at 100, 102 (noting that contributions at American Lawyer 100 firms have more than doubled since 2000). For other firms, see VAULT GUIDE TO LAW FIRM PRO BONO PROGRAMS (3d ed. 2007).

with the world's highest concentration of lawyers has done so little to make legal assistance available to low-income individuals who need it most.[4] Equal justice is what we put on courthouse doors; it does not describe what goes on behind them. Lawyers, both individually and collectively, have a responsibility for the quality of justice that implies a responsibility for effective pro bono assistance. This obligation is too often overlooked in contemporary practice.

I. THE ROLE OF SELF-INTEREST

Whether self-interest matters in public service is part of a long-standing debate about the meaning of altruism. Some branches of philosophy and economics deny the possibility of wholly disinterested behavior.[5] Their assumption is that all reasoned action is motivated by some self-interest—after all, why else would someone act?[6] According to this view, when people attempt to benefit another, it is because they derive personal satisfaction from doing so. And from a societal standpoint, why should their motivation matter? To borrow philosopher Bernard Williams's example, when a man gives money to famine relief, why should we care whether his objective is to enhance his standing with the Rotary Club?[7] So too, what difference does it make if law firms volunteer time less out of concern for social justice than a desire to improve their recruitment, reputation, training, and media rankings. The point is to get their contributions.

Yet, to view public service solely in terms of professional interests is troubling on both moral and pragmatic grounds. As a matter of principle, an action taken because benefiting others feels intrinsically rewarding stands on different ethical footing than an action taken because it will bring extrinsic rewards.[8] Part of what individuals find fulfilling about charitable work is a sense that they are expressing moral values and serving broader

4. For an overview of the inadequacies, see generally DEBORAH L. RHODE, ACCESS TO JUSTICE (2004).

5. *See* C. DANIEL BATSON, THE ALTRUISM QUESTION: TOWARD A SOCIAL-PSYCHOLOGICAL ANSWER 6 (1991); *see also* Robert B. Cialdini et al., *Empathy-Based Helping: Is It Selflessly or Selfishly Motivated?*, 52 J. PERSONALITY & SOC. PSYCHOL. 749, 756 (1987); Reed Elizabeth Loder, *Tending the Generous Heart: Mandatory Pro Bono and Moral Development*, 14 GEO. J. LEGAL ETHICS 459, 467 (2001). *See generally* Melvin J. Lerner, *The Justice Motive in Human Relations and the Economic Model of Man: A Radical Analysis of Facts and Fictions*, *in* COOPERATION AND HELPING BEHAVIOR: THEORIES AND RESEARCH 249 (Valerian J. Derlega & Janusz Grzelak eds., 1982).

6. *See* BATSON, *supra* note 5, at 3–4; DAVID GAUTHIER, MORALS BY AGREEMENT 1–20 (1986); DENNIS C. MUELLER, PUBLIC CHOICE 1–4 (1979); James Andreoni, *Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving*, 100 ECON. J. 464, 464–77 (1990); Robert A. Katz, *Can Principal-Agent Models Help Explain Charitable Gifts and Organizations?*, 2000 WIS. L. REV. 1, 14.

7. BERNARD WILLIAMS, MORALITY: AN INTRODUCTION TO ETHICS 71–72 (1972).

8. Jon Elster, *Selfishness and Altruism*, *in* BEYOND SELF-INTEREST 44, 44–52 (Jane J. Mansbridge ed., 1990).

social objectives.[9] A wide array of evidence suggests that selfless action is good for the self; it enhances satisfaction, health, and self-esteem.[10] Moreover, as a practical matter, encouraging individuals to engage in public service for intrinsic reasons rather than extrinsic rewards serves societal objectives. It is generally less expensive and more effective to rely on internal motivations than on external incentives and sanctions to ensure quality assistance.[11] That is particularly true in contexts like pro bono legal work, where most clients are not in a position to evaluate or challenge the adequacy of aid. Those who provide legal services based on deeply felt values are more likely to do their best than those who are merely fulfilling a firm's hourly quota or improving their legal skills. Some evidence also suggests that lawyers motivated by internalized commitments are the most likely to engage in substantial and sustained service.[12]

Of course, intrinsic and extrinsic motivations are not mutually exclusive; they are often mutually reinforcing. Billable hours credit can ensure that individuals have the time to offer assistance that they are internally motivated to provide. The point is simply that encouraging individuals and employers to view pro bono contributions in terms of their social impact is likely to enhance their performance. A strategic philanthropic orientation also encourages the kind of public service that most benefits the public.

Yet this ethical focus is too often eclipsed by the "business case" for pro bono service. This essay explores the way that lawyers' own pragmatic interests can marginalize more socially responsible considerations. It also chronicles the inadequacies in program design, evaluation, and reporting and accountability standards that have compromised the effectiveness of even the best-intentioned public service initiatives. The full potential of pro bono work is more likely to emerge under a framework grounded in strategic philanthropy. In essence, that framework demands clarity in goals and specific measurements of achievement. Its premise is that those who make philanthropic contributions want the maximum social return on their

9. *See* DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE 58–59 (2005); *see also* CTR. ON PHILANTHROPY AT IND. UNIV. FOR BANK OF AM., THE 2008 BANK OF AMERICA STUDY OF HIGH-NET-WORTH PHILANTHROPY (2008); ALLAN LUKS WITH PEGGY PAYNE, THE HEALING POWER OF DOING GOOD, at xi–xii, 16–18, 45–54, 60, 118–119 (2d ed. 2001); John Wilson & Mark Musick, *The Effects of Volunteering on the Volunteer*, 62 LAW & CONTEMP. PROBS., Autumn 1999, at 141, 150–59.

10. RHODE, *supra* note 9, at 59; *see also* LUKS WITH PAYNE, *supra* note 9, at 17–18, 118–19; John M. Darly, *Altruism and ProSocial Behavior Research: Reflections and Prospects*, *in* PROSOCIAL BEHAVIOR 312 (Margaret Clark ed., 1991).

