

Pro bono: good enough?

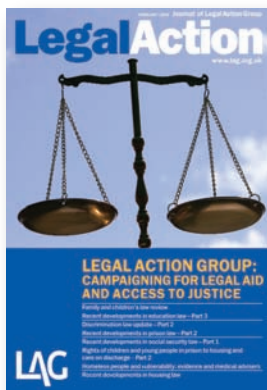
The uneasy relationship between volunteer
legal activity and access to justice



Edited by Jon Robins

SOLICITORS JOURNAL
Justice Gap series

LAG



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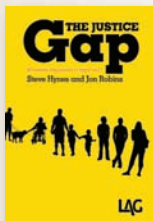
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Steve Hynes and Jon Robins



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Pro bono: good enough?

The uneasy relationship between volunteer legal activity and access to justice



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Introduction



P*ro bono: good enough?* was produced by the legal research company Jures, and is published by *Solicitors Journal*. It was edited by Jon Robins.

Thanks to all the contributors for their time and effort. We are grateful to Michael Mansfield QC for his support. Thanks also to Paul Gilbert, chief executive at LBC Wise Counsel, and Gus Sellitto and Richard Enfield, directors at Jures (jures.co.uk) who also run the specialist PR company the Byfield Consultancy (byfieldconsultancy.com).

This is the second collection of essays in the '*Justice Gap*' series which aim to shine light on different aspects of 'access to justice'. The first collection, *Closing the Justice Gap*, was a call for "radical, exciting and innovative ways to reform and improve access to justice" and came out in April.

In that collection, we invited a number of respected authors to provide "a positive and different contribution to a debate that's stuck in something of a rut caught between government intransigence (as lawyers and those working in the advice sector might see it) and professional self interest (as non-lawyers and ministers might see it)".

With this second collection, we continue the project by looking at the pro bono movement and its relationship with 'access to justice' in the same spirit. The dynamics of the debate around pro bono and 'access to

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justice' are very different. It's an uneasy relationship. Pro bono, we are reminded, is "an adjunct to, not a substitute for, legal aid". It's a neat formulation that misleadingly suggests a clearly delineated relationship between the profession's voluntary endeavours led by the pioneering City firms and the beleaguered publicly funded world. Life's never that simple (and none of our contributors suggest it is).

That said, the pro bono mantra ("...adjunct to, not a substitute for...") serves as a useful reminder that ministers have an obligation to secure access to justice to those who otherwise couldn't afford it. It also makes the point that they shouldn't be allowed to use pro bono as an excuse to cut legal aid.

But we know ministers don't need any such excuse. The legal aid budget went from being demand-led to a fixed budget when New Labour came in and it has been frozen at £2.1bn for the last four years. It now faces a £350m cut under last month's spending review.

For this collection, we haven't been quite as prescriptive in our approach as in *Closing the Justice Gap* where we set our eminent essayists ground rules ("no point scoring, no complaining about the fees") and insisted

they sign up to six 'access to justice principles' (number one being that 'access to justice is the constitutional right of each citizen').

This time around we identified the central theme of the essay (the relationship between pro bono and 'access to justice'). We asked contributors to explore what, in the past, has been regarded as a professional obligation (ensuring that the more vulnerable members of society have the ability to enforce their legal rights) and to question whether that obligation is being met by the pro bono movement.

We don't endorse any of the individual views and I am not going single out any other than Geoffrey Bindman's. It is the only one that appeared in *Closing the Justice Gap* (a revised version is included). It articulated a number of issues that we felt should be aired and we asked contributors to respond to some of the ideas.

Bindman, while applauding "the energy and commitment" of those lawyers committed to pro bono, believes that the movement has become something of a smokescreen whereby the profession evades its wider responsibility to ensure access to justice. He argues for a levy on the larger law firms (a Robin Hood tax for lawyers, if you

will) and makes the ‘ethical case’ for every solicitor to support legal aid.

According to Bindman, in 1949 when legal aid was included as part of the welfare state, “the price paid by the legal profession for avoiding the imposition of a National Legal Service” was its “commitment as a profession to manage legal aid”. “Lawyers whose clients can afford to pay for their services have largely turned their backs on it,” he writes.

A number of contributors invoke legal aid’s origins in the welfare state created by the Attlee government in 1949. The architects of that scheme decreed that state funding shouldn’t be restricted to those people “normally classed as poor” but should also include those of “small or moderate means”.

Increasingly the declining eligibility makes legal aid a statistical irrelevance. Eligibility has dropped from 80 per cent of the population in Attlee’s day to around two thirds by the mid-1980s. The steepest decline came under New Labour and now fewer than one in three of us (29 per cent) qualify for help.

Two events in the last few weeks have helped focus the minds of our contributors. First, there was the establishment last

month of the National Pro Bono Centre which was “a key milestone in the coming of age of the pro bono community”, as the Attorney General Dominic Grieve QC and Edward Garnier QC put it. The following day there was another less happy legal milestone: the government’s spending review, where a small but vital backwater of our public services took a heavy hit.

If pro bono has come of age, how will it respond to the challenges of an increasingly impoverished legal aid sector?

This collection comes out in National Pro Bono Week – but it isn’t part of it. That event rightly celebrates the good and hard work done by solicitors, barristers and legal executives. We don’t mean to detract from that but we do aim to challenge some of the assumptions behind pro bono and do that in a constructive and positive way.

Finally, thanks to all our contributors for their support and for responding to unreasonably tight deadlines.

We hope that you enjoy the collection. We hope it stimulates further debate.

Jon Robins

Find out more about the Justice Gap series at solicitorsjournal.com and jures.co.uk

Contributors



GEOFFREY BINDMAN

Geoffrey Bindman qualified as a solicitor in 1959 and has practised in London since 1960. He founded Bindmans in 1974 and throughout his legal career has specialised in civil liberty and human rights issues. Geoffrey is a visiting professor of law at two London universities and is chair of the Board of Trustees at the British Institute of Human Rights.



TOBY BROWN

Toby was called to the Bar in 2005, undertook pupillage at 9 Gough Square and practised civil, family and criminal law. He is currently based at 3-4 South Square, focusing on a number of pro bono initiatives. He jointly manages the Access to Justice Foundation and chairs African Prisons Project's board of advisers. In 2009 he was chief rapporteur of the Qatar Law Forum 'legal G20'.



ANDREW CAPLEN

Andrew qualified as a solicitor in 1982 and chairs the Law Society's access to justice committee. He started his career as a generalist litigator and has appeared as an advocate in the European Court of Justice. He now deals primarily with commercial property transactions and large-scale commercial mortgaging. Andrew was president of Hampshire Incorporated Law Society in 2001.



PAUL GILBERT

Paul is chief executive of LBC Wise Counsel, a specialist management consultancy for law firms and in-house legal teams with a particular focus on change management, relationship development, strategic planning and personal/team development. He lectures widely in the UK, Europe and in the US. He is vice chairman and a trustee of LawWorks



RICHARD GRIMES

Richard qualified as a solicitor in 1977. He worked initially in a law centre and later as a partner in a law firm. In 1990 he joined Sheffield Hallam University where he established an in-house practice where law students handled real cases under professional supervision. He is now director of clinical programmes at the University of York's Law School.



REBECCA HILSEN RATH

A qualified solicitor, Rebecca has been chief executive of LawWorks since 2008. She is a trustee of the National Pro Bono Centre, Mary Ward Legal Centre and Bar Pro Bono Unit. Rebecca trained at Linklaters and is now a government lawyer on secondment from the Treasury Solicitor's Department; her most recent position was in the Attorney General's Office.



ANDREW HOLROYD CBE

Andrew is managing partner of Jackson & Canter soon to become QualitySolicitors' Liverpool practice. The firm undertakes a wide range of personal client and human rights work. He was awarded a CBE for services to administration of justice in December 2008. Andrew was president of the Law Society of England & Wales from 2007 to 2008.



STEVE HYNES

Steve is the director of the Legal Action Group (LAG). LAG is a charity and carries out policy and campaigning work mainly focused on access to justice and publicly funded legal services. Steve has written extensively and has appeared in the broadcast media commenting on legal aid and access to justice issues. He co-authored *The Justice Gap* with journalist Jon Robins.



NEIL KINSELLA

Neil has been chief executive of Russell Jones & Walker since 2002. Neil joined RJW in 1991 specialising in catastrophic injury cases becoming head of national personal injury. Prior to this Neil was a partner in Pannone Napier and represented victims of disasters. He lectures on various legal subjects including access to justice and new legal business structures.



CRISPIN PASSMORE

Crispin is strategy director at the Legal Services Board. Crispin's role is to lead the development of a long-term strategy for reform of regulation in the legal sector that delivers customer protection, effective competition, consumer choice and a strong and diverse profession. He has worked at the Legal Services Commission and was chief executive of Coventry Law Centre.



ANDREW PHILLIPS

Andrew, Lord Phillips of Sudbury, qualified as a solicitor in 1964 and founded Bates, Wells & Braithwaite in 1970, remaining as senior partner until 1998. He was co-founder and first chair of LAG (1971) and was also co-founder and president of the Solicitors' Pro Bono Group, now LawWorks (1996, continuing). He has had ongoing interest in the third sector.



ATANAS POLITOV

Atanas is director of the Budapest office of the Public Interest Law Institute (www.pili.org) and is responsible for managing Pili's pro bono efforts. He has developed large-scale legal aid reform projects in Bosnia Herzegovina and Serbia, coordinated the contributions of Pili to legal aid reform in other countries, and overseen the global development of Pili pro bono clearing houses.



EDWIN REKOSH

Edwin has been executive director of the Public Interest Law Institute (www.pili.org) since 1997, when he founded the organisation. Since 1991, he has been working to advance human rights principles and promote the development of public interest law throughout Central and Eastern Europe, the Balkans and the former Soviet Republics, and, more recently, in China.



JON ROBINS

Jon is a freelance journalist and director of the specialist legal research company Jures. His work has appeared regularly in *The Times*, *The Observer*, *The Guardian* and the *Financial Times*. He has written several books including *The Justice Gap: Whatever happened to legal aid?* He edited the first collection of essays in this series, *Closing the Justice Gap*.



STEVEN SCUDDER

Steven is counsel to the American Bar Association standing committee on pro bono and public service. During his over 25 years working on pro bono development, he has administered multiple programmes, developed new initiatives, generated new funding through gifts and grants, provided regular consulting services, and has spoken and written extensively on the topic.



ROGER SMITH OBE

Roger Smith OBE has been director of JUSTICE since 2001. He was previously director of the Legal Action Group, director of legal education and training at the Law Society, director of West Hampstead Law Centre and solicitor to the Child Poverty Action Group. He has written widely on matters relating to legal services and edits a bi-monthly digest on international developments.



MICHAEL SMYTH

Michael retired last month after more than 20 years as a Clifford Chance partner. Before stepping down he had overall responsibility for the firm's pro bono activities and headed its public policy and government affairs practice. He was awarded the CBE in 2009 for his pro bono legal work. He chairs Public Concern at Work and the Social Welfare Law Coalition.



SUZANNE TURNER

Suzanne is a partner and the chair of the firm-wide pro bono practice at Dechert LLP. Her practice involves a wide range of human and civil rights litigation. She is a trustee of the Public Interest Law Institute and the Lawyers' Committee for Civil Rights Under Law. From 2002 to 2009 she served as a trustee of LawWorks and on the ABA's pro bono committee.



YASMIN WALJEE

Yasmin is a partner and international pro bono manager at Hogan Lovells. She was appointed pro bono coordinator in 1997, the first appointment of its kind in the UK. She is an international human rights lawyer and has advised on issues relating to compensation for victims of crime and regularly works on public policy issues in this area.



LISA WINTERSTEIGER

Lisa is the development manager at the Public Legal Education Network. She has worked in and around the not-for-profit advice sector in the UK since 1995. Her casework and policy roles have focused on work with marginalised groups in outreach, regeneration and community development settings. She is currently researching a doctorate on philosophy and law.

Tenuous links

Lord Phillips of Sudbury, co-founder, Solicitors' Pro Bono Group (now LawWorks)

“Client relationships are out; price-driven transactional lawyering is in”

Has access to justice in modern times ever been as tenuous as it is today? What one tends to forget is that even 50 years ago, when I started in the law, the majority of the public never darkened the doors of a solicitor's office. They did not have the assets to make that necessary, quite apart from the fact that in the intervening half century parliament has spewed out more statute law than in the previous millennium. Today everyone is drawn into the legal net.

Over the same period the nature of soliciting has also changed beyond recognition. When I started, 95 per cent of all law firms were general practices, the average size being two or three partners (there was a limit of 20 until the late 1960s). Most did some legal aid (no contracts then) and were communally embedded at a time when communities were still strong and when, as a result, local reputation meant everything. The solicitor who simply sat in the office coining it in, declining to take an active pro bono part in civic life, would pay for it in terms of local esteem and lost clients. Private interest and public benefit happily coincided.

Today, not many see solicitors as part of a profession anymore, and certainly not as serving a vocation. We are broadly indistinguishable from any other business committed first, second and third to 'the bottom line'. We have gone from making 'a good living' whereby one took the rough with the smooth to an occupation where, at the high-earning end, one can make a fortune, as many do.

The writing was well on the wall when I co-initiated the Solicitors Pro Bono Group – LawWorks – just over 20 years ago. My belief then, as now, was that, given half a chance, most solicitors – especially the younger ones – want to feel part of the system of justice; want to have an ethos to profess; want, from their position of privilege and power, to contribute to the civic realm. The question was and is how.

In the interim the pro bono movement has advanced steadily, though the going is hard. The plight of the high street general practice, whether or not doing legal aid, has become progressively more difficult. Not only has the legal aid scheme itself been undermined by governments of all persuasions, but the national

breakdown of community life and, with it, the rise of a rabid materialist individualism has changed the culture of lawyering. Client relationships are out; price-driven transactional lawyering is in. Contingency fees, fee farming and commission payments, advertising and (from 2011) external ownership of law firms have (inter alia) done the rest.

The crisis in legal services is of course part of the wider one, which saw the near-death banking collapse we still live with. As regards legal needs, free market dogma, unbuttressed by any public ethic is a disaster. It leaves lawyers free to ignore the needs of those who cannot get legal aid and cannot afford to pay. Which is why, of course, every lawyer occupies a pivotal position in today's law-saturated society. We are, indeed, the indispensable gate-keepers to justice.