11. BATSON, *supra* note 5, at 59; Loder, *supra* note 5, at 468; Jane J. Mansbridge, *On the Relation of Altruism and Self-Interest*, *in* BEYOND SELF-INTEREST, *supra* note 8, at 133, 136–37.

12. David Rosenhan, *The Natural Socialization of Altruistic Autonomy*, *in* ALTRUISM AND HELPING BEHAVIOR: SOCIAL PSYCHOLOGICAL STUDIES OF SOME ANTECEDENTS AND CONSEQUENCES 251, 263–67 (Jacqueline Macaulay & Leonard Berkowitz eds., 1970).

investment.[13] For lawyers' pro bono programs, that will require a more reflective process for establishing priorities and evaluating progress.

II. WHAT COUNTS AS PRO BONO?

How much of what American lawyers consider "pro bono" work has the primary purpose or effect of benefiting the public? That is impossible to gauge. Both conventional usage and official bar definitions of pro bono service are quite elastic, and many attorneys take considerable liberties with what counts. Rule 6.1 of the ABA's current Model Rules of Professional Conduct asks that lawyers "aspire" to provide at least fifty hours of pro bono work each year or the financial equivalent.[14] A "substantial majority" of their contributions should go to "persons of limited means" or organizations assisting them.[15] Additional assistance should go to activities that improve the law, legal profession or legal system, or that support "civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations," if payment of fees would "significantly deplete the organization's economic resources or would be otherwise inappropriate."[16]

How many lawyers meet even this expansive definition is unclear. Only seven states require reporting of pro bono contributions.[17] Moreover, many lawyers have included in their reports or in responses to other surveys work such as bar association activities, favors for friends, clients, and family members, and cases where fees turn out to be uncollectible.[18] Based on such reports, the best estimates indicate that lawyers' average pro bono contribution is less than half a dollar a day and half an hour a week, and that much of this assistance does not go to individuals of limited means or to public interest organizations.[19]

Rating systems that employ a more rigorous definition of pro bono find still lower contribution rates, even among the most profitable segments of

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13. PAUL BREST & HAL HARVEY, MONEY WELL SPENT: A STRATEGIC PLAN FOR SMART PHILANTHROPY 15–17 (2008); Peter Frumkin, *Inside Venture Philanthropy*, *in* IN SEARCH OF THE NONPROFIT SECTOR 99 (Peter Frumkin & Jonathan B. Imber eds., 2004).

14. MODEL RULES OF PROF'L CONDUCT R. 6.1 (2007).

15. *Id.*

16. *Id.* The comment to the rule also allows firms to satisfy their lawyers' obligations collectively. *Id.* R. 6.1 cmt.

17. For the seven states, see American Bar Association, State-by-State Pro Bono Service Rules, http://www.abanet.org/legalservices/probono/stateethicsrules.html (last visited Feb. 21, 2009).

18. *See* RHODE, *supra* note 9, at 19, 145–48.

19. *See id.* at 20. American Bar Association (ABA) survey results finding that two-thirds of lawyers report doing some pro bono work are not inconsistent with this estimate, given that the average hourly contribution of lawyers who offered pro bono assistance needs to be adjusted for the numbers who did not, and for those whose contributions involved activities such as bar association service. *See* AM. BAR ASS'N STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 4 (2005), *available at* http://www.abanet.org/legalservices/probono/report.pdf.

the bar. The *American Lawyer* uses a standard developed by the Pro Bono Institute, which tracks the ABA rule but excludes activities designed to improve the law or legal profession, such as bar committee work. Under that standard, only about two-fifths of lawyers in the nation's 200 most profitable firms have contributed at least twenty hours a year.[20] After finding that some of those firms were stretching its definition, the *American Lawyer* recently clarified its standard to exclude board service, cases that generate fee awards that are not donated to legal services, and work for well-endowed government and nonprofit institutions that does not address the needs of the poor or protect civil rights.[21] Many lawyers, however, consider contributions to local government agencies and cultural institutions as public service and want to retain some or all of the court-awarded fees from pro bono cases to support their other nonpaying public interest work.[22] How much effect the *American Lawyer*'s tightened definition will have on these practices remains unclear. However, these disputes over definition are emblematic of more fundamental differences over the rationale for charitable contributions.

III. PRO BONO FOR WHOM? THE PROFESSION'S INTEREST IN PUBLIC SERVICE

The lack of consensus about what constitutes pro bono work is partly attributable to the lack of consensus about why lawyers should do it. Attorneys' public service reflects the same mix of motives that underpins other charitable work. People contribute out of a sense of empathy and obligation, and out of a desire for rewards and recognition.[23] Giving makes givers feel good and translates into tangible personal and professional

20. Aric Press, *In House*, AM. LAW., July 2008, at 13; Raymond, *supra* note 3, at 101 (commenting on Akin Gump Strauss Hauer & Feld LLP's revamp of its pro bono program under which "the average pro bono hours per lawyer rose to 69 last year, almost double its 2006 figure of 35.4").

21. Aric Press, *Pro Bono 2007: Drawing the Line*, AM. LAW., July 2007, at 119 ("We underline Pro Bono Institute's decision not to count hours spent on board service for nonprofits or general bar activities unrelated to performing legal services for poor persons or fulfilling civil or public rights.").

22. Carlyn Kolker, *The Good Fight*, AM. LAW., July 2006, at 105, 105–06, 126, 128; *see also* Amanda Bronstad, *Fees Paid in Pro Bono Cases Are Contested*, NAT'L L.J., Feb. 4, 2008, at 4 (describing controversies over claims of $1 million, and $1.8 million in pro bono cases).

23. NANCY EISENBERG, ALTRUISTIC EMOTION, COGNITION, AND BEHAVIOR 30–57 (1986); PETER FRUMKIN, STRATEGIC GIVING: THE ART AND SCIENCE OF PHILANTHROPY 256–57 (2006); SAMUEL P. OLINER & PEARL M. OLINER, THE ALTRUISTIC PERSONALITY: RESCUERS OF JEWS IN NAZI EUROPE 113, 165–67, 173–75, 228 (1988); RHODE, *supra* note 9, at 7; E. Gil Cary & Mark Snyder, *A Functional Analysis of Altruism and Prosocial Behavior*, *in* PROSOCIAL BEHAVIOR, *supra* note 10, at 133; Martin L. Hoffman, *Empathy and Prosocial Activism*, *in* SOCIAL AND MORAL VALUES: INDIVIDUAL AND SOCIETAL PERSPECTIVES 65, 65–85 (Nancy Eisenberg et al. eds., 1989); Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, *in* CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 31 (Austin Sarat & Stuart Scheingold eds., 1998).

benefits. Lawyers are no exception. When asked about motivating factors for pro bono work, lawyers most often cite personal satisfaction, and then a sense of professional obligation, followed by employer policies and encouragement, and career advancement.[24] For many attorneys, public service offers their most rewarding experiences; it is a way to feel that they are making a difference and to express the values that sent them to law school in the first instance.[25] Work for racial, ethnic, or other disadvantaged groups can also be an important form of "giving back" and affirming identity.[26] So too, for attorneys phasing into retirement, volunteer service is a way to continue making productive use of their skills on a less demanding schedule.[27] Other lawyers cite practical payoffs. Public service can bring recognition, contacts, trial experience, direct client relationships, and expertise in a field in which they would like to obtain paid work.[28]

A sense of obligation may also grow out of the profession's long-standing tradition of pro bono representation, intermittently enforced by the courts and repeatedly affirmed in bar ethical codes.[29] Judges and commentators have often maintained that some reasonable amount of assistance is an appropriate condition of the privilege to practice.[30] As bar leaders have also recognized, the profession has a strong self-interest in

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24. On a scale of one to five, with five being most important, the motivations were: personal satisfaction (4.2); a sense of professional obligation (3.7); employer policies and encouragement (2.7); professional benefits such as contacts, training, and referrals (2.7); reputation and recognition (2.5); and trial experience (2.5). RHODE, *supra* note 9, at 131.

25. *Id.* at 131–32.

26. Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations Among Lawyers*, 41 LAW & SOC'Y REV. 113, 137 (2007) [hereinafter Granfield, *The Meaning of Pro Bono*]; Robert Granfield & Thomas Koenig, *"It's Hard to Be a Human Being and a Lawyer": Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495 (2003); David B. Wilkins, *Address: Doing Well by Doing Good?: The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 HOUS. L. REV. 1 (2004).

27. Marc Galanter, *"Old and in the Way": The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081; Kathryn Alfisi, *The Senior Lawyer Public Interest Project*, WASH. LAW., Dec. 2006, at 30.

28. RHODE, *supra* note 9, at 131–32; Granfield, *The Meaning of Pro Bono*, *supra* note 26, at 139; Karen A. Lash, *Pitching Pro Bono: Getting to First Base with the "Big Firm,"* MGMT. INFO. EXCHANGE J., Fall 2008, at 3, 7–8.

29. *See, e.g.*, Sparks v. Parker, 368 So. 2d 528 (Ala. 1979), *appeal dismissed*, 444 U.S. 803 (1979) (requiring that an attorney provide services to an indigent without just compensation despite Alabama statute); Mallard v. U.S. Dist. Court, 490 U.S. 296 (1989) (requiring attorney to represent indigent inmates despite his objections that he was not competent); Family Div. Trial Lawyers v. Moultrie, 725 F. 2d 695 (D.C. Cir. 1984) (holding that requiring lawyers to represent indigent parents was not involuntary servitude). For bar ethical codes see ABA CANONS OF ETHICS Canons 4, 12 (1908); MODEL CODE OF PROF'L RESPONSIBILITY EC 2-25 (1980); MODEL RULES OF PROF'L CONDUCT R. 6.1 (2007); *see also* RHODE, *supra* note 9, at 3–12.

30. For arguments that pro bono requirements are a reasonable condition, *see* RHODE, *supra* note 9, at 3; Michael Millemann, *Mandatory Pro Bono in Civil Cases: A Partial Answer to the Right Question*, 49 MD. L. REV. 18 (1990); *supra* note 29.

seeing that its members voluntarily assume such obligations. In a society in which over four-fifths of the legal needs of the poor, and two- to three-fifths of the needs of moderate-income individuals remain unmet, bar pro bono assistance can help relieve pressure for more systemic reforms that would reduce the need for attorneys.[31] Empirical research suggests that lawyers have provided more unpaid representation in states where they have experienced greater threats from other occupations.[32] Pro bono assistance also serves the bar's reputational interests. In one representative survey, which asked what could improve the image of lawyers, the response most often chosen was "provision of free legal services to the needy"; two-thirds of Americans indicated that it would favorably influence their opinion.[33]

Legal employers, for their part, have comparable interests in supporting pro bono work. Those interests vary somewhat across practice settings. Particularly for junior attorneys in large firms, nonpaying cases can offer training, litigation experience, client contact, intellectual challenge, and responsibility far beyond what is available in their other work.[34] As corporate clients become increasingly unwilling to subsidize training of young associates, and firms become too highly leveraged to provide career development opportunities to all who need them, pro bono representation fills an important gap. Firm leaders consistently cite these professional benefits, along with recruitment and retention, as primary justifications for their public service initiatives.[35] As one lawyer put it, pro bono work "is an 'enormous morale booster for the entire firm . . . . Everyone feels that they touched a life. . . . No office picnics or parties can give you that.'"[36]

Such work can also enhance a firm's reputation and visibility in the community. The benefits are particularly great for the largest firms. They have the resources to attract and underwrite high-profile cases, and their pro bono performance is ranked by the *American Lawyer* based on the number of hours per lawyer and the percentage of lawyers who contribute more than twenty hours. A firm's pro bono rating also accounts for a third of its score in the competition for membership on the *American Lawyer*'s coveted "A-List" of the nation's top twenty firms. A low score also risks relegating the firm to the magazine's occasional profiles of cellar dwellers. Interviews

31. For unmet needs, see RHODE, *supra* note 4, at 3.

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

33. PETER D. HART & ASSOCS., A SURVEY OF ATTITUDES NATIONWIDE TOWARD LAWYERS AND THE LEGAL SYSTEM 18 (1993).

34. RHODE, *supra* note 9, at 30; Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1 (2005); Granfield, *The Meaning of Pro Bono*, *supra* note 26, at 138.