The pro bono movement accepts that in some career situations – in-house lawyer to a big company, or employment in an international law firm – there is no organic connection with such needs. They have to be sought out and some quasi-training

“What is clear is that it would be devoid of the most basic professional morality for the best paid lawyers to contribute least to the common weal”

undertaken if the most pressing needs of poorer citizens are to be addressed.

But what is clear is that it would be devoid of the most basic professional morality for the best paid lawyers to contribute least to the common weal.

The joke in all this is that those who do pro bono seem to get more from it than they give to it. Again and again one hears from junior solicitors in large law firms how indispensable their pro bono contributions are to their peace of mind, to their sense of fulfillment and connection to justice and society at large. So often it provides the lawyer with the chance to help someone in plangent need with an eventual effect that fundamentally improves their life.

Of course, pro bono work is no substitute for legal aid and it was gratifying to hear the new Attorney General, Dominic Grieve QC MP, say as much, unreservedly, at the splendid reception at the law courts in The Strand on 19 October to celebrate the opening of the joint pro bono offices in Chancery Lane. But in times of public expenditure stringency there is no point in pretending that the impact on an already damaged legal aid scheme does not further hit access to justice and so increase the need for all solicitors to lend a hand.

Equality before the law is an ancient boast, recognised since the Magna Carta. Indeed, it is surely the essential bedrock of democracy.

That equality has two essential elements. The first, open courts and an impartial judiciary, is with us. The second, truly accessible legal advice and representation, is palpably not.

I hope this excellent compilation of essays, which flesh out that failing, written by people who are committed to its mitigation and eradication, will help stimulate an ever wider pro bono contribution from lawyers everywhere.

What money could buy

Sir Geoffrey Bindman, founder, Bindmans

In the early 1960s I spent my Monday evenings at my local Citizens Advice Bureau as what was then known as a ‘poor man’s lawyer’. The problems were usually housing, employment, immigration or crime or family related – far removed from the experience at that time of myself and most of my colleagues, whose day jobs in the City or West End rarely confronted us with individual clients at all, let alone those suffering from legal difficulties associated with poverty or social disadvantage.

The clients often gained helpful insights and the lawyers benefited from seeing an unfamiliar side of life. But problems were rarely solved without a referral to a solicitor in regular practice. The reason is simple: you cannot carry forward a negotiation or a correspondence with an opposing party (usually a corporation or public authority) – let alone litigation should it be necessary – at a weekly evening session. Life moves too quickly. Serious legal problems need continual attention. My pro bono contribution at the CAB was peripheral, and an inferior substitute for properly resourced legal representation.

Yet, of course, there has to be a role for the many lawyers operating in the commercial sphere who are committed to access to justice for all and who are ready and willing to do

whatever they can to promote it by practical action. All lawyers should follow the precept of Francis Bacon: “I hold every man a debtor to his profession, from the which as men of course do seek countenance and profit, so ought they of duty endeavour themselves, by way of amends, to be a help and ornament thereunto.” The issue is how they can best make their contribution.

In May 1994 the Law Society published Solicitors Serving Society, the report of its Pro Bono Working Party. The six members covered a wide spectrum of the profession, though weighted in favour of large City and provincial commercial firms. I was the only member of the working party whose firm could be said to serve predominantly the needs of the disadvantaged and vulnerable.

We carried out a survey of the free services provided across the country and were impressed by their range and variety. We had no difficulty in agreeing that pro bono was a duty and a benefit to the public to which lawyers ought to commit themselves. We were also clear that pro bono could never be a substitute for legal aid, which must remain a public responsibility to be funded by the taxpayer.

Paying with profits

I tried to persuade my colleagues that giving

free advice and representation was not only insufficient but that the well-intentioned commercial lawyers – as I had found in my CAB – poorly placed to provide it. They lacked either the time, access or skill – sometimes all three. I proposed that private practitioners could help best by contributing a proportion of their profits to a fund to support legal aid.

There were models in other countries, including the United States, Canada and Australia, of funds created by lawyers for this purpose. One source of funding was the interest on bank deposits which in those countries had hitherto been retained by the banks. In the UK, interest, where not payable to the clients, is a windfall retained by the lawyers.

My colleagues in the working party were opposed to a compulsory levy on solicitors but recommended the establishment of a fund to be supported by voluntary contributions. When our report came before the Council of the Law Society, however, it decided to consult some of the large City firms to see if they would support a voluntary fund. Without their support, it was reasoned, a fund would never get off the ground. The result of the consultation was a resounding thumbs down. So the idea was dropped.

Our working party nevertheless achieved something. It prompted the formation of the Solicitors Pro Bono Group – now called LawWorks – which has organised free assistance from lawyers for a significant number of people who otherwise might not have obtained it.

But I remained, and remain, sceptical that voluntary pro bono activity, conducted at the whim of individual lawyers and firms can come close to satisfying that professional obligation so eloquently described by Bacon in the 17th century. Even in 1994 the profits of the commercial firms were substantial. They could well afford a financial contribution to unmet legal

need as well as the contribution in kind which pro bono usually means.

Paul Boateng, then a shadow justice minister in the Labour opposition in parliament, had proposed a levy on the legal profession to support legal aid. When Labour was elected to government in 1997, Boateng was not appointed to the post he had been shadowing and the levy proposal was not pursued by the new government.

Since 1994, however, there have been serious efforts on the part of government and members of the profession to develop pro bono. Lord Goldsmith, when Attorney General, initiated a national pro bono coordinating committee and appointed Michael Napier, a leading solicitor with much legal aid experience as his “pro bono envoy”. Napier made it clear that “pro bono work should not be any form of substitute for public funding of legal services at the level that the Treasury says the taxpayer can afford”.

A supportive role

In 2008 the Access to Justice Foundation, a national charity, was launched. It is an initiative backed by the Law Society, Bar Council, Institute of Legal Executives and the Advice Services Alliance. A national network of regional legal support trusts has also been established. They have raised funds mainly by sponsoring walks in which a number of well-known lawyers have taken part.

On 1 October 2008, section 194 of the Legal Services Act 2007 came into force. It provides that when a successful party in litigation is represented pro bono the court may order the loser to pay costs to the foundation. In 2009 an award of £20,000 was made in one case to the foundation. There may have been others, and the income from this source may grow.

As a result of its fundraising the foundation has already started making grants. Lord Goldsmith announced several of these at the

National Pro Bono Conference in November 2009, including support for essential IT costs to Gloucester Law Centre and Streetwise Community Law Centre, a grant to Devon Law Centre for training its lawyers, and to the Asylum Support and Appeals Project towards the cost of interpreters.

The foundation also stresses in its statement of aims that “pro bono assistance complements, but is not a substitute for, legal aid (i.e. publicly funded help). In the same way with the foundation – it is directed to supporting the delivery of pro bono advice or assistance, but never in place of the legal aid system.”

What makes me uneasy about this approach is that it takes for granted the polarisation of the profession. Legal aid is seen as the exclusive concern of the government and the embattled and marginalised band of solicitors who continue to do legal aid work. In 1949 the price paid by the legal profession for avoiding the imposition of a national legal service was its commitment as a profession to manage legal aid. Lawyers whose clients can afford to pay for their services have largely turned their backs on it.

In spite of structural changes since 1949, the ethical case for every solicitor to support legal aid remains clear. Promoting pro bono does not address this obligation. In the present dire state of legal aid, pro bono is like donating deck chairs to the sinking Titanic.

Yet the large City firms and commercial Bar, who would not dream of taking a legal aid case, continue to boast profits which provide their senior members with annual incomes above £1m. Lord Justice Jackson’s recent report on costs in civil litigation disclosed that while legal aid pays £70 an hour, taxing officers are allowing hourly charging rates up to £400 for senior solicitors who are privately paid. For commercial work charges may be much higher still.

In these circumstances, a profession which rejects even a voluntary levy should be prepared to face a compulsory one. The government could provide a sweetener by allowing tax relief on the amount levied.

Addressing the problem

It is true that we lack a mechanism for the profession to give financial support directly to legal aid. This is a logistical problem which needs to be addressed. The working party in 1994 envisaged contributions linked to firms’ profit levels and their income from interest on client accounts. The fund need not duplicate government responsibility but could provide research facilities, scholarships, grants to set up legal aid practices in areas of need, and subsidies to provide legal aid firms with a reasonable income.

The fear that a parsimonious Treasury would use such a fund as an excuse to reduce legal aid funding even more is real but surely we know now that governments need no excuse. Paradoxically, a commitment by the profession to put some of its own profits into legal aid could increase pressure on the government to do more. Politicians can be complacent while the public believes that lawyers are greedy fat cats. Donating money for legal aid could change the image.

I applaud the energy and commitment of Lord Goldsmith and others who have done so much to develop pro bono in recent years, but I would also like to see them apply their wisdom and good will to the much more vital task of getting the whole profession behind a legal aid scheme which was once the envy of the world but is now facing terminal decline.

This is an updated version of Geoffrey Bindman’s article published earlier this year in *Closing the Justice Gap*

Coordinated action

Michael Smyth CBE, formerly Clifford Chance pro bono partner

“It is in the interests of any ambitious corporate law firm to exhibit a commitment to civic participation, the technical and human development of its lawyers and intellectual debate”

“**[Nobody should be]** financially unable to prosecute a just and reasonable claim or defend a legal right,” the supporters of the Legal Aid and Advice Act claimed when the bill became law on 30 July 1949.

Sixty year later, Bar chairman Nicholas Green QC reminded us that: “The proper funding of civil and criminal rights is fundamental to the rule of law and, as such, underpins our democratic way of life.”

The period between these two comments is a telling backdrop to all discussion of legal services delivered free of charge. Unequal access to legal remedies undermines the rule of law; and a reduction in state support will likely widen inequality of access to legal remedies. A year ago, the fact that only 29 per cent of the population of England and Wales was eligible for legal aid, compared to 50 per cent in 1997, looked like one of New Labour’s less proud legacies. As we await the coalition government’s plans for legal aid, an eligibility level met by three out of ten citizens might come to be fondly remembered.

In 2008/09, the civil legal aid system provided over one million acts of assistance, delivered either face to face or over the telephone. Over 145,000 certificates to fund civil proceedings were issued. At a time

when most of those familiar with the pro bono outputs of the larger City law firms would be delighted were the lawyers in those firms regularly to contribute, say, 50 pro bono hours each year, it is perhaps stating the obvious to observe that the pro bono sector will never be in a position to match in scope and breadth the services currently provided by legal aid lawyers.

So, what is the best way to maximise the value of the contribution that lawyers acting pro bono can make towards the delivery of specifically social welfare law advice and representation to those who cannot afford to pay? This is an important moment to consider exactly what we have meant over the last ten years when we have said that pro bono is not a substitute for legal aid but rather a complement to it.

I believe it is in the interests of any ambitious corporate law firm to exhibit a commitment to civic participation, the technical and human development of its lawyers and intellectual debate. A thriving pro bono practice has an important contribution to make in each of these spheres. I also think it is right to find ways of manifesting the integrity of our liberal profession. One way to do this is for its better resourced elements to advocate for and practically support the delivery of free legal services to those who need them.

There are over 200 partners in Clifford Chance's London office where the firm currently employs around 760 associates and trainees. Together, these groups recorded over 33,000 pro bono hours in 2009/10.

The firm acts on a pro bono basis for a wide range of international, national and community-based NGOs and charities.

In addition, the firm runs 11 institutional pro bono programmes. The focus of the largest and most longstanding of these is on the delivery of free social welfare law services to the disadvantaged in London. That commitment is grouped under three broad programmes which embody what the firm has learned over the last generation about harnessing corporate law firm expertise in the delivery of frontline legal services:

Drop-in clinics

Clifford Chance lawyers provide free legal advice at four drop-in clinics in Canning Town, Stratford, Bethnal Green and Tooting each week. A fortnightly service operates on the Isle of Dogs and a monthly rota at the Citizens Advice Bureau to be found in the law courts. In 2009/10 over 200 lawyers took part in this programme, estimated to increase the capacity of these advice agencies by around 2,000 appointments per annum. In addition, the firm provides financial support to the advice centres to cover the administrative costs they face in running law clinics.

The concern raised most frequently about this model of pro bono delivery is that it requires corporate lawyers to advise in areas of law outside their expertise. In my firm we have sought to guarantee the quality of work delivered by:

- a) ensuring that experienced solicitors are present at each advice session to

“The fact that the larger firms recognise that pro bono provision is part of their licence to practise should never relieve others of the duty to do more”

- support more junior volunteers;
- b) running monthly in-house training sessions each year on the core social welfare law areas – volunteers can also access the extensive social welfare law training provided by LawWorks;
- c) developing dedicated online social welfare law know-how in house and providing access to the best external social welfare law databases;
- d) hosting sessions at which training is provided by specialist NGOs and law firms; and
- e) employing a lawyer with ten years’ experience of legal aid and social welfare law to oversee the day-to-day running of the programmes.

In *Closing the Justice Gap*, the Jures report on access to justice published by *Solicitors Journal* in March, Sir Geoffrey Bindman observed that “you cannot carry forward a negotiation or correspondence with an opposing party... at a weekly advice session”; but that only focuses on process. In reality members of the larger firms, including my own, have developed systems that enable advice to be provided to disadvantaged clients between sessions which may often lead, for example, to the successful resolution of high-impact consumer disputes.

Free advice and advocacy

Clifford Chance has a ten-year relationship with the National Autistic Society (NAS) as part of which the firm’s litigators provide free advice and representation to parents challenging the level of additional provision provided by local authorities in respect of their autistic children’s special educational needs (SEN).

During that time, the firm has undertaken 115 cases and secured a successful outcome in 87 per cent of them. Earlier in 2010, it intervened on behalf of NAS at the Supreme Court.

The success of this programme has lain in developing a narrow but deep expertise in SEN law and creating an infrastructure that has ensured the retention and dissemination of that expertise over time – 225 lawyers have been involved in the programme since its inception.