35. *See New Approaches*, *supra* note 1, at 10 (quoting lawyers); Brent Harris, Fulfilling the Promise of Law Firm Pro Bono (2008) (unpublished manuscript, on file with the Fordham Law Review).

36. RHODE, *supra* note 9, at 31 (quoting Taleott J. Franklin, *Practical Pro Bono: How Public Source Can Enhance Your Practice*, S.C. LAW., Feb. 1999, at 15, 18).

with senior managers leave no doubt that many firms have responded to these rankings by substantially improving their pro bono programs.[37]

IV. LIMITATIONS OF EXISTING PROGRAMS

These bottom-line concerns have led many bar leaders to stress the business case for pro bono initiatives. As one veteran repeatedly emphasized to American Bar Foundation researchers—"often pounding the table—self-interest, self-interest, self-interest."[38] The risk, however, is that the public interest may become an unintended casualty. Problems arise in several forms: the quality of service, the need for recognition, and the criteria for selection.

One chronic difficulty stems from the inadequacy of oversight and accountability. Law firms and media ranking systems compile information on the quantity, not quality, of pro bono work, and clients often lack the knowledge or leverage to raise concerns. A *National Law Journal* cartoon captures the problem. It portrays an obviously outraged defendant being led out of court as his lawyer cheerily concedes, "All right, so you got 50 years to life, but my work was pro bono, so think of all you saved at that end."[39] Particularly where pro bono cases are seen as training opportunities for junior lawyers, and supervisors have little incentive to monitor performance, the result may be ineffective or inefficient service. As one pro bono coordinator of a New York law firm noted, inexperienced legal teams may "research ad nauseam useless issues," or push those issues at the expense of better arguments because they lack "proper mentoring and guidance."[40] "[M]any firms that on paper have a partner in charge on the case do not believe that the partner is doing anything."[41] And ironically enough, when supervisors actively manage the case and prevent time-consuming, pointless effort, they "are making [their] statistics in the *American Lawyer* look worse even though [they] are doing [the work] more efficiently."[42]

In my own recent survey of leading public interest legal organizations, almost half reported extensive or moderate problems with quality in the pro bono work they obtained from outside firms.[43] The more specialized the

37. *A First for Orrick: Stronger Pro Bono Scores Help the Firm Make Its A-List Debut*, AM. LAW., July 2007, at 88; Ben Hallman, *Starting at the Top*, AM. LAW., July 2007, at 92, 95; Harris, *supra* note 35, at 29–30.

38. *New Approaches*, *supra* note 1, at 6 (quoting Stephen Daniels, ABF Senior Research Fellow).

39. S. Harris, NAT'L L.J., Oct. 22, 2007, at 23.

40. Harris, *supra* note 35, at 50 (quoting the pro bono coordinator of a New York law firm).

41. *Id.* (quoting the pro bono coordinator of a New York law firm); *see also* Wilkins, *supra* note 26, at 77–78 (noting that young associates are often not closely supervised).

42. Harris, *supra* note 35, at 49 (quoting the pro bono coordinator of a New York law firm).

43. Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027, 2071 (2008).

work, the more difficulties arose in finding or equipping volunteer lawyers with the relevant skill sets. As the leader of one death penalty organization noted, in his field, "'getting people to the point of real competence takes years, not weeks.'"[44] Although some organizations are willing to provide outside counsel with the necessary background in substantive law, they generally lack staff to "'train a junior associate in how to take a deposition.'"[45]

A related problem involves lawyers who "'want to do pro bono work in theory but in practice, don't want to make the commitment.'"[46] Although many firms go to considerable lengths to ensure that public service clients are not treated as second class citizens, others let bottom-line considerations prevail. These employers look for "'training and opportunities for bored associates, but don't want to give them the time . . . when other paid work comes up.'"[47]

In some cases, the difficulty lies with the associates who are disenchanted with their pro bono options, often because the programs do not provide sufficient choice or credit. Here again, *American Lawyer* rankings may have perverse results if firms pressure attorneys to participate without providing a range of satisfying opportunities. Almost half the lawyers in my pro bono study expressed dissatisfaction with the kind of work their firms permitted.[48] Favors for clients, other lawyers, and their relatives, or partners' "pet organizations" struck many associates as "not truly" pro bono.[49] Many surveys find that attorneys are foreclosed from taking on matters that would offend the political sensibilities of firm leadership or major clients, or are drafted for matters that hold no interest.[50] A typical illustration involved an associate who repeatedly received assignments such as drafting a letter to the Internal Revenue Service on behalf of the Catholic Church that the supervising partner attended. These projects "drive her crazy, since she cannot bill for them, they take lots of

44. *Id.* at 2072 (quoting Brian Stevenson, Director, Equal Justice Initiative). For other research reviewing concerns about lack of expertise, see Cummings, *supra* note 34, at 143.

45. Rhode, *supra* note 43, at 2072 (quoting Mitch Kamin, Director, Bet Tzedek). Other organizations did continuing legal education in areas where volunteers could provide adequate representation, such as school discipline cases. *Id.* (citing Janet Stotland, Education Law Project).

46. *Id.* (quoting Richard Rothschild, Western Center on Law and Poverty).

47. *Id.* (quoting Steven Bright, Southern Center for Human Rights); *accord id.* at 2072 n.236 (Kaufman Atlantic Legal Foundation noting difficulties in relying on firms at "'crunch time'").

48. RHODE, *supra* note 9, at 148.

49. *Id.*

50. For ideological tilt, see *id.* For the reluctance of firms to subsidize work that may conflict with client interests or values, see *id.* at 146; Cummings, *supra* note 34, at 122; Rhode, *supra* note 43, at 2073; Norman W. Spaulding, *The Prophet and the Bureaucrat: Positional Conflicts in Service Pro Bono Publico*, 50 STAN. L. REV. 1395 (1998); Wilkins, *supra* note 26, at 77.

time . . . and she then doesn't have time to work on pro bono projects that she really cares about."[51]

Participants in summer programs have reported similar concerns with required service. Some of those assigned to assist low-income clients have lacked the interest or cultural competence for such work; the result ill serves all concerned.[52] Even firms that make some effort to assess participants' satisfaction do not necessarily act on what they find. At one Los Angeles firm, only a third of summer associates reported that their day of required service at a local legal services organization had been worthwhile, but the attorneys in charge had no plans to scrap the program. The firm paid the organization a substantial sum to provide pro bono work and appeared unwilling to invest the resources necessary to design a more productive approach.[53] All too often, the discontent of junior lawyers or summer recruits may fail to register because they are reluctant to raise concerns if no one asks. And no one feels pressure to ask because those concerns are not one of the major factors driving job choice or firm profits.[54]

Other performance problems arise when relatively inexperienced pro bono attorneys want to call the shots, hog the credit, or make the arguments in important cases. About a fifth of surveyed public interest organizations experienced extensive or moderate difficulties around these issues. Some firms took the position that "'if it's our money, we should have control over spending it.'"[55] Allowing pro bono counsel to exercise that degree of authority has generally been unacceptable to public interest organizations, which have long-term policy objectives to consider.[56] Although many public interest organizations are willing to let cooperating attorneys argue cases and monopolize the associated publicity, that result may not always serve the client or the cause. Often the organization has more experienced counsel and is in greater need of recognition than financially well-off firms. Public visibility provides the psychic income and credibility with donors that are the lifeblood of many underfunded public interest groups.[57] But those concerns may fall by the wayside when firms view pro bono in terms of self-interest rather than societal responsibility.

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51. Susan Cameron, unpublished paper 2 (Nov. 16, 2007) (unpublished manuscript, on file with author).

52. For disrespectful behavior by summer and junior associates, see Alana Nyguen Secret, Law Firm Pro Bono Programs for Summer Associates: More Harm than Good? 4 (2008) (unpublished manuscript, on file with author); Email from Brandon Vongsawad to Deborah L. Rhode, Professor of Law, Stanford Law School (Nov. 13, 2007) (on file with author).

53. Secret, *supra* note 52, at 4–5 (describing Jeffer Mangels's program).

54. RHODE, *supra* note 9, at 149.

55. Rhode, *supra* note 43, at 2071 (quoting John Bouman, Director, Shriver National Center on Poverty). Other directors from Equal Rights Advocates and the Sierra Club expressed similar concerns. *Id.* at 2071 n.231.

56. *Id.* at 2071 (discussing concerns of Irma Herrera, Equal Rights Advocates, and Carl Pope, Sierra Club).

57. *Id.*

A further limitation in lawyers' public service initiatives involves the criteria for selection. Many law firm pro bono coordinators are quite candid about the kinds of cases their attorneys will accept. As a partner at O'Melveny & Myers noted, the "'[w]orst thing in the world is to give [them] a bad experience,'" which means no difficult clients and only cases that "'are likely to be winnable or to achieve some sort of feel-good result.'"[58] The Crowell & Moring firm wants a compelling story—a "'worthwhile client or cause,'" or clear villain, such as "'one of the city's worst slumlords'".[59] For Mannat, Phelps & Phillips, it is critical to show how a case "'will benefit the volunteer'" through opportunities for court appearances, development of negotiating skills, or collaboration with "'an expert mentor.'"[60] "'Perfect for busy partners'" is a "'beautiful phrase'" for certain projects.[61] Such criteria make sense in selling cases, but they often screen out those who need aid most. Unless the firm also provides some general financial support to the referring organization to handle less marketable matters, a cherry-picking strategy may ill serve broader societal interests.

A related problem involves the lack of strategic focus in formulating selection standards. Despite all the discussion about the business case for pro bono, most firms are strikingly unbusinesslike in the way that they structure their programs. The result is missed opportunities for both the profession and the public. Research on strategic philanthropy in general and public interest legal efforts in particular suggests that the most effective approach is to be systematic in identifying goals, designing cost-effective strategies to address them, and developing criteria to measure their achievement.[62] By this standard, most lawyers' pro bono work falls short. Relatively few firms engage in any systematic assessment of community needs or of the most cost-effective use of resources. Seldom do they even survey their own membership about giving priorities or attempt to monitor the satisfaction of clients or the social impact of particular initiatives. When asked about how effectiveness is measured, one Wall Street partner expressed a common view with uncommon candor: "'We are not able to answer this question as it is posed. . . . [W]e cannot opine as to which of our pro bono projects most effectively contributes to the community.'"[63] The result is often a mismatch between public needs, partner priorities, and associate satisfaction. In Maryland, the only state that reports on the distribution of pro bono work compared with the demand for legal

58. Lash, *supra* note 28, at 5 (quoting David Lash, O'Melveny & Myers).
59. *Id.* at 7 (quoting Susie Hoffman, Crowell & Moring).
60. *Id.* at 7–8 (quoting Cristin Zeisler, Mannatt, Phelps & Phillips).
61. *Id.*
62. *See* FRUMKIN, *supra* note 23, at 5–7.
63. Harris, *supra* note 35, at 24–25 (quoting Paul Saunders, member of the Pro Bono Committee at Cravath, Swaine & Moore).

assistance, indigent clients' greatest needs involve family matters, but those cases rank seventh or eighth in lawyers' pro bono contributions.[64]

One obvious reason for the lack of attention to program effectiveness is the lack of accountability for the consequences. As in other philanthropic contexts where the need for help vastly exceeds the supply, those who contribute assistance often face inadequate pressure to worry about recipients' satisfaction or social impact.[65] This is not to suggest that quality concerns are entirely missing. The most well-established public interest organizations, which generally control access to the most interesting, high-visibility cases, can afford to be selective in their choice of outside counsel. Many receive more requests for pro bono work than they can accommodate, so they choose firms that have demonstrated a commitment to effective representation.[66] So too, most lawyers have internalized an ethic of client service and care about their reputation among colleagues and the local community. But even the best intentioned attorneys may operate with unduly flattering self-evaluations when more disinterested forms of oversight are absent.