The key features of the infrastructure that the firm has created to make the programme sustainable are:

- a) **partner ownership:** the programme has been led from the outset by the same litigation partner;
- b) **mentoring:** all new volunteers are provided with a comprehensive starter pack and an experienced volunteer to act as a mentor when they start their first case;
- c) **know-how:** the firm now has extensive know-how on SEN, autism and education law available on its intranet; and
- d) **training:** training is provided to all volunteers on an in-house basis with valuable support from Matrix Chambers. Volunteers are able to attend Matrix's regular education law roundtables and call on specialist counsel there for technical support.

The firm has developed a programme that mirrors many of the successful features of the NAS model in undertaking free advice and representation for victims of violent crime, challenging compensation awards before the Criminal Injuries Compensation Appeals Panel.

It is also a year into a third manifestation of this approach, representing asylum seekers who are challenging the refusal or withdrawal of subsistence benefits pending the completion of due process in respect of their asylum application. Other law firms do the same and Clifford Chance is not unique.

An institutional relationship

Over the last 15 years, Clifford Chance has developed a comprehensive institutionalised relationship with Law For All, one of the leading not-for-profit providers of social welfare law in the country. The two organisations have worked together to customise a relationship capable of enhancing Law For All's capacity to meet the needs of its clients. The key features of the relationship are:

- a) The annual secondment of four FTE lawyers by quarterly rotations: secondees typically increase Law For All's new client appointment capacity by about ten per cent per annum. In 2010 they enabled Law For All to see an extra 1,500 clients. In addition, they increase the firm's ongoing casework capacity by about 25 per cent. Secondees also provide advocacy in tribunals for which legal aid is not and has never been available, thereby enabling Law For All to provide many of its most vulnerable clients with more comprehensive support than the legal aid system allows for. The trainees are supervised by Law For All's solicitors and are appraised under Law For All's procedures.
- b) Law for All can and does refer individual pieces of casework to solicitors at Clifford Chance, thereby increasing Law For All's capacity to meet clients' demands.
- c) Clifford Chance acts as Law For All's own solicitors on a pro bono basis,

typically providing employment, real estate and forensic accounting advice.

d) Clifford Chance also provides extensive non-legal, back-office support on a pro bono basis; for example in pensions, IT, health and safety and tax. It recently paid for a new server and its installation at no cost to Law For All.

This support enables Law For All's full-time legal staff to do what they are best at: the provision of specialist, social welfare law support. They are freed of many of the managerial and non-core burdens that would otherwise require to be dealt with.

Lessons learned

These programmes share the following features:

- partner ownership and wider institutional buy-in on both sides;
- appropriate and proportionate levels of supervision and training; and
- continual dialogue to understand exactly what form of support will add most value to their work.

Effective partnerships

Much of Clifford Chance's best pro bono work in the social welfare law space has deliberately been undertaken where legal aid has not been available. We shall soon know those areas of law which will be removed from the scope of the legal aid scheme altogether.

Working in partnership with single-issue charities provides the pro bono provider with access to significant numbers of clients requiring a narrow expertise. It is feasible to institutionalise a narrow expertise reasonably quickly. Firms new to pro bono might want to seek out a

relationship of their own.

This debate should not ignore the yawning gaps in pro bono provision outside London. The fact that the larger firms recognise that pro bono provision is part of their licence to practise should never relieve others of the duty to do more.

The law firms should redouble their advocacy on behalf of the legal aid and advice sector, in particular by continuing to press on the government the economic benefits of free legal advice – not least in terms of costs saved elsewhere in the welfare system.

Other professions should be exhorted to emulate the pro bono work of the lawyers. How many cases founder where the disadvantaged client represented free of charge by a lawyer cannot meet the fees and expenses of a non-legal specialist?

More than anything, there is a need for coordination of the efforts of the pro bono sector. If I am right in thinking that Clifford Chance's twinning arrangements with Law For All provide a template for effective, institutionalised partnership between the corporate and social welfare law sectors, there is currently nowhere I can take that template to encourage its dissemination. It might be said that pro bono's emergence as another area of competitive activity militates against the adoption of one firm's good idea by another.

If there is an appetite for exploring how law firms might do more than manage pro bono programmes as well as they can but in isolation from each other, and so to raise the ambition for the scalability of the pro bono sector's outputs, a forum that the major stakeholders buy into needs to be established as quickly as possible. It might even need to be a quango.

A valuable supplement

Roger Smith OBE, director, JUSTICE

“Whatever the temptation, government must see pro bono services as a bonus to be fashioned around the needs of the giver rather than as anything which can be taken for granted and made part of a structured national scheme of provision. To argue for anything else is cynical or naïve”

The key to understanding pro bono is to see it in context and to be clear that integral to its provision is enlightened self-interest. That is, in no way, to diminish its value. JUSTICE is hugely dependent on the voluntary contribution of solicitors, law firms, chambers and individual counsel. They provide us with venues, legal assistance with third-party interventions, grants and donations, lecturers and expert advice. We would not have the same clout without all this assistance. However, pro bono – in the sense of free legal services delivered by lawyers and counsel – must be seen within the context of its inherently voluntary nature. There are good commercial reasons for its growth that both define and limit how pro bono services can be deployed.

Whatever the temptation, government (and any other observer) must see pro bono services as a bonus to be fashioned around the needs of the giver rather than as anything which can be taken for granted and made part of a structured national scheme of provision. To argue for anything else is cynical or naïve.

British lawyers have always given free legal advice and assistance. However, over the last decade pro bono services have moved to a new level of visibility,

organisation and sophistication. The incentive for delivery of any particular pro bono legal services will lie somewhere along an axis that runs, at one end, from self-promotion and, at the other, professional duty. Historically, lawyers in this country have participated in their communities; chaired local committees and organisations; assisted individuals for no charge. Free legal services, like the poor, have always been with us.

Changing ways

There has, however, been a shift in the form of provision and the nature of the provider. Until a decade or so ago, high street practices benefited from developing referral mechanisms which maximised the number of clients. The occasional free case was seen as a loss-leader. Help a scout troop to buy a hut and every parent was a potential client.

But the high street has changed. In particular, the profitability of legal aid has declined and funding is now based on contracts for set numbers of cases – at least within the fields of civil and criminal litigation. Consequently, legal aid practitioners have little incentive to give free services in the hope of making contacts that lead to more cases. Indeed, the position is quite the reverse. The economic imperative is to limit demand to what is contractually required.

The historical pattern of the local solicitor who assists at the local Citizens Advice Bureau as an honorary legal adviser is, therefore, fading. Practitioners at the publicly funded end of the provision consider they are already acting pro bono on the earnings they are receiving – a point they frequently make.

Extensive commitment

Among solicitors, pro bono is a phenomenon

of a completely different class of firm – the large corporate. The commitment of such firms is extensive. Allen & Overy's website, for example, says last year its lawyers "donated over 55,000 hours of their time worth over £16.5m". Clifford Chance's announces it is "important that Clifford Chance people use their talents and resources to help others". Linklaters' site reports its appointment of a first global pro bono partner in 2009. Slaughter and May's proclaims: "There is a strong appetite for pro bono among the firm's lawyers and we offer a range of opportunities to participate."

So, why all this activity and commitment? The coordinator of one of the best of these firms gives five reasons why her firm devoted real resources to its pro bono operation:

- Professional obligation.
- The work provides an interesting way to develop skills. It breaks the insularity of many elements of corporate practice and fosters a cross-fertilisation of knowledge, skills and client contact. At her firm, pro bono work was valued so highly that it is included within staff appraisal as a way of encouraging a culture.
- Marketing. The firm's annual pro bono report is used at beauty parades and potential clients do sometimes ask. The report allows clients to be told of the firm's commitment.
- Recruitment and retention. Pro bono helps to keep staff interested and operates as an enticement to new entrants.
- Fostering a sense of community with the firm. A weekly newsletter was circulated around the firm where pro bono engagement was something that everyone from secretaries to partners could understand.

The key to using pro bono from large

corporate firms in the cause of access to justice is to maximise the pull of each of these factors. Third-party interventions or judicial review applications represent one of the easiest matches between the interests of justice and those of counsel and litigation departments willing to act for free.

Take two examples from our own work. JUSTICE coordinated the joint intervention of a number of international organisations in *A and others v Secretary of State for the Home Department* (No 2). This included a comparative study of the admissibility of evidence tainted by credible allegations of torture in 52 jurisdictions. The intervention was all brought together and presented by a pro bono team of counsel led by Sir Sidney Kentridge, with Freshfields providing research and litigation expertise. The result was a ringing declaration that the common law prohibited such evidence in civil cases.

In *Secretary of State for the Home Department v AF and others*, a case about the requirement of the right to have sufficient evidence of allegations made by the state in relation to an application for a control order, we fielded a powerful team headed by Michael Fordham QC as counsel and Clifford Chance as solicitors.

It is invidious to choose these particular cases. Almost every major human rights' counsel and almost every major law firm has assisted us in a major case.

No replacement

Such short, sharp engagements in a high-profile case allow a firm to choose if they have the resources to get involved and offer good experience for young litigators who may, with their commercial clients, rarely see a case come to fruition within the time frame of

a judicial review or an appeal. It is harder for corporate law firms to provide continuing resources on, for example, a weekly basis for advice sessions in areas where their lawyers may not be experienced. And it is to the credit of a number of firms that they have done, and do, this.

However, it is inherently unstable and no one involved in such ventures would argue that you could replace a functioning law or advice centre with such an arrangement. Pro bono assistance, provided on a regular basis, needs to be organised on the ground, at the point of delivery. It would be an interesting development to see one or more firms setting up a law firm to deliver poverty law in, for example, the east end of London, near the city. That could be developed into an exciting, innovative and worthwhile project but it would require considerable amounts of time and money. It would necessarily be a one-off and would be unlikely to be duplicated.

So, from the point of view of a national programme of legal services, pro bono should be seen – and is – the icing on the cake. The assistance which we have been given is repeated for many other national organisations. But, assistance can only be integrated in any meaningful way with a national strategy in a controlled way.

For example, if legal aid is removed for classes of judicial review applications or for inquests, one could see an organised programme involving lawyers willing to act on a regular basis. Otherwise, pro bono is best seen as a valuable supplement rather than an integral part of provision. Ministers should recognise that. So should anyone who fears that pro bono may be a threat to properly funded provision. And providers should celebrate their engagement – they deserve our thanks.

Pro bono for prosperity

Paul Gilbert, trustee, LawWorks

“Lawyers are far more redundant or dispensable today than ever before; but the conundrum is that lawyers are actually needed far more than ever before”

I have had a long and close relationship with LawWorks, the leading national pro bono charity for solicitors in the UK. It is an organisation I am proud to be associated with and I hope it will develop, grow and thrive in the years to come. I say this up front because I clearly have a partial view, but the views in this article are mine and do not represent LawWorks strategy or policy.

It is hard to place pro bono in the modern legal profession. Legal services in the UK are undergoing an extraordinary period of change. Legal process outsourcing, offshoring, commoditisation and deregulation are all part of this, but so is the rise of technological innovation that is sweeping away old certainties about how clients access legal support and how legal support can be provided.

Now, in the aftermath of a global recession, we can also see many law firms in a determined drive for innovation, efficiency and cost saving, but we may also see a new generation of lawyers questioning what they want from a career and certainly whether they want to climb the even more uncertain greasy pole to partnership.

Then consider the influence of the in-house sector growing a role as expert procurers of legal services, the demise of public funding for legal advice, public sector innovation in sourcing and provision and new entrants to the market with niche propositions.

The picture is one of significant and permanent change on all levels, economic, structural, cultural, technological, operational and strategic. It is a quietly irrevocable and quite fundamental revolution.

Is there, in all this, a time and a place for pro bono? And what might that be? These are big questions, because perhaps there isn't a place for it at all.

Pro bono has been accused of sitting in the comfortable higher reaches of the legal profession, largely supported by large and successful law firms where for years income has been reasonably secure, competitive forces relatively benign, markets protected and long-term planning possible. Individuals and firms who felt strongly could deliver their pro bono work informally or in more organised initiatives.

This market view, however, has changed and it is not a given any more that the bigger

law firms will continue to support an institutionalised view of what pro bono means. Furthermore, the sense of pro bono as a national resource has not been realised in any significant way so far. I think it is perceived to be South East centric and also stands accused of being insensitive to the plight of small law firms working in what is left of the publicly funded arena.

So, why am I so passionately of the view that pro bono is not just 'nice to have', but is actually fundamental to the longer-term health of a profession that is under the most enormous strain at the moment? Because I believe it goes to the very core of what being a lawyer means and that is going to be a crucial factor for a profession that could easily lose a great deal of its identity.

Do we need lawyers?

If a computerised process can run several thousand files at a time; if a call centre in Delhi can answer 80 per cent of the questions a consumer might have about their rights over a defective item recently purchased; if one of the legal publishers can employ more lawyers than the vast majority of most law

“Value is sometimes unrelated to cost”



firms; if non-lawyers can part own businesses that offer legal advice and wholly own business that offer ‘commercial’ advice, the question is not what is the point of pro bono, but what is the point of being a lawyer?

Now we start to drive to the centre of the issue. Lawyers are far more redundant or dispensable today than ever before; but the conundrum is that lawyers are actually needed far more than ever before.

Before we get carried away by the glitter of process, innovation and talk of ownership models and delivery channels, and before anyone utters the damned ‘Teso law’ phrase, I want to differentiate between information and insight, between guidance and representation and between access and genuine assistance.

The world does not work perfectly. Fundamental rights are sometimes violated, power can be exceeded and decisions are capable of being badly made. Righting wrongs may have less commercial value to a corporate entity and may be unhelpfully nuanced for a standardised approach. One size fitting all it probably isn’t.

In this space we need lawyers; in this space we must have lawyers. Not just clever process managers and slick software, but individuals who are also ethically bound to serve the best interests of their clients. I am happy to accept that some of this may be work that has to be done at a loss even for free. I am happy to accept that it will be work that will be deeply unattractive to low-margin, highly automated churn machines; but I think it might be the profession’s salvation too.

In the end, when we are all wrung out with change, real value will be perceived to vest in those who have a proposition that is not just efficient and cost effective (this will be the least that is expected) but a proposition that is

also based on values that resonate; where credibility, trust, certainty and quality are also evident. It will be partly about brand, partly about profile and partly about making real promises of fairness and fair dealing.