V. A STRATEGIC APPROACH TO PRO BONO SERVICE

Paul Brest, former Stanford law professor, and now president of the Hewlett Foundation, likes to remind nonprofit organizations that "if you don't know where you are going, any road will take you there."[67] Pro bono decision making often lacks that sense of direction. Many lawyers have not thought deeply about their objectives or have no principled way of resolving conflicts among them. The result is often a "'spray and pray'" approach, which spreads assistance widely in the hope that somehow something good will come of it.[68] Something usually does, but the result is not necessarily the most cost-effective use of resources.

When the amounts of assistance are small, such an ad hoc approach is not particularly problematic. Lawyers making individual decisions about their own contributions can afford to do so based on the same personal considerations that guide other charitable contributions. But decision makers with control over significant investments would benefit from a more systematic approach. Esther Lardent, president of the Pro Bono Institute, notes that too much of current assistance is random and episodic; what is

64. Cynthia Dipasquale, *Pro Bono Reporting Requirements Help Maryland Lawyers Measure Up*, DAILY REC. (Balt.), Feb. 16, 2007.

65. *See* ASS'N OF THE BAR OF THE CITY OF N.Y. FUND, INC. ET AL., PUBLIC SERVICE IN A TIME OF CRISIS: A REPORT AND RETROSPECTIVE ON THE LEGAL COMMUNITY'S RESPONSE TO THE EVENTS OF SEPTEMBER 11, 2001, at 38 (2004), *available at* http://www.probono.net/library/item.54591-Public_Service_in_a_Time_of_Crisis; FRUMKIN, *supra* note 23, at 334; Deborah L. Rhode, *Pro Bono in Times of Crisis; Looking Forward by Looking Back*, 31 FORDHAM URB. L.J. 1011, 1018 (2004).

66. Rhode, *supra* note 43, at 2070.

67. BREST & HARVEY, *supra* note 13, at 7–15.

68. FRUMKIN, *supra* note 23, at 371.

needed are strategies that are sustained, strategic, leveraged, and collaborative.[69]

For organizations, that approach should have at least four critical dimensions:

- A process for identifying objectives and establishing priorities among them;
- A process for selecting projects that will best advance those objectives;
- Policies that encourage widespread participation; and
- A system for overseeing performance and evaluating how well objectives are being met.

In essence, those who make substantial pro bono contributions need to become more strategic in setting goals and monitoring progress in achieving them.

A. *Identifying Priorities and Projects*

Pro bono activities serve multiple goals that often tug in different directions. Yet many lawyers are reluctant to acknowledge or address the tensions. From a prudential standpoint, that reluctance is understandable. One way of avoiding controversy is to offer something for everyone. Many law firms present their programs as serving recruitment and training objectives, while also meeting professional responsibilities and advancing the public interest.[70] The risk, however, is that by failing to be explicit about competing goals, a program that seeks to serve them all equally will serve none effectively.

A more strategic approach requires establishing priorities and developing a structure that reflects them. If the objective is to maximize recruitment and training, employers should ensure a broad range of well-supervised opportunities, offering marketable skills and full billable hour credit for participation.[71] If the primary goal is to enhance reputation and rankings, the program could require minimum contributions from all attorneys and encourage more substantial involvement in high-visibility projects through recognition in marketing, promotion, and compensation decisions. To develop such projects, employers should develop expertise in some specialized area or build long-term collaborations with well-established

69. Esther Lardent, President of the Pro Bono Inst., Comment at UCLA Conference on the Future of Pro Bono (Oct. 3, 2008) (on file with author).

70. Harris, *supra* note 35, at 6–9.

71. Recruiting efforts can also benefit from short-term public interest externships available to especially talented associates. Cummings, *supra* note 34, at 77–78; *see also New Approaches*, *supra* note 1, at 10.

public interest organizations. Both approaches require sustained quality control and financial support.[72]

If one's goal is to maximize social impact, "signature" programs should target compelling unmet needs that participants have a particular interest and capacity in addressing. For example, one Philadelphia firm surveyed its members and local service providers and decided to assist veterans and the elderly;[73] a Los Angeles firm focused on abused and neglected children; and a Silicon Valley firm offered its start-up expertise to local nonprofit organizations.[74] Collaboration between governmental agencies, nonprofit organizations, and private law firms can also achieve results beyond what any of these entities could secure on their own. A model of such cooperation is a coalition between the Los Angeles City Attorney's Office, the Legal Aid Foundation of Los Angeles, the Los Angeles Community Action Network, and private practitioners to cope with housing issues in the city's Skid Row. Each member of the coalition brings distinctive strengths: law firms offer resources and litigation expertise; nonprofits have knowledge of substantive law and community needs; and city prosecutors have special investigative capacities and the leverage of criminal and civil penalties.[75] Such approaches are often cost-effective because the investment in training and contacts pays off in multiple cases.

These goals need not be mutually exclusive. Well-designed programs can offer a range of opportunities that reflect different preferences, talents, and levels of commitment. Clarity about program priorities can, however, help in channeling efforts and determining how much autonomy to give lawyers in selecting projects that may become divisive. Well-publicized tensions have surfaced when attorneys have represented controversial positions in areas such as affirmative action, abortion, and gay/lesbian rights.[76] If a firm's primary objective is to maximize attorney satisfaction, then it makes sense to respect the diverse commitments of its members and provide credit and resources for whatever causes they choose. But if an important goal is to maximize reputation and recruitment, then some attention to the political fallout is prudent. So too, when a central function of pro bono programs is to express organizational values, then employers need a case selection process that reflects broadly held views and is generally accepted as legitimate. Lawyers with different commitments can, of course, advance them on their own time, but they should not expect institutional credit and resources. For organizations with this philosophy, it is not enough to assert, as did one firm leader, that "'I'd like to think [our

72. RHODE, *supra* note 9, 174–75; Rhode, *supra* note 43, at 2070; *see also* Ashby Jones, *Law Firms Willing to Pay to Work for Nothing*, WALL ST. J., June 19, 2007, at B1 (detailing financial implications of pro bono work).

73. Michael Aneiro, *Room to Improve*, AM. LAW., July 2006, at 100, 102 (providing examples).

74. Harris, *supra* note 35, at 27, 45.

75. I am indebted for this example to presentations at a conference on the future of pro bono at UCLA Law School on October 4, 2008.

76. Vivia Chen, *Rise of the Right*, AM. LAW., July 1, 2007, at 114, 115, 116.

choice of cases] reflects values.'"[77] Organizations need a formal process for identifying those values and holding pro bono decision makers accountable for the results.

B. *Maximizing Participation and Quality*

Research on philanthropy in general and pro bono programs in particular leaves no doubt about the strategies most likely to promote involvement. First, organizations need to demonstrate a commitment to public service that is affirmed by their leadership and institutionalized in their policies. According to surveyed lawyers, the reforms most likely to encourage volunteer work included crediting it toward billable hour requirements and valuing it in promotion and compensation decisions.[78] Particularly in organizations that lack a strong tradition of service, leaders need to demonstrate their support in tangible ways; this includes creating an effective administrative structure to identify and oversee appropriate projects. In one firm, pro bono participation rose nearly 100% after the managing partner took every opportunity to stress its importance.[79] In other firms, appointment of a full-time coordinator and personal involvement by leaders has been critical. About half of large law firms now have at least one such coordinator, and their participation makes it possible to pressure nonparticipants.[80] Program administrators can go door to door and note that the firm's chair "'is doing this, what is your excuse?' He's the busiest guy in the firm."[81] A new Association of Pro Bono Counsel enables these individuals to share ideas and coordinate projects.

What does not work, however, is window dressing, or pressure without adequate placement and oversight structures. Offering trivial rewards, like a dinner for lawyers who contribute at least ten hours or iPods for those who meet a mandatory twenty-hour minimum, may send a message other than what is intended.[82] The same is true of programs that fail to ensure sufficient choices, training, supervision, and backup resources.

An analogous point applies to bar association initiatives. Databases, legal needs surveys, continuing legal education credit, referral and volunteer programs, and recognition for exceptional service can all help to

77. *Id.* at 116 (quoting Jeffrey Trachtman, Chair of Pro Bono Committee, Kramer Levin Naftalis & Frankel LLP).

78. RHODE, *supra* note 9, at 150. For examples of how law firms have bolstered their pro bono programs, *see* Aneiro, *supra* note 73, at 100.

79. Harris, *supra* note 35, at 21 ("Hours rose nearly a hundred percent after the 'managing partner took every opportunity at firm retreats and in other speeches to emphasize the importance of pro bono work.'" (quoting Scott Edelman, Chair of the Pro Bono Committee at Gibson, Dunn & Crutcher LLP in Los Angeles)).

80. Daphne Eviatar, *Pro Bono Pros*, AM. LAW., July 2008, at 104.

81. Hallman, *supra* note 37 at 93, 94 (quoting Steven Schulman, former pro bono counsel at Latham & Watkins LLP).

82. *See* Aneiro, *supra* note 73, at 100, 102, 103 (describing Sullivan & Cromwell's dinner and Milbank Tweed's gift of iPods).

increase the amount and quality of pro bono participation.[83] Requiring lawyers to report their contributions can also result in substantial improvements in hours and financial assistance.[84] But initiatives that look like public relations gestures push in precisely the wrong direction. Some efforts in the ABA's recent campaign to promote a "Renaissance of Idealism" fall into this category: billboards advertising good works; exhortatory advisory resolutions; model PowerPoints; and "I Am an Idealist" buttons.[85] Translating the bar's civic obligations into daily practices will require less aspirational rhetoric, and more resources and reforms.

Enlisting students, clients, and the legal media in efforts to pressure legal employers also makes sense. For example, a student-led group, Building a Better Legal Profession, ranks major firms on measures including pro bono commitments and diversity.[86] If a significant number of students act on that information, many employers will respond accordingly. So too, some government and corporate counsel's offices here and abroad have begun considering pro bono records in allocating legal work.[87] If more clients joined a coordinated campaign, involving a broad spectrum of the legal market, the result might be a significant difference in law firm priorities. And if more legal publications published pro bono rankings of more legal employers, the heightened visibility might help improve performance.

C. *Evaluating Effectiveness*

A final group of strategies should focus on evaluation. Employers need to know not simply who contributes and how much, but also how satisfied stakeholders are with their contributions. The ABA Standards for Programs Providing Civil Legal Services to Persons of Limited Means identifies strategies for assessing effectiveness, which include collecting evaluations from participants, clients, referring organizations, and peer review teams.[88]

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83. *See* Siobhan Morrissey, *Helping the Helpers*, A.B.A. J., Jan. 2008, at 64 (describing online National Pro Bono Opportunities Guide developed by the ABA and Pro Bono Net).

84. Since Florida has required reporting of pro bono work, the number of lawyers providing assistance to the poor has increased by 35%; the number of hours has increased by 160%, and financial contributions have increased by 243%. STANDING COMM. ON PRO BONO LEGAL SERV., REPORT TO THE SUPREME COURT OF FLORIDA, THE FLORIDA BAR, AND THE FLORIDA BAR FOUNDATION ON THE VOLUNTARY PRO BONO ATTORNEY PLAN 3 (2006).