Standing out

In lawyers we will trust, provided they can live up to this standard. What better way therefore for lawyers to demonstrate this commitment, but to have a tangible, visible, serious and long-term commitment to pro bono work? Clients can see this and understand what it means; it is a huge indicator of trust, seriousness and values. It is a differentiator in an ultra-competitive world.

If you work in one of the great city cathedrals to magic circle legal services, and equally if you work in a cramped office on a high street helping 'real' punters, everyone who uses you will understand that a commitment to pro bono sets you apart from the supermarket, the call centre and the generic business adviser. A commitment to pro bono suggests compassion, a values-based service, an ethical framework of substance, a realisation that value is sometimes unrelated to cost, a statement of support of what is right not what is afforded.

I believe clients will be more likely to give their paid-for work to such businesses and I believe the commitment to pro bono is a business development tool that is largely, still, significantly under developed.

Consider then as well the opportunity to engage local communities, to establish the profile of the firm at the very heart of the life and soul of a town. Consider how, for larger law firms, there is an opportunity to deliver on CSR policies in a way that rebuilds people's lives and contributes to a broader ethic. Consider the credibility that is derived by such efforts and

which can then be influential in negotiations with government and regulators. Consider the personal development opportunity for staff. It is all significant and all positive.

And yet there will be many who still say pro bono is incompatible with publicly funded work. If lawyers work for free, let them step into the gap left by dwindling public funding. The answer to that concern will sound glib in the context of a short article, but it is true. We all know that a fully funded legal aid proposition will never materialise (and it probably never existed) so on the one hand pro bono has a role in any event. But being described as a partial sticking plaster is not the most strategic argument one has ever heard.

Securing the future

The value, however, of pro bono in this sphere is that it puts a very diverse range of talents together to witness the need, to size the tasks and to evaluate solutions. It provides an opportunity to invent, develop and create new models for delivery. In effect utilising the advancements and change described earlier. If lawyers can stay in the space, harness, technology, partner with agencies, develop alternative funding strategies and build out our credibility for efficiency and effectiveness, there will be a way to work and to support this work that will secure a future role for lawyers – not undermine it.

Pro bono is not signalling the end of publicly funded work, nor is it incompatible with it. Pro bono may actually be the bridge from the current impossible funding issues to something more creative and secure – and a way to protect and enhance the role of lawyers for the benefit of all. The challenge for the profession, therefore, is to make pro bono a genuinely strategic commitment that has a policy role in the justice system. It won't be easy, but it may be absolutely necessary.

Partnership solutions

Andrew Holroyd CBE, managing partner, Jackson & Canter, and former Law Society president

“The legal profession, working alongside the government, could start to have more joined-up thinking to establish precisely where the major justice gaps are in our society”

British lawyers have a problem with pro bono. It's called legal aid. We should be proud as a nation to have developed the concept of the rule of law which ensures that, although governments govern, the law is king. The developments of human rights legislation based on the European Convention on Human Rights drawn up by English lawyers may be difficult for governments, but no one should be above the law. Decisions affecting citizens are required to be fair and reasonable and made in accordance with the law. What vision the post-war Labour government had! Perhaps it takes a trauma like a war to create a society where education, health and justice are all available to those who need them most. A just society will only be attained if you have rights which can be effectively enforced.

There are no greater supporters of the Magna Carta and the rule of law than US lawyers. They cannot understand why we do not make more of our great heritage. Nevertheless, US lawyers have a problem. How can their citizens enforce their rights?

The US justice system is wonderful if you can afford wonderful lawyers, but, if you cannot, what use are your rights under the constitution? If you are accused of a crime you will have to rely on the hit and miss public defender system, and, if your children are taken into care, you are helpless unless you are fortunate enough to live in an area with a programme which might assist you.

It is not surprising that US lawyers and the American Bar Association are proud of their 'pro bono' record. As president of the Law Society in 2007, I visited the Los Angeles County Bar Association and was surprised at the extent of work done for the poor by local lawyers. However, without their efforts, the situation would be disastrous. Even their commendable pro bono programmes only scratch the surface of legal need which largely goes unmet.

What a contrast to Liverpool, where the Liverpool Law Society, one of the most effective local law societies in the land, does little pro bono work (except for a new project to help Mombasa Law Society with whom it is twinned provide access to justice for children). It does not feel the need to promote pro bono as legal aid is still widely available and law firms like mine are able through legal aid to challenge authority ensuring that citizens' rights are not unduly infringed. Furthermore, UK lawyers might fear that attention to pro bono gives the government an excuse to withdraw legal aid.

Thank goodness we spend more on legal aid than most other societies. Legal aid provision is a fundamental part of what makes British society fair and tolerant and we should celebrate this. While the Ministry of Justice needs to make cuts, legal aid expenditure has already been substantially

cut over the past four years and cannot bear much more pruning without damaging the jewel created in 1949 unless very careful thought is given to the process.

Filling the gaps

Although legal aid creates a very different context to that of the USA, pro bono effort ought to make an even more significant contribution to access to justice in England and Wales. However, we should all start from that self-evident premise that no amount of pro bono can substitute for a properly funded legal aid system. With that in mind, the legal profession, working alongside the government, could start to have more joined-up thinking to establish precisely where the major justice gaps are in our own society.

What about those wrongly convicted of crimes they did not commit? It is hard to find the funding to do the spadework to get an appeal against a criminal conviction off the ground. Once someone has put in the effort to show that a miscarriage of justice may have taken place, then lawyers are available to take the case on. Who has the time and commitment to put effort into that? University innocence projects have provided part of the answer. Here, committed and idealistic students, working under the guidance of volunteer academics or criminal practitioners, can trawl through evidence to find the cracks where something might have gone seriously wrong. What a great way to learn law and perform a valuable function in society at the same time.

Then there are asylum seekers who have a case which is unlikely to succeed and have to be refused legal aid. Just because the case is unlikely to succeed does not mean it will fail.

“Together we could develop a comprehensive strategy which could look at how access to justice could be enhanced in a systematic way”

There is a crying need for this particular gap to be filled. In Leeds this gap is to some extent bridged by the Manuel Bravo Project where community organisations and major Leeds law firms get together to provide representation. However, perhaps this example is more problematic. Surely all asylum appeals need to be covered by legal aid. The dilemma is clear, but, while the gaps exist, it is commendable that Leeds law firms are helping to meet this need demonstrating how important pro bono effort can be in the UK.

Enabling access

We have pussyfooted around the issue of the confluence between legal aid, the involvement of community based justice organisations and law centres, and the pro bono effort of law firms for too long. With a bit of trust between the MoJ and other interested parties (including major law firms, the Law Society and Bar Council, local law societies, community organisations, CABs and trusts like the Access to Justice Foundation who, through pro bono costs orders, fund access to justice) we could debate which functions

of state legal aid funding are fundamental to our society. Thereafter, we could decide where community organisations, charities and pro bono work by lawyers could fill some of the gaps. Together we could develop a comprehensive strategy which could look at how access to justice could be enhanced in a systematic way.

The concept of the Community Legal Service developed by the LSC was not far off the mark and it is a shame it was not properly developed. It envisaged three tiers of assistance. The first was provided by community-based organisations signposting to the second layer of advice givers (partially funded by legal aid) who then referred to the third tier of specialist providers funded by legal aid. In this model, legal aid, charitable funds and pro bono volunteering could all play their part in providing a more comprehensive provision enabling wider access to justice. Add to this new ways of delivering advice through telephone and the web, and one can see how pro bono and legal aid could work more effectively in partnership to deliver the solution our society needs.

Back to the future?

Steve Hynes, director, Legal Action Group

“Pro bono services have their place in the civil justice system as they can augment state-funded services which will never fully meet the demand for legal advice”

Legal aid minister Jonathan Djanogly caused some controversy recently when he commented at a fringe meeting held at the Conservative party conference that pro bono work “can be a good filler for those lawyers out of work, or for women who want to get back into the legal job market after having children”. The comments might not have been greeted with such hostility if he had not been speaking at a meeting on legal aid.

Controversy is never far away when pro bono is associated with legal aid work, but the history of legal aid and pro bono work have been firmly intertwined for over a century.

In 1903 the Poor Prisoners Defence Act was introduced. This was the first system of state funding for legal representation and after this date representation in murder cases and for other serious crimes became the norm. Before this though, prisoners who could not afford a lawyer had to rely on ‘dock briefs’. This pro bono system survived up to the establishment of the post-war legal



aid scheme. Any wigged and gowned barrister in court could be required to defend an unrepresented prisoner. Unsurprisingly, it was not a popular professional duty among the ranks of the Bar. A news report in 1944 refers to the 'general scuttle' of counsel to leave court when a prisoner asked for representation (*News Chronicle*, 14 April 1944).

The use of pro bono work as a training ground for lawyers in the early stages of their careers continues to this day. A good example of this is the Bar's Free Representation Unit (FRU). Many newly qualified lawyers with FRU have cut their advocacy teeth representing clients in employment and other tribunal cases not covered by the legal aid scheme. Their work is supervised by the small staff at FRU and the organisation enjoys a good reputation for quality.

This was not always the case with pro bono services. Often only junior counsel, keen to gain experience and to build a reputation, would be available in the days of the dock brief scheme. One convicted prisoner, the dubious beneficiary of the system, on being asked if he had anything to say before sentence was passed complained: "Nothing, my Lord, except to plead the youth and inexperience of my counsel." ('Legal aid', Robert Egerton, 1994.)

The poor man's lawyer service

No one, we hope, is arguing that we should return to the days of the dock brief scheme to provide defence services to those accused of a crime. Now criminal pro bono work by UK lawyers is confined to overseas; for example, in death row cases in the US. As other essays in this book have touched on, pro bono work on civil cases is common especially in London and the South East.

“Gurney-Champion and other radical lawyers had envisaged a salaried service similar to the NHS”

This is not a new phenomenon as the history of the poor man’s lawyer service illustrates.

Towards the end of the 19th century the settlement movement was established. The idea behind it was to offer education and other services to impoverished inner-city communities. The movement was especially strong in London. Frank Tillyard, a barrister, founded the first poor man’s lawyer service at Mansfield House settlement in London. By the start of the second world war, the numbers of poor man’s lawyer services had increased to 55 in London and 70 in the provinces.

Staffed by volunteer lawyers, the most common cases the services dealt with were disputes between landlord and tenant, accident cases involving workers’ compensation and matrimonial cases involving maintenance and separation. (Gurney-Champion (1926) p25. See also Leat (1975) p173 – Leat is reporting from a survey of Toynbee Hall’s poor man’s lawyer in 1901, Gurney-Champion some 25 years later reports similar concerns.)

The ‘poor man’s lawyer’ became a generic name to describe free legal services for the poor and not necessarily associated with the settlement movement. Political parties might organise a service, and those provided by local law societies, under what were called the poor persons’ rules, were often referred to as poor man’s lawyer services.

The poor person’s rules were frequently used to offer free pro bono help with divorce cases. The Manchester poor man’s lawyer scheme was run by the local law society and appears to have been the largest service outside London. The Manchester Law Society coordinated the work of around 70 firms and, at its peak in 1939,

back to the future?

these firms advised in 4,290 cases. Coverage was erratic. Towns such as Cardiff and Coventry had no schemes and some towns would deal with far fewer cases than the better served areas like Manchester. For example, the Newcastle scheme dealt with only 198 cases in 1938.

Campaigning for legal aid

For over 50 years, despite inadequate geographical coverage and limited resources, the poor man's lawyer services remained the only source of legal advice for many people. By the beginning of the 20th century it was becoming apparent that these services could not meet the demand for legal advice. Lawyers associated with the poor man's lawyer services, such as FCG Gurney-Champion, were at the forefront of the campaign for a government funded legal aid system.

The legal aid system was established in 1949 after the Rushcliffe report recommended that lawyers in private practice should be paid to undertake cases on behalf of people of "small or moderate means". This was not what Gurney-Champion and other radical lawyers had wanted, they had envisaged a salaried service similar to the NHS, but the Law Society had lobbied hard for a private practice-based model which would also help re-establish solicitors' practices badly affected by the second world war.

Voluntary services like poor man's lawyers carried on after the establishment of the legal aid system. In its early years civil legal aid mainly paid for advice in family law. It was not until the introduction of the green form scheme, the forerunner of today's legal help scheme, that there was a growth in advice in non-family civil law.

Altering eligibility

Spending on legal aid grew over the last 40 years – mainly in response to the growth in the crime rate, increasing complexity of the law and social change – but throughout its history the government has tended to alter who is eligible for help from the scheme and the areas of law it will cover. Eligibility has fallen from 80 per cent of the population at its outset to around one third today.

Currently spending in non-family work is around £300m, which is about a third of the civil legal aid budget, the rest of which is spent on family law work. This pays for over one million legal help cases, nearly 100,000 immigration cases and nearly 150,000 certificated cases needing representation in court proceedings.

There are strong rumours that the government intends to slash civil legal expenditure, but, even if firms were willing to undertake the cases paid for by civil legal aid on a pro bono basis, they would probably not be able to undertake any more than ten per cent of this work.

Pro bono services have their place in the civil justice system as they can augment state-funded services which will never fully meet the demand for legal advice, particularly from people just above the eligibility limits for civil legal aid. However, the pioneers of the pro bono movement recognised that charitable good works were not enough to ensure access to justice, without which the rule of law becomes "an anaemic attenuated make-believe which we flourish in the eyes of the poor as 'justice'". It is hoped that Jonathan Djanogly and the rest of the government continues to understand the wisdom of this.

Another vanity project?

Neil Kinsella, chief executive, Russell Jones & Walker

“Taking on groundbreaking test cases on a pro bono basis won’t be enough”

Pro bono is getting sexy. Just as it’s now virtually obligatory to pay for carbon offsetting when you fly anywhere if you don’t want to be accused of killing the planet, lawyers are finding they have to give up a certain amount of their time for free if they don’t want to be accused of making money out of misery. Top firms vie with each other to see who can give the most time to the most deserving causes in the most innovative and most high-profile ways. And now, with the Big Society requiring all of us to do our bit, there is an even stronger imperative to show how much we care. But are many pro bono schemes really anything more than just vanity projects and are they doing more harm than good?