85. AM. BAR ASS'N COMM'N ON RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION, RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION: FINAL REPORT (2006), *available at* http://www.abanet.org/renaissance/downloads/finalreport.pdf.

86. Building a Better Legal Profession, a national student organization, grades firms on their diversity and pro bono records. *See* Building a Better Legal Profession, About Us, http://www.betterlegalprofession.org/mission.php (last visited Feb. 21, 2009). The Pro Bono Institute's challenge to corporate counsel now has seventy-five participants who agree to consider outside law firm's pro bono records when allocating legal work. Eviatar, *supra* note 80, at 106; *see also* Adam Liptak, *In Students' Eyes, Look-Alike Lawyers Don't Make the Grade*, N.Y. TIMES, Oct. 29, 2007, at A10.

87. RHODE, *supra* note 9, at 167–69; Wilkins, *supra* note 26, at 83–84.

88. Morrissey, *supra* note 83 (discussing Standard 2.12).

More effort should also address social impact. It is, of course, true, as Albert Einstein reportedly observed, that "'[n]ot everything that counts can be counted, and not everything that can be counted counts.'"[89] In many charitable contexts, the social return on investment is hard to quantify and evaluate.[90] It is generally impossible to do a random, controlled experiment to demonstrate the causal influence of any single strategy.[91] For example, a firm that wants to focus on domestic violence has multiple options. It could,

- assist survivors in filing temporary restraining orders and obtaining appropriate support services;
- partner with a public interest organization to improve public policies; or
- help develop violence prevention and offender treatment programs.

We lack effective tools for calculating the social returns on these strategies. Providing individual services carries the lowest risks of failure but also the least potential for promoting long-term societal interests.

In some contexts, we also lack consensus on what those interests are. Chief Judge for the U.S. Court of Appeals for the Second Circuit Dennis Jacobs made precisely that point in a widely publicized speech before the Federalist Society: "No public good is good for everybody," he noted. "[M]uch of what we call legal work for the public interest is essentially self-serving: Lawyers use public interest litigation to promote their own agendas, social and political . . . [and] for training and experience."[92] As illustrations, Judge Jacobs cited a case in which pro bono Wall Street lawyers held up the eviction of a woman who kept allegedly unsanitary birds in her public housing, and a case in which environmental lawyers who delayed levees that might have averted some of the flooding damage from Hurricane Katrina. According to Jacobs, only some pro bono matters really deserve that label. Among those that meet his definition are "corporate work for non-profit schools and hospitals, and the representation of pro se litigants whose claims have likely merit."[93] But presumably not everything that those schools and hospitals want to do is "good for everybody," and

89. *See* BREST & HARVEY, *supra* note 13, at 15 (quoting Albert Einstein).

90. For the difficulty of finding metrics and increasing transparency in many philanthropic areas, see FRUMKIN, *supra* note 23, at 55–57; Paul Brest, *Strategic Philanthropy and its Malcontents*, *in* MORAL LEADERSHIP: THE THEORY AND PRACTICE OF POWER, JUDGMENT, AND POLICY 229, 237 (Deborah L. Rhode ed., 2006); Bruce Sievers, *Ethics and Philanthropy*, *in* MORAL LEADERSHIP: THE THEORY AND PRACTICE OF POWER, JUDGMENT, AND POLICY, *supra*, at 249, 253; Jon Gertner, *For Good, Measure*, N.Y. TIMES, Mar. 9, 2008, § 6 (Magazine), at 62.

91. *See* BREST & HARVEY, *supra* note 13, at 141–64

92. Dennis Jacobs, Chief Judge, U.S. Court of Appeals for the Second Circuit, Pro Bono for Fun and Profit, Speech Before the Rochester Federalist Society, Rochester, N.Y. (Oct. 6, 2008), *available at* http://www.fed-soc.org/doclib/20081023_DJProBonoSpeech.pdf.

93. *Id.*

what constitutes "merit" often depends on precisely the "social and political" judgments that Jacobs condemned lawyers for making.[94]

Critics like Judge Jacobs are surely right on one point: evaluating public interest work entails subjective decisions about what constitutes the public interest. But that is no reason to avoid the effort, and there are better and worse ways of making such evaluations. As research on philanthropy demonstrates, donors who want to make a difference cannot afford to conflate good intentions with good results.[95] Yet lawyers have a tendency to do just that. They often assume that anything given pro bono *is* pro bono; representation is taken as a good in and of itself, regardless of cost-effectiveness.

A more strategic approach would incorporate criteria similar to those that public interest legal organizations often use in allocating resources and evaluating their efforts.[96] For example, are they meeting needs that experts or client groups consider most compelling? How many individuals are they assisting? If the matter involves policy or work or impact litigation, what are the chances of a long-term legal or political payoff? Will the work help to raise public understanding or empower clients? Is the assistance filling gaps in coverage or bringing some special expertise to the table? What are the other uses of lawyers' time? Might they find better ways to address the sources rather than symptoms of the problems?

An alternative approach is for pro bono providers to partner with well-established public interest organizations that are better equipped to engage in such evaluation. As Steven Teles's study of the conservative public interest movement notes, where long-term impact is hard to predict, the best strategy may be to support the judgments of those highly regarded in the field.[97]

CONCLUSION: BEYOND THE BOTTOM LINE

In today's increasingly competitive legal market, it comes as no surprise that pro bono is increasingly presented as a bottom-line issue. Nor is that strategy entirely misplaced. Convincing lawyers that they will do well by doing good is a key strategy in sustaining charitable commitments. But to present public service purely in those terms is to compromise altruistic impulses and societal objectives. When attorneys talk about pro bono, they generally speak in shorthand. "Publico" has dropped out of the discourse. We can afford to lose the Latin, but not the concept.

94. *Id.*

95. Brest, *supra* note 90, at 247.

96. Rhode, *supra* note 43, at 2057.

97. STEVEN M. TELES, THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT 20, 271–73 (2008).