It is hard to argue with the principle of pro bono work. Lawyers have a professional duty to uphold the rule of law and ensure access to justice and most lawyers make a decent living and can therefore afford to give something back. But isn’t there

something rather distasteful about a top City lawyer who earns in a month what most people won't get in a year salving his or her conscience by attending a legal advice clinic every so often or setting up a small pro bono unit? And does that mean that lawyers who work professionally in these areas, who spend their days working for the poor and oppressed or those injured or discriminated against at work, should also be required to do pro bono work – which most of them do to some extent on every day of their working lives without visibility or awards?

Pro bono work can be like some foreign aid projects and cause more harm than good. Lawyers need to be careful about where and how they dispense their 'largesse'. Legal aid lawyers are angry or believe that city firms should "stop meddling just to make [themselves] feel better" and keep out of legally aided areas. The argument is that it's precisely because City and large regional firms undertake pro bono that successive governments are able to attack legal aid.

Whether or not this is true, and of course many firms and all recent governments would deny it, there is no doubt that large firms are increasingly being called upon to fill the gaps left by the withdrawal of legal aid.

A recent letter to senior partners in the top 100 firms from the Lord Chief Justice and Master of the Rolls (via the London

Legal Support Trust) asked that firms prioritise support for domestic legal advice agencies in their corporate responsibility programmes. It states that the free legal advice sector was likely to suffer significantly in the coming cuts and that it "is not a popular cause and has nowhere to look for assistance except to the legal profession itself. Legal advice agencies and pro bono services are, after all, the expression of the profession's belief in access to justice for all and we as lawyers all have a stake in maintaining that purpose."

Becoming self-sustaining

More controversially, and going back to the foreign aid analogy, there is an argument that the pro bono work provided by larger firms can create a dependency in the free legal advice sector and discourage sustainability. In these cash-strapped times no charity or voluntary organisation can rely on handouts and should look to become self-sustaining, like the Waterloo Action Centre in South London which hires out rooms and is a thriving community resource.

This is not a new problem, even in the days of plenty, third-sector organisations were encouraged to find their own core running costs while being able to access public funds, for example lottery money, for specific projects or activities.

Whether it be New Labour or the Big Society, it is surely just the continuation of

“Pro bono as a general concept is fundamental, but it has to be delivered in a more strategic and organised way”

a trend. With the coalition government committed to both spending cuts and shrinking the state, communities will not only be encouraged to find their own solutions to local issues and problems, they’ll have to, which means that only the best and most organised advice centres will survive.

In the same way that the revolution underway in the legal profession will mean that solicitors who don’t provide services that consumers want may find themselves out of business, advice centres that don’t get the support from their local communities may also have to shut their doors without support from public funding which is unlikely to be forthcoming.

Alternative delivery

So, is it that the legal aid sector is under attack because of pro bono work or is pro bono work vital in ensuring access to justice for those who can’t afford to pay for legal advice? The coalition government, led by a party whose former leader famously denied the existence of ‘society’, now espouses the ‘Big Society’ as if that is an answer to the need to provide access to justice as a central pillar of political stability and a civilised consensus. The record of New Labour isn’t exactly glorious either but treating access to justice as a charitable cause is a dangerous game.

It’s worth remembering that although the impetus for setting up a legal aid system in

another vanity project?

the first place was the recognition that equality of access and the right to representation before the law was fundamental to a just society. But the Legal Aid and Legal Advice Act of 1949 didn't set up a national legal service in the way that the NHS was set up to provide universal healthcare free at the point of delivery.

We've always had to rely on the goodwill of the profession to help ensure access to justice; it's just a question of how much and how it's delivered and the balance of responsibility between public and private sector.

Which brings us back to whether City law firms providing pro bono work is just a modern day example of paternalistic Victorian philanthropists providing for the 'deserving poor' or whether it is fundamental to providing access to justice in today's society.

Given where we are, the answer to this has to be that pro bono as a general concept is fundamental, but it has to be delivered in a more strategic and organised way.

The advice deserts of the future will not just be in the cities and major towns, where the plethora of wealthy firms can easily support legal advice centres, but in regional towns and rural areas where there aren't any big firms or the level of need to sustain a physical advice centre.

The National Pro Bono Centre will obviously have a key role to play here, ensuring resources are deployed where they are most needed and not just clustered around the most obvious, or convenient, areas for firms.

Alternative forms of delivery through helplines and online should also play a part but the generational gaps in IT skills must be considered.

Sharing responsibility

We can no longer rely on the goodwill of firms and individuals to provide pro bono advice as and when they feel like it. It should become compulsory for all lawyers to play their part, not just those in the City, but also those at the other end of the scale that do 'nice' legal work (and I don't mean legal aid lawyers who are virtually working pro bono full time). Doing the odd bit of pro bono work for an existing client or taking on groundbreaking test cases on a pro bono basis won't be enough – everyone is going to have to get their hands dirty and there needs to be some ground rules without creating yet another bureaucratic, fundraising, quango.

On the flip side of this is the government's review of legal aid and indeed the civil costs regime. If the profession is going to take on its share of the responsibility for ensuring access to justice, then ministers will have to listen to what the profession says it can provide on a pro bono basis and make sure legal aid is properly funded to do the rest. That way we may get somewhere towards a national legal service provided through both the public and private sectors that ensures true access to justice. Pro bono should get serious because access to justice is more than a matter of private or corporate law firm conscience.

The Big Society may appeal to our better selves but it must also appeal to the consensus that there is a thing called society and justice is in our common interest. Winning awards for high-profile but isolated causes simply doesn't move the dial!

Going public

Lisa Wintersteiger, Advice Services Alliance

“People’s perception of the law is about crime and punishment rather than something they can use to help themselves in their daily lives”

Lawyers working for free are not a patch on a well-resourced legal aid system, but, whatever their reasons for making their contributions, how can they best make them?

There is a key area of legal need and social disadvantage that has consistently been overshadowed, but that is increasingly difficult to ignore. A growing body of evidence shows the overwhelming majority of the public struggle to cope with law-related issues because of a fundamental lack of knowledge about legal rights and processes, and the skills and confidence needed to secure the protections that the law affords. People’s perception of the law is about crime and punishment rather than something they can use to help themselves in their daily lives.

Barriers to justice

The effects of this are profound; many people fail to recognise the legal dimensions of everyday life; when a problem occurs, be it family, housing or otherwise, they don’t characterise their problem as legal which in turn impacts on how and when they use legal services. Often people do nothing; major hurdles to taking effective action include fear of stigma, a sense of hopelessness or simply not knowing

where to go for help. While invoking the law might not be a first course of action for many people, having an inkling that it could be relevant, and the confidence to take action, alters the bargaining position and often the ultimate outcome for those concerned.

Another major barrier is the lack of basic skills, such as being able to communicate effectively, keep records, understand the value of evidence as well as staying calm and persevering. Some might argue these are simply life skills; we believe these skills are intimately associated with the way legal issues progress and are resolved, and therefore provide the building blocks that people need to help themselves more effectively.

In a law-heavy world, these aspects of legal capability are fundamental not only to gaining access to justice but also to securing essential services, managing personal and professional matters and functioning fully in society. The most disadvantaged, as ever, pay the heaviest price; and research points increasingly to the links between low levels of legal capability and a propensity to social exclusion. Findings from a population-wide survey by the Legal Services Research Centre in 2010 show that marginalised groups are the least likely to act, and most likely to experience adverse outcomes, especially where relations of power are concerned; for example, in trying to deal with unfair police treatment or discrimination.

At present the primary focus of the distribution of legal resources is on the availability of advice and representation, and to some extent access to formal dispute resolution mechanisms. This does little to address this extensive underlying need. Access to justice is in danger of becoming a

zero sum game; for every person who receives advice someone else doesn't: getting to grips with the drivers of litigation and the causes of actions are largely fringe concerns. The capacity of individuals and groups to prevent problems in the first place or to make informed choices about the legal services that they want and need is left largely untouched.

Unlike health, where prevention initiatives and learning about healthy lifestyles and different services has become a mainstay of modern medicine, legal learning continues to be the domain of professional legal practice. This has contributed to an ever-widening gap between those equipped to respond to legal issues and those who are not. Yet most people are likely to encounter legal difficulties in their lives – and those who are most at risk of legal ill-health are the least able to cope. When it comes to distribution of legal resources, something is wrong with this scene.

The scale and nature of the challenge calls for a culture shift, both by the profession and in terms of justice policy, to help people make sense of the law. The intention is not to give birth to a nation of mini-lawyers. Improving public legal education (PLE) means recognising and addressing the fact that the law touches every part of people's lives. To be kept in the dark is fundamentally disempowering and leaves many people at a gross disadvantage in dealing with the big and little issues in life.

Sharing skills

Although pro bono work continues to thrive, there has been a decline in pro bono services within the not-for-profit advice sector. In 1976 the Royal Commission on Legal Services estimated that around 3,300 solicitors supported advice agencies by offering free services. A 2006 survey by Citizens Advice

showed only 964 solicitors were recorded as working in CABx – a decline from 1,084 in 2003. If the goal is access to justice, this presents a dilemma.

Obstacles to involvement include the increasing culture of specialisation and a lack of expertise in social welfare law beyond legal aid providers. Many lawyers find that their expertise from the commercial and business world simply does not equip them to deal with the intricacies of housing law or the benefit system. One lawyer from a commercial firm recently commented that the expectation of sending his juniors down to an advice agency was frankly absurd – they would do more harm than good.

A move beyond casework lawyering to broader legal education work can address some of these challenges and offers new opportunities for legal professionals who want to give something back. The Streetlaw approach, first developed in the USA, involves pro bono lawyers and law students in delivering legal education to disadvantaged groups in the community, including the development of the practical skills needed to deal with legal issues. Exploratory studies by Plenet with advice services in London working with both law students and commercial lawyers have shown the potential of this approach.

Participating lawyers are able to pass on some of their softer skills – the ability to communicate effectively and how to remain calm and confident in the face of a rebuff. Participants are brought into contact with people they might otherwise never have occasion to meet, and they point to a change in the way in which they communicate with, and are perceived by, the public. The recipients of public legal education benefit too. They gain the know-how to protect and

“A move beyond casework lawyering to broader legal education can address some of these challenges”

“Rebalancing priorities toward preventative strategies means taking stock of the resources that are available in the current climate and finding innovative ways to tackle underlying problems”

.....

secure their own interests and learn how to take steps to get specialist help when it is needed.

There are other great examples of sharing legal skills which go beyond traditional casework and representation. ‘Lawyers in schools’, organised by the Citizenship Foundation, has seen a growth in lawyers going into schools to support legal learning. Again, soft skills implicit in the work of the legal profession can be harnessed; from negotiation and communication skills, to drafting legal information materials for distribution to the public.

PLE strategies offer potential economies of scale; once the initial investment is made in high-quality learning or information resources, the subsequent distribution costs are lowered. Once effective PLE programmes are tested and proved, they can be scaled and replicated to reach a wide audience.

Downloading an extra leaflet or telling the story again via a workshop offers efficient ways of reaching more people.

Collateral benefits arise too, people transmit knowledge that they have found useful and tell one another about where they have found

good information resources. Many public legal education projects will work with ‘intermediaries’ (for example health workers and community workers) so that they can pass on their increased knowledge to the people they meet in the course of their work.

The satisfaction gained by helping others can be successfully combined with personal professional enhancement provided there is clarity about the outcomes for all involved. The evaluation of pro bono PLE work in advice services shows the importance of focusing on improving the legal capability of recipients, and not just ‘bums on seats’ or the satisfactory learning outcomes of the pro bono providers. The evaluation also shows the need for effective planning in advance of sessions, with support for interactive learning methods. Better targeting of levels of knowledge, and combining PLE work with the practical problem solving skills and legal tactics, is key.

Thinking creatively

There is no doubt about the enormous value of pro bono advice and representation, yet the pivotal role of the profession in improving access to justice suggests the need to think creatively about what can be done to meet the fundamental need for the public to make sense of the law. Rebalancing priorities toward preventive and early intervention strategies means taking stock of the resources that are available in the current climate and finding innovative ways to tackle underlying problems and the need for a better mix of provision.

Public legal education isn’t a panacea for all ills, but, in a world of increasing pace and complexity, it is a way for the profession to share a little of what it has been privileged to learn, and to build people’s capacity to exercise control over their own lives.

Lawyers in shining armour

Atanas Politov and Edwin Rekosh, Public Interest Law Institute

“The biggest issue to resolve is how to connect those lawyers sequestered in their corporate suites with the social problems of the day”

Comparisons can be tricky but, in broad lines, it is true that governments in continental Europe take on a larger role in solving social problems than in the United States, where law firm-led pro bono practice developed. Indeed, one of the most important driving factors for the development and rapid growth of pro bono practice in the US was the responsibility felt by the legal profession to compensate for a very strong downward trend in state subsidy for legal assistance in civil matters dating from the early 1980s. (A comprehensive perception survey released in October 2010 by the World Justice Project ranked the US last on a list of 11 high-income countries on ‘access to civil justice’: <http://www.worldjusticeproject.org/>)

In continental Europe, in contrast, state-subsidised legal aid systems are relatively robust, including in the civil arena, and there is a fairly strong political consensus to support them. Yet, increasingly globalised law firms throughout Europe are looking for ways to meet their corporate social responsibilities, help their communities and contribute to the realisation of justice. That gives rise to a lurking concern. As pro bono develops, driven by this trend, will it create a basis for European finance ministries to

argue for cutting back (further) on legal aid subsidies within state budgets consistently under pressure? That is a fear expressed by legal aid and Bar officials around the continent.

This question arises at a time when the development of pro bono in continental Europe appears to be at a tipping point. Just five years ago, it was rare to hear about law firms formally taking on clients on an unpaid basis for charitable purposes in any organised way. To the extent it might have happened occasionally, it was not considered part of an established pro bono programme. Now, law firms throughout the continent talk about their commitment to pro bono, formally participate in collective efforts to facilitate pro bono work and can readily provide examples of charitable client work they have performed without charge.

Perspective from the East

The story is even more complicated in the eastern part of the continent, where 50 years of state socialism altered the context for state-subsidised legal aid systems. Today, strong financial pressures limit the capacity of government to reform legal aid sufficiently to meet the full range of legal needs in a 21st century European democracy. Nevertheless, our organisation and others have been working for more than a decade with Ministries of Justice, the Council of Europe, the European Commission and bilateral and multi-lateral donors to shore up the foundations for state-subsidised legal aid systems in eastern Europe. Through the accession process and other reform-oriented activities, legal aid systems have got better, and, in some cases, new state funding has come on line.

But, especially in the East, where large governmental infrastructures still struggle to reconfigure themselves to be effective in changed circumstances and where privately

funded organisations grew rapidly in the last two decades to compensate, state-subsidised legal aid systems cannot do it alone. It was in the context of countries like Hungary and Poland that our organisation first started to explore whether law firm pro bono programmes could help fill the gap by supporting privately funded civil society organisations.

Indeed, it was the desire to find new ways to advance the work of NGOs, especially human rights and public interest groups, in an environment where donor and other funding sources were dwindling that originally motivated us to explore the potential for developing pro bono practice in Europe. Advancing a professional responsibility agenda was also a key objective.

Direct legal assistance to the poor, however, was not in the forefront of our own planning and thinking. In fact, when we first introduced our pro bono initiative in Hungary, we needed to make significant efforts to explain to Bar leaders and other lawyers that institutionalising pro bono practice would not 'steal' state subsidies from solo practitioners, themselves struggling to make ends meet by providing much-needed legal assistance to the poor. Rather, we explained, the legal aid system is not in a position to support the development of community groups and other NGOs that are playing an increasingly important role in Hungary in supplementing the resources of the state to help solve social problems. But pro bono lawyers working out of law firms can do a great deal to support the work of NGOs.

The message to the law firms was simple: join us by doing what you do best; i.e. assisting corporate entities by advising on tax, labour and intellectual property law, governance, complex cross-border issues, multi-jurisdictional research, training needs, etc. And, in that way, you can help advance worthy social causes in keeping with your

own values and social responsibilities. That message has had great resonance, not just in Hungary, but across Europe.

Help without harm

Indeed, the urge to help appears to be universal. Just as solo practitioners of a bygone era would instinctively step forward to utilise their legal skills to solve community-level problems, as they still do in smaller towns everywhere, lawyers within increasingly large-scale urban practices across Europe feel the same way. The biggest issue to resolve is how to connect those lawyers sequestered in their corporate suites with the social problems of the day, without undermining the critically important state-organised legal aid programmes that make use of lawyers working primarily in smaller-scale practices.

With this connectivity gap between lawyer and client in mind, some years ago PILI started building a pro bono infrastructure that would match the realities of the continental legal markets. Borrowing the concept from the US, PILI launched its first pro bono clearing house in Hungary in 2005, matching Hungarian pro bono lawyers with potential organisational clients. Five years later, we operate four such clearing houses, and partner organisations run similar initiatives in other European countries. The European network of pro bono clearing houses now includes Hungary, Russia, Poland, the Czech Republic, Slovenia, Latvia, France, Ireland and the UK. Organisations in Slovakia, Romania, Serbia, Bulgaria, Germany and Spain are considering following up with pro bono initiatives of their own.

Through these mechanisms, pro bono work in continental Europe has been directed primarily to leveraging still developing NGO networks, providing much needed immediate support, and offering still more profound

possibilities for positive social impact in the longer term.

One example of the long-term potential can be found in a piece of successful civil litigation undertaken by a pro bono lawyer at Allen & Overy in Budapest seeking compensation for discrimination against Roma children. The case originated in Miskolc, an industrial city in central Hungary and was based on an earlier lawsuit brought by a small but scrappy Hungarian NGO called Chance for Children. The earlier case found that the Miskolc school district had violated the law by segregating some Roma children from mainstream schooling.

The follow-up litigation supported by Allen & Overy established for the first time that the harm suffered by Roma children excluded from mainstream education has a real monetary value. The court's judgment of about \$500 in financial compensation was little more than symbolic, and it would be hard to justify the level of legal representation provided according to the strict cost/benefit considerations that a legal aid system might apply. But the result was groundbreaking: poor and stigmatised Roma families received justice from the highest court in the country in a case that would not otherwise have had its day in court. Further, that a lawyer from Allen & Overy led the charge underlined the point that the winners in society's contests have a key role to play in helping out the losers, setting a powerful example for others.

As the Miskolc case demonstrates, pro bono lawyers can do far more than just add a pair of legal hands to support an over-burdened legal aid system; they offer the promise of helping the legal profession to contribute in new, unique and diverse ways to realising the ideal of justice.

Clinical approach

Professor Richard Grimes, director of clinical programmes,
York Law School, York University

“Everyone, from student to university and client to practitioner, can benefit”

For some lawyers, providing free legal services to the community is simply part of the job – the high street practice that handles a wide range of matters may continue acting for a client when legal aid runs out or may take on a case where there is no entitlement to public funding. The magic circle firm may send a team of its lawyers to staff an advice centre or may take on high-profile death row cases. Our legal history is rich with accounts of lawyers helping those who cannot afford or cannot otherwise access a lawyer’s help. The good offices of LawWorks and the Bar Pro Bono Unit daily put in touch many clients in need and lawyers willing to help.

One can rail against government, civil servants and the machinery of justice for its collective failing to honour the ambition of the legal aid scheme of post-second world war Britain, but the fact remains that, pending the implementation of an effective state-financed system, a gap remains to be bridged.

Pro bono services, provided by professionals in the private, statutory and not-for-profit sectors, continue to play a vital role in legal service provision especially in the everyday struggles for those with what can be broadly described as social welfare problems. So what

has this got to do with law schools?

It is only relatively recently that law students have been encouraged to have an input in this bigger picture. Often termed ‘clinical legal education’ the movement owes its origins to a small group of pioneers in 1930s America. Now, the pro bono law clinic is an established feature in all American Bar Association accredited US law schools.

Turning heads

Law schools in the UK have been relatively slow in taking up this mission – but this picture is changing. At a time when clinics were becoming an established part of the US legal education scene a small number of UK universities were following suit.

However, research carried out by LawWorks shows that the number of law schools engaged in pro bono work has grown from 41 per cent in 2000, to 53 per cent in 2006, and 75 per cent in 2010.

I want to outline some of the reasons why attention is now turning to hands-on or clinical methods and how law students might take advantage of this development. While it will become apparent that the pro bono and clinical activities of law schools are increasingly seen as a good thing, considerable logistical, political and professional challenges also need to be addressed.

So, why do clinic? Simply put, it:

- gives an opportunity for applying knowledge of law and the legal process as well as the skills implicit in legal study (particularly problem solving and research);
- should complement what goes on elsewhere on the students’ programme;
- introduces students to a set of values

and to professional responsibility;

- is an opportunity for law schools to play a role in the wider community;
- can be a powerful recruitment tool for universities and colleges;
- makes a valuable addition to any student’s CV;
- provides employers with staff who should be more aware and better equipped to cope in a working environment; and
- usefully supplements other public legal service provision (providing the requisite professional standards are met and the service offered matches unmet need and complements the work of other legal service providers).

Everyone, from student to university and client to practitioner, can benefit.

There are now many examples of where learning law by doing law has been implemented in UK law schools. The principle models are:

- **In-house clinics** (based in the law school) – where students, under the guidance of professionally qualified staff, assist members of the public. Some of these clinics offer a generalist service while others specialise in one particular area of law; for example, housing, employment or social security. The help offered by this clinic may be limited to advice only or may extend to other forms of assistance including representation. Some law schools, for example, run tribunal representation services or appear in the courts (instructing agents or counsel where the students do not have rights of audience).
- **Outreach clinics** (run by the law school but based in the offices of another legal

“Although students are involved in part for their own education, this is secondary to the client’s best interests and supervisors of every project must ensure that the client’s interests are met”

service provider) – here the student and the law school staff run a clinic in a community setting, perhaps a law centre or other advice agency. The clinic is still run by the law school that takes responsibility for the conduct and management of cases and staffing issues. Such a service can provide a valuable addition to the other work carried out by the organisation concerned.

■ **Placements or, to use the American terminology, ‘externships’** (with students working in advice centres and other community based settings) – this clinic is run by the host organisation. The law school provides the students, prepares them to take part and monitors their progress. The actual case management responsibility and day-to-day supervision, however, falls to the service provider. The placement is usually physically located in the premises of the host organisation but can, for example as with the employment advice clinics run at the College of Law, take place on law school premises. The difference between the placement and the in or out-house clinic is about who is responsible for delivery and professional responsibility – the host organisation or the law school.

■ **Legal literacy clinics** (sometimes known as Street Law) – this model involves students, again under supervision, preparing and delivering material on rights and responsibilities-awareness to the public; for example in schools, prisons and community centres. The idea is that if the public is better informed it should be easier for problems to be recognised and tackled at an earlier stage.

Real people, real problems

The common feature in all of these schemes is that law students get to meet real people with real problems or concerns. With professional supervision the students take on cases and challenges, providing concrete help for the individuals involved. Along the way the student gets support and constructive feedback. It is therefore more than just learning from experience – it is education through doing and reflecting on the doing, while at the same time contributing to unmet legal needs.

Those running clinics frequently report that students become very motivated and deliver to a high standard. The clients too seem impressed by the quality of service they receive and the commitment of law school staff and students.

Many law students also engage in pro bono work that is not a formal part of the curriculum. This may be in a CAB, in a law firm or in a variety of other places. As valuable as these might be to public and student alike, they are perhaps of a different nature to the clinical models described above. The structured educational component (analysing what happened and why) is not necessarily present.

Covering all bases

It is easy to enthuse about pro bono clinics. The universal reaction of all who take part – students and clients – is inevitably very positive. Most say that clinic is the best thing they do at law school. I recall one individual rather worryingly saying that clinic was the best thing he had ever done! However, there are some challenges that arise in the context of law school pro bono programmes. Here are some pointers:

■ **Professional indemnity insurance** –

cover is advisable (and may, depending on the nature of the service, be required) to protect both the provider and the client. It should be possible to extend a law school's insurance policy to include the clinic's activity at no or little additional premium, providing the service is professionally supervised and no client's money is handled.

■ **Adequate supervision of the clinic** – this is essential to safeguard standards and to deliver both the professional and educational objectives. This will mean having qualified and experienced staff in post. Some clinics use academics who are entitled to practise as supervisors. Others work with lawyers from private practice, industry or the public sector. If the clinic receives public funding (legal aid) it will be a requirement to have a suitably qualified supervising caseworker.

■ **Maintaining standards of client care** – the service offered by the clinic should aim to meet the standards of any other legal service provider. It is unacceptable both professionally and educationally to deliver anything less. It may take the clinic longer to provide the necessary help, but, as long as this does not prejudice the client's case and the client knows and accepts the nature of the service, then requisite quality should be attainable.

■ **Assessment and the clinic** – if students are to be given academic credit for their work in the clinic (and experience suggests they want and deserve this) then clear outcomes and criteria must be set.

Particular challenges attach to assessing clinic performance but again there are examples of assessment regimes that have been successfully tried and tested.

■ **Meeting the cost** – one of the most

significant obstacles to establishing and running a clinic is securing funding. Clinics are powerful vehicles for learning but they do need proper resourcing. Working in partnership with the local profession, the not-for-profit sector, government and business, law schools can, with a little imagination and the necessary will, make the clinic a viable part of the learning process. In the last couple of years organisations such as LawWorks, the Law Centres' Federation and (most recently) some government departments have joined in discussions about pro bono and clinical work. There is now much greater awareness across the board of the potential role that law schools and law students can play in pro bono provision within an education context.

The bigger picture

But there are broader concerns:

- Does law school involvement effectively help to let government off the legal aid hook?
- Are clients being used as guinea pigs?
- How do you manage expectations?

The responsibility of funding a public legal service is a political matter and the responsibility of government. In recognition of this and to ensure that pro bono work functions appropriately, a protocol has been adopted through the offices of the Attorney General's Pro Bono Coordinating Committee, to which all pro bono providers are asked to subscribe. LawWorks and the Bar Pro Bono Unit can provide copies on request or from LawWorks' website (<http://www.lawworks.org.uk>).

What about the clients? As explained above the benchmark applicable to any law school pro bono or clinical programme should, and

“Law schools can, with a little imagination and the necessary will, make the clinic a viable part of the learning process”

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indeed may depending on how the programme is structured have to, comply with standards of professional legal practice. Although students are involved in part for their own education, this is secondary to the client's best interests and supervisors of every project must ensure that the client's interests are met. Judging by client feedback there are very few complaints.

So far as managing expectations is concerned – those of clients, students, supervising staff and other stakeholders (for example the local legal profession) – all involved must understand clearly what the clinic can and cannot do and how it operates. This requires thorough training, explicit client-care letters and robust internal rules of procedure. Some clinics have developed sophisticated guidelines and office manuals setting out these issues. If applying for the Legal Service Commission's contracts, the clinic will have to have approved procedures in place. We are talking of setting and maintaining good or best practice.

There is much to commend pro bono work in law schools. Properly structured and supervised and run in collaboration with other service providers the law school clinical model can make valuable contribution and perhaps produce the next generation of committed as well as talented lawyers.

Joining forces

Yasmin Waljee, pro bono manager, Hogan Lovells

“The relationship the pro bono community has with the legal aid sector has changed considerably”

Since coming to the UK as a domestic worker in 2005, Rajesh has been subject to physical abuse by successive employers and not been paid; one confiscated his passport. He was denied food, kicked and punched, and was deliberately burnt with a hot iron.

Through a friend he got in touch with Kalayaan, a charity providing help to migrant domestic workers, and through them he was referred to a lawyer volunteering on a pro bono basis through Hogan Lovells’ anti-trafficking programme. After representation in his employment case he was awarded a substantial sum which he then used to enrol on a further education course and now has the possibility of regaining some stability in his life.

Rajesh’s case was just one of many which have come through our pro bono programme on anti-human trafficking and victims of violent crime; providing assistance to victims, charities and advocates in the field.

Over the past 13 years pro bono has had a unique place in the provision of legal services, providing help to those who would otherwise fall through the gaps. Without a programme such as ours, Rajesh, and others

like him, and more commonly the women affected, would go unrepresented before the tribunals where legal aid is not available for the hearings.

If a victim of forced labour can find the courage to leave her employment and have the language skills to find appropriate help, they find that the legal aid system allows them to have the service of a paid lawyer to help them prepare for an employment tribunal – but not to actually represent them at the tribunal or enforce an award in their favour, leaving the offender to walk away.

Additionally, many victims of exploitation have a complicated immigration status. The changes to publicly funded immigration and asylum work have forced many firms to close down, or to stop taking publicly funded immigration cases. It is now very difficult for appellants to find legal representation and the fixed-fee funding arrangements do not allow proper preparation of their cases.

Increased sophistication

Pro bono has come a long way in the 13 years since I first started as the pro bono manager at Lovells, now Hogan Lovells. From the evening advice sessions at law centres to the work done by firms at the forefront of many complex legal issues, the level of sophistication of pro bono work has increased tenfold.

The development of our victims of violent crime programme is testament to that. After seven years of experience we had gained a great deal of experience representing victims of violent crime before the Criminal Injuries Compensation Appeals (CICA) Panels, which doesn't fall within the scope of legal aid. Following the London bombings on 7 July 2005, all the victims of the attacks were eligible for compensation from the CICA. To deal with the volume of cases, 15 firms came

together under the umbrella of the Law Society. This was unprecedented in the organisation of pro bono and served to provide a coordinated service at time a when people were traumatised and vulnerable to claims handlers advertising legal assistance on the internet for a fee which was easily earned in what was a virtually uncontested claim for criminal injuries compensation.

Most pro bono work for individuals is now more effective and more efficient. By undertaking the day-to-day law centre work firms build up relevant expertise, frequently develop new strategies in tackling social issues and can deliver these by working alongside partners in the NGO sector who are experts in their field.

Hogan Lovells works closely with the Poppy Project, which provides accommodation and support to women who have been trafficked into prostitution or domestic servitude. Having been trained by support workers at Poppy, we applied the knowledge we gained in the criminal injuries field to secure the first compensation awards for victims of trafficking, false imprisonment and forced prostitution, elements which are not specifically mentioned in the CICA tariff scheme.

A collaborative approach

Importantly, the relationship the pro bono community has with the legal aid sector has also changed considerably. When pro bono first started in the UK there was a great deal of reluctance to see the development of pro bono as positive. Legal aid firms were understandably worried that they would lose business to commercial firms providing pro bono advice, and that these commercial lawyers were ill-trained to deal with social issues. Over time we have learned to trust

“By undertaking the day-to-day law centre work firms build up relevant expertise, frequently develop new strategies in tackling social issues and can deliver these by working alongside partners in the NGO sector who are experts in their field”

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each other a great deal more, and a collaborative approach is now much more the norm.

A large number of commercial firms now work in cooperation with advice centres which have legal aid contracts. Pro bono support can help supplement the range, quality and consistency of support they offer to their clients. For example, we have a three-way partnership with Wilsons Solicitors and in-house lawyers from ITV plc to provide a legal clinic for families affected by HIV. It works because each partner plays to their strengths.

By relieving the administrative burden and assisting with the initial advice to the client we can free up the time of the legal aid practice to focus on the cases with the strongest merit, which are also a source of income to them. The small in-house commercial team at ITV plc benefit from having a co-partner law firm to share the workload and facilitate their pro bono contribution.

The litigation practices of commercial firms continue to handle major litigation where legal aid is unavailable, and frequently take on the major cases where the percentage chance of success is not high in order to set precedents that otherwise would be overlooked.

We recently defended a rape victim against a civil claim of malicious prosecution by her alleged assailant. Our client was ineligible for legal aid, but, after using her own resources to fund her defence for many years, she simply couldn't afford to continue. If women automatically faced the threat of malicious prosecution after reporting a rape case the instances of reporting could have been significantly affected when already only six per cent of cases lead to a prosecution.

Pro bono work has matured over the years, and we realise that sometimes it's not good enough to just help individual clients when more can be done. When a government policy clearly doesn't work it can make more sense to work to change it than to deal with its consequences.

Drawing on our extensive pro bono experience in criminal injuries compensation work, we worked collaboratively with members of the Bar and another City firm, in this case Field Fisher Waterhouse, to effect a change to UK law which now provides for support for those who sustain physical and emotional injuries on the same basis as victims of terrorist attacks in the UK. Such was the iniquity of the situation that all three major political parties supported the change. Yet it took our combined lobbying to mobilise them to make the changes.

Traditionally pro bono has been seen to focus on human rights but it has developed over the last decade to address the corporate governance needs of not-for-profit

organisations. In the current times this is going to be particularly important as the free legal advice sector is likely to come under enormous financial pressure.

Wider impact

One way for pro bono lawyers to have a wider impact is by offering help to institutions. Perhaps one of the best examples of this and collaborative working is Allen & Overy's leadership role bringing together commercial firms and the free legal advice organisations to work with the South West London Law Centre on restructuring and encouraging the Ministry of Justice to recognise this as a model for the future. This work also led to the herculean efforts of corporate restructuring lawyers from firms who tried unsuccessfully to save Refugee Migrant Justice, a charity providing help to over 10,000 immigration clients.

The major global firms have also helped to internationalise pro bono. There are now schemes which allow firms to use their network of international offices more effectively to support the NGO community in international development and human rights work. The development of Advocates for International Development and Trust Law now offers the prospect of collaboration between lawyers across jurisdictions and in this context can apply their expertise and networks, for example, to the human rights issues which cross borders.

We are working with Victim Support Europe and Anti-Slavery in a bid to improve implementation of an EU directive on compensation for victims of crime and to ensure that not only is access to justice for victims of trafficking improved in the

UK, but across Europe.

Pro bono has become increasingly sophisticated because of the ability to draw on the expertise available across our firms and across the profession. In the case of Hogan Lovells this has meant using our experience in securing compensation for victims of violent crime and applying it to new contexts. That can only be done by building up a body of experience to ensure coherence and quality in our work and to ensure it has real impact, which can never be measured by league tables of pro bono hours alone.

Looking bleak

Pro bono plugs a vital gap but it is not a substitute for a comprehensive legal aid service. Not so long ago this was a mantra within the profession and within government – nowadays it is rarely heard. In the age of austerity which we are entering there will no doubt be calls for private practices to do more pro bono, to help those not fortunate enough to afford legal advice.

Pro bono can do a great deal to help those who can't get access to justice, whether because they cannot afford commercial fees or are not eligible for legal aid. What it can't, and shouldn't, do is to try to guarantee that access to justice while the state rolls back its own provision through further cuts to legal aid.

As for all the other Rajeshs out there, the outlook is bleak. The pro bono community will continue to do what it can, but further cuts to legal aid will make it even harder for an already excluded group to gain access to justice and will ultimately leave them even more open to exploitation than they already are.

Rumpelstiltskin's new money

Toby Brown, Access to Justice Foundation

“By escaping the traditional model we can create secondary, independent, sources of funding for legal help”

Rumpelstiltskin spun straw into gold; the Bank of England printed new money. We also need to create new money to improve access to justice. Pro bono costs orders and the Access to Justice Foundation show that innovative solutions are possible. But if we can create yet more money, the question remains whether new funds should go to help fund legal aid, or to pro bono and other legal help provision.

Before the Legal Services Act 2007, when pro bono lawyers won a case, the losing party paid no costs. No longer. Section 194 enables courts to award pro bono costs, which reflect the financial value of the pro bono lawyer's efforts. This is new money unlocked to support justice, and awarded to the Access to Justice Foundation to distribute. Furthermore, the costs have an important role in helping level the playing field for the pro bono party, as now both sides have a costs risk to consider.

The Access to Justice Foundation was established two years ago as the legal profession's charity to receive and distribute new money to support free legal assistance, in particular to the pro bono and voluntary advice sector. After its modest first year receipts, it made small grants to 14 local, regional and national legal advice organisations. An intrinsic part of

its nationwide and strategic approach has been the formation of six additional regional legal support trusts across England and Wales, modelled on the London Legal Support Trust which now raises half a million pounds a year.

The number of these new costs orders is slowly increasing as more lawyers realise they can create funds in this way, and that it requires no more effort than usual. This year's National Pro Bono Week will see the launch of a new awareness campaign aptly titled 'Unlock funds for justice' to encourage and inform those lawyers who are not yet aware of how the process works, or the valuable help it can provide.

To help more people, or even just to maintain services given the cuts, we must introduce further innovative schemes to produce new forms of funding. Several possible schemes are listed below, of which some were described in detail in *Closing the Justice Gap*, the Jures report on new ideas for legal aid, published by *Solicitors Journal* earlier this year:

- Interest on client accounts (IOLTA in the US, CARPA in France)
- Unclaimed money in solicitor client accounts
- Contingent legal aid fund (CLAF)
- Legal profession levy
- Undistributed proceeds from collective proceedings
- Polluter pays levy
- A capital endowment
- Sponsored walks and fundraising events

Avoid the black hole

Given the state of public finances, there could be pressure to put any new money straight into the Treasury. There are obvious dangers in this model, in particular that funds might

not be ring-fenced, or that the budget of the Ministry of Justice or Legal Services Commission would simply be reduced by the corresponding amount raised. Also, initial arrangements could easily be altered by a different government. Moreover, most of the potential schemes would produce unreliable amounts of money each year; take for example the drastic effect on American IOLTA programmes when interest rates plummeted. Finally, but importantly, implementing most of the potential new schemes would require the active support of the legal profession, and the Treasury model provides the sector with little control, accountability, nor enthusiasm particularly if a scheme was mandatory.

What about the children?

If not to the Treasury, some will suggest new money should help the widest range of public causes, whether children's charities or the Big Lottery. This ignores the argument that money derived from the process of law should be directed to enable access to justice for all. Supporting the provision of legal assistance helps our society's most vulnerable, from children through to the elderly. Furthermore, improved access to justice will in turn benefit many non-legal causes.

Legal aid

The legal aid system is a cornerstone of our modern rule of law. Notwithstanding the cuts, it will continue to be prized in comparison to the rest of the world. Clearly, it will remain the funder of the vast majority of legal help, and it is difficult to argue that pro bono provision can or should take its place. But it does not mean that the current legal aid system should be the only method of financing the provision of free legal help.

“It does not mean that the current legal aid system should be the only method of financing the provision of free legal help”

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It is time to bring significant new funding to support the provision of pro bono and the voluntary and not-for-profit advice sector. We must maximise the contribution they can make, particularly at a time of funding cuts. We should also not miss the opportunity to fund new models of providing help; for example establishing regional law centres, or novel charitable or social enterprise law firms focused on poverty law.

Big Society

By escaping the traditional model we can create secondary, independent, sources of funding for legal help. A flexible source that is not reliant on taxation or departmental spending decisions. However, the trust and support of government and parliament will be critical. If the ‘Big Society’ means anything here, it is consideration of whether central government should manage all types of funding for legal help. Any independent funder must clearly be trusted by all branches of the legal profession and the advice sector. Accountability and appropriate regulation are important, but must not detract from independence to act in the public interest, without fear or favour.

Single and strategic

The prospect of extra money could lead to organisations competing and lobbying for

the funds. The solution lies in a trusted national organisation having a singular role to receive such funds, and distribute onwards. It should not be involved in providing any legal assistance itself, nor in making individual decisions on which cases should be assisted. Rather through grant funding to help meet the financial costs of charities, organisations, and new models to provide free legal help. A single national destination should take a strategic approach, taking into account local, regional and national needs. The Access to Justice Foundation is such a body.

At the core of the proposition is the ability of the sector to have more control over its own destiny, to maximise its existing potential while with additional funding being able to respond and reinvent according to the needs of the public. Also central is the ability of a strong independent funder to promote pro bono and the third sector as an effective partner to the traditional private and legal aid funded work.

Section 194 of the 2007 Act was enacted with cross-party support, and with the assistance of the Ministry of Justice and the Attorney General. The Law Society, Bar Council, ILEX and Advice Services Alliance were the founding members of the Access to Justice Foundation. The Lord Chancellor then prescribed the foundation as the recipient of costs orders. There is thus a clear precedent to show the ability of the sector to work together, and with government, to produce imaginative solutions to the problem.

But to secure the help people need, we must create new money for justice. It will not be as simple as Rumpelstiltskin's spinning wheel or the Bank of England's printing press. But such additional funding would go a long way to helping achieve access to justice for all.

Parallel universe

Andrew Caplen, chair of the Law Society's access to justice committee

“Was the work currently being undertaken by firms that had stuck with the legal aid system to be taken away from them and done ‘free of charge’ by mega-firms who might then benefit by a bolstering of their public profile?”

I come from a fairly traditional type of legal practice. Born and brought up in rural Hampshire I always intended to settle in the South East, so my search for articles was very much centred on a few towns and cities in an area sufficiently far away from London not to be regarded as overspill for the capital and to have its own identity – and a place where my slight agricultural accent was not so much out of place.

I ended up in a practice in Southampton which to London firms would be regarded as high street but in a local context it was more than that. It had served, and continues to serve, local businesses and individuals around Southampton, along with some of the light industrial and high-technology businesses situated in the Winchester/Southampton/Portsmouth corridor.

What attracted me to my firm – where I have been a trainee solicitor, an assistant solicitor, a partner and now a consultant – was that they performed a wide range of work and had a diverse client-base, and clearly had a social conscience. They did not call it pro bono work, but this is what they did as a matter of normal business practice. It was ingrained in what could be termed their *modus operandi*.

The then partners considered that being a solicitor was, in fact, a vocation and using your skills as a man or woman 'of affairs' (my firm was the first in Hampshire to have a woman as a partner) meant you had an obligation to use your abilities at times without the certainty of a financial reward.

One of the partners had founded a voluntary duty solicitor scheme providing assistance – on a completely unpaid basis – to otherwise unrepresented defendants in Southampton Magistrates' Court. His model was one that interested the powers-that-were who later considered setting up a national paid duty scheme. That partner became a member of the relevant governmental working party.

By the time I joined the firm, the national duty solicitor scheme was just about to go live. But my firm remained as its local administrator, unpaid, for a number of years thereafter; and, yes, rotas were issued on time and 'dates to avoid' were even taken into account.

Then we set up a scheme named Law Line Southampton. Solicitors who joined paid a small subscription to cover printing costs and joined the Law Line rota. This meant they would take their turn in spending a day being available to give non-criminal legal advice to telephone callers – sometimes over 40 in one day. In the evening the solicitor would be required to attend a free legal advice venue: Southampton CAB, the Commission for Racial Equality and Woolston Unemployed Centre. Everyone in the area seemed to know about the scheme; the city council provided funding to publicise it. Southampton Central Police Station and the local CAB drank their morning coffee

from mugs emblazoned with our logo.

This was the 1980s though and things were different then. There was enough 'fat' in the system for solicitors to feel that they could give some of their time for free.

Firms provided more generalistic advice; if you had a received a call on Law Line duty that was not within your knowledge, there would almost always be someone in your firm who could take the call instead.

Almost all firms in the city were involved – there were only a few who would exempt themselves. But, then again, most of the firms in Southampton did some measure of legal aid work.

My firm had been in the forefront of legal aid too. It had taken on its first legal aid cases shortly after the system was introduced in the late 1940s and had continued to regard it as being part of the service that the firm should provide. Partners in the firm were involved in various voluntary committees that helped to administer the system. One of my trainee solicitor duties was even to help rearrange the furniture in the senior partner's room once a month; area appeal committees were held regularly there and the room was provided free of charge.

This work did have some financial benefits; you would occasionally pick up a new case through having provided the free advice. Perhaps a juicy Crown Court trial resulting from the free representation you had provided at the magistrates' court. Perhaps someone you saw at the CAB had a genuine personal injury case that would lead to costs being paid.

Advice given freely to Southampton's Women's Refuge would frequently lead to instructions to take domestic violence proceedings. Whether the time expended

for free led to sufficient financial recompense was not, however, a calculation that anyone bothered to do.

Sign of the times

In the late 1980s things changed. A number of the larger, perhaps more blue chip, firms withdrew from the Law Line scheme. They were too busy. They did not concentrate on such general areas of law any more. Their senior partners no longer appeared in the local magistrates' court unless it was to make applications at the liquor licensing sessions. And they had decided to stop doing legal aid work; it was not well paid and they had a lot of commercial work and wanted to concentrate on that. They felt sure we understood.

We soldiered on. We felt it was still part of our vocation, our calling as lawyers. Maybe it was even part of our Judaeo-Christian heritage; the instruction of Solomon was that we should "speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy." But other initiatives became less and less well supported. We still did them, although they tended to be more and more things we did ourselves. We still did legal aid work – and still do – although perhaps our private and commercial practice has always meant an element of cross-subsidisation of one part of our practice by the other.

And then we started to hear about pro bono work. The phrase was a known one but not so much in this context. It brought good touchy-feely publicity and became front-page legal press news – and the subject of legal feel-good seminars, of

"It was part of a good law firm's corporate social responsibility. But we had never called it 'pro bono'. Perhaps we just were not so good at realising the marketing benefits that it seemed it could bring. Perhaps we had missed something here"

award ceremonies and the occasional national honour. It was part of a good law firm's corporate social responsibility. But we had never called it 'pro bono'. Perhaps we just were not so good at realising the marketing benefits that it seemed it could bring. Perhaps we had missed something here.

And then the government seemed to suggest that this was something that all lawyers should do. At the same time it was clear that the government was intending to take pressure away from the legal aid budget – it was in the process of being capped so that it was no longer demand led.

It was also clear that the system of rationing legal aid provision via new matter starts was a precursor for actual financial cuts. Was the thinking behind this that the work currently being undertaken by firms that had stuck with the legal aid

system (many of whom had come to rely upon the low-paid work for survival) was to be taken away from them and to be done 'free of charge' by mega-firms who might then benefit by a bolstering of their public profile? Was there no recognition of what had been done by traditional firms in the past under increasingly tightened circumstances? And, in any event, how could these newer pro bono efforts be qualified, able to provide the sort of advice that was needed by the typical legal aid solicitor's clients?

This was undoubtedly partly a misunderstanding of the nature of pro bono work that the City firms, for example, were and are doing. But you can understand the thoughts behind these misconceptions. The legal press had reported the public recognition of firms whose involvement in pro bono appeared to be relatively short term, whereas the more traditional firms had been continuously involved with it as a way of life without recognition or reward. Changes in the legal marketplace had meant that their commercial survival was under threat. They would probably even argue that legal aid in itself should be regarded as being a pro bono service and that the Legal Services Commission was the national body overseeing pro bono work – but without the award ceremonies.

Building understanding

I feel differently. Perhaps because I no longer have a financial interest in a firm of solicitors. Perhaps because the heritage so adequately stated by King Solomon is one that I personally subscribe to. I applaud pro bono work in all its forms – by whoever, for whoever and for whatever reason. The fact that a needy person is helped through what

may be the most stressful period of his or her life is of all importance and is to be encouraged, in all circumstances.

I passionately believe in the rule of law but the rule of law is meaningless without there also being access to justice. It is not so important who provides that access to justice, so long as it is provided.

I do have three messages though. The first is to both the legal aid – and perhaps more traditional – section of my profession and the bigger national firms. Try and understand what each of you is doing. It could be that there is no conflict between you and that you can constructively work together. The situation I outlined from the 1980s may have come full circle and you may have more in common than you think.

The second is to the government. If you are tempted to think that you can continually cut legal aid and make up the shortfall by encouraging pro bono work by lawyers then you are living in a parallel universe. A universe where everyone is a generalist and can provide appropriate advice and representation just by passing a law degree – if that. A universe where it does not seem to matter if tendering processes and reduced rates have the result of consistently reducing the viability and ultimately existence of your supplier base.

And the third is to everyone – and is perhaps the most radical. Consider finding other ways of publicising the good the profession as a whole can and should do – surely that is not beyond the wit of man. If we have public recognition we have our reward by virtue of our public applause. If we perform pro bono services in secret, as part of our vocation, then maybe that is even more worthwhile.

New alliances

Rebecca Hilsenrath, chief executive, LawWorks

“This project is particularly important because all lawyers, irrespective of their expertise, are capable of making a real difference by providing initial advice to those in need”

“**L**awyers make possible the peaceful life of men in a peaceful state.” If you want to know who said that – a rare plaudit for lawyers in a hostile world – keep reading. For some of us, that rarified claim can feel a fair distance from the day job.

There is a popular pro bono line, originally developed as the strapline of a previous National Pro Bono Week: “Pro bono – it’s part of being a lawyer.” As a corollary to that, it could be said that any lawyer can carry out pro bono work. This maxim is not, however, reflected in a number of widespread misconceptions. Perhaps as much as anything, the objective of LawWorks is to spread that message and to enable its implementation.

The numbers of perceived obstacles to pro bono work are legion. From in-house counsel who believe they cannot access requisite professional indemnity insurance to City equity lawyers who believe their expertise is not transferable and to LawWorks members who, in response to a survey in 2009, claimed that the greatest barrier to carrying out pro bono was time.

In fact, LawWorks’ members are responsible for a vast amount of pro bono work and one of the charity’s functions is to

recognise that contribution. What LawWorks adds to the effort is collaboration, coordination and innovation at a strategic level.

LawWorks is the operating name of the Solicitors Pro Bono Group. Established in 1997, we are a national charity providing brokerage, consultancy and clearing house services for lawyers providing pro bono legal advice and assistance. Our members are largely law firms and in-house legal departments (for whom we provide professional indemnity insurance cover at no additional charge). We have members in London and all over the country but are focusing on increasing regional presence, particularly in Wales and the North. We operate through a number of specific projects, access to all of which is available to our members in return for an annual membership fee.

LawWorks' great strength is the range of projects it operates. At the same time, we recognise that many lawyers will focus on particular projects and may not realise the breadth of our offering. This reflects, as much as anything, the depth of stereotyping in perceptions of the pro bono legal work.

Clearing house

LawWorks is a clearing house and a key area of work for us is case brokerage. We run two distinct projects – for individuals and for community groups. In both, our teams review applications for legal merit and financial eligibility. We aim to provide help for those who cannot access legal aid nor afford to pay and, on the other hand, small charities that cannot otherwise access legal assistance. We place cases with firms that offer the requisite expertise, and lawyers will receive a clear briefing sheet

with the relevant issue and key materials attached. We aim to place cases which will not take an inordinate amount of members' time. A parallel project provides free mediation service (and if possible a legal adviser) where either party to a dispute cannot afford to pay. An offshoot of this project, currently in development, is a peer mediation project – teaching conflict resolution skills to school pupils.

Our Initial Electronic Advice project facilitates brief, discrete responses provided anonymously by members to specific questions posed over the web and triaged by the charity. This is a particularly popular project which works on maximising the impact of lawyers' time available, allowing them to do pro bono work from their desk. We are currently trying to build capacity in the system in response both to members' wishes and the growing need for strategic solutions to unmet legal need.

We establish and support free legal advice clinics and here our flexibility and knowledge of the sector comes into full force. Clinics are established according to local need and capacity in the legal profession. They may be in general or specific areas of law; appointment or drop-in; face-to-face, telephone or virtual; run by a single law firm or a partnership of several; weekly, fortnightly or monthly; and the target clients may be individuals or organisations.

All LawWorks clinics enjoy support such as roundtable knowledge-sharing sessions, handbooks, advice and consultancy and, crucially, free CPD accredited training, available face to face and by podcast over the net. This project is particularly important because all lawyers, irrespective of their expertise, are capable of making

“Students are an important resource in the pro bono sector and our work helps to shore up their contribution and to put them in touch with local opportunities”

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a real difference by providing initial advice to those in need. Those who do not believe this overestimate the legal literacy of the public and underestimate their own legal skills.

A key LawWorks project works with students, supporting the establishment and networking of pro bono opportunities in university law faculties and postgraduate law schools. Students are an important resource in the pro bono sector and our work helps to shore up their contribution and to put them in touch with local opportunities. We run a Student Pro Bono Conference every other year and a dedicated student pro bono website.

Legal literacy

The provision of traditional legal advice is not, however, the limit of our activities. It is important also to build levels of legal literacy and awareness of rights and responsibilities on a preventative basis. It is equally imperative to provide volunteering opportunities for those who cannot advise: students and trainees who cannot access supervision; public sector lawyers who

struggle with conflict interest barriers – as well as those who are simply more interested in other forms of assistance.

We develop factsheets, based on frequently asked questions, which our members draft and are downloaded from our website in thousands. We facilitate the delivery of practice advice talks, given by our members to groups of charities on a range of issues such as compliant redundancy processes or data protection. Through ALLIES (a local lawyer in every school) we promote lawyers using their legal skills on the governing bodies of schools, where they are able to make other contributions to society.

All these projects involve the provision of opportunities to member firms. We have recently, however, in response to a wider strategic demand from the legal profession, developed a new project – Choices – which works with individual solicitors. These solicitors fall into three categories: those who have been made redundant, those who are on career breaks and those who have retired.

We provide (in partnership with the Law Society) practising certificates, insurance and a consultancy and match-making service, allowing access to all our projects and other, more bespoke, opportunities. In relation to the first two categories, we run a Guaranteed Interview Scheme through some of our members, who have agreed to provide an interview for a suitable published vacancy to any Choices lawyer who has delivered above a certain number of threshold pro bono hours. The second and third limb of this project will be launching in the early part of 2011.

Lastly, and importantly, LawWorks is innovative. The world of pro bono does not stand still. We run a consultancy service,

“It is important to build levels of legal literacy and awareness of rights and responsibilities on a preventative basis”

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developing new projects in accordance both with community need and members’ objectives. Recent examples have included advocacy opportunities representing asylum seekers challenging their welfare benefit provision. Other areas of work under consideration include representation of pupils excluded from school and of families of children in hospices.

Strategic coordination

In all areas, we work as closely as possible in partnership with other organisations in the sector. Over the past couple of decades, the strategic coordination of pro bono in England and Wales has developed exponentially.

Clearing houses such as LawWorks and the Bar Pro Bono Unit, themselves set up in the second half of the 1990s, together with other pro bono charities such as the Free Representation Unit and important advice sector umbrella bodies such as the Law Centres Federation, AdviceUK and Citizens Advice, all three professional bodies and the law school sector, were brought together in 2002 to sit around the table of the Attorney General’s Pro Bono Coordinating Committee. This has resulted in greatly improved collaboration and reduced duplication across the sector.

More recently, in 2007, the Attorney General’s International Pro Bono Coordinating Committee was formed, on the back of important new initiatives such as Advocates for International Development, to harness and coordinate appetite for focusing on the international arena.

July 2010 saw the establishment of the National Pro Bono Centre in Chancery Lane, the heart of London’s legal community. The centre was established as a charity to house the Bar Pro Bono Unit, LawWorks and the ILEX Pro Bono Forum. The move will enable the three charities to build on synergies and enhance an already close working relationship, while including provision to accommodate others involved in the pro bono sector. It represents the creation, for the first time in the world, of a single, high-profile, physical hub for the coordination and development of national pro bono services. It is an important and exciting next step forward for the profession as a whole and we all look forward with great anticipation to see what results.

John William Davis (an American Solicitor General and failed Democratic presidential candidate in 1924, losing to Calvin Coolidge) said: “True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures – unless as amateurs for our own principal amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men’s burdens and by our efforts we make possible the peaceful life of men in a peaceful state.”

This is not a bad objective for the legal profession. But do we build no bridges? I would argue that’s what the National Pro Bono Centre is.

Quantity v quality

Crispin Passmore, strategy director,
Legal Services Board

“The majority have spurned legal aid to concentrate on corporate and commercial work; some to concentrate on private clients”

Having spent the week representing homeless people, a lawyer from a Law Centre takes the tube across London to City Law Inc to do a Friday evening shift of pro bono advice. She doesn't know what will land on her desk tonight but feels relaxed as she has had training and knows that she will get closely supervised. She is delighted to see the case she is to work on; it's a major property deal for a pension fund that needs to be completed by Monday morning.

Her colleague at the Law Centre is spending the weekend undertaking pro bono conveyancing for one of the partners of City Law Inc. She chose this because she has done well out of rising property prices (it makes up for the low salary in the voluntary sector) and wants to put something back into the property market.

Absurd? Of course. But it's worth unpicking its absurdity so that we can better understand the problem that pro bono is trying to solve and then assess its effectiveness at tackling that problem. Some have argued that pro bono is the embodiment of the public service ethos – almost a justification for the restrictive practices of the legal profession. This has

“Without the means to enforce our rights our rights are meaningless. So as a public good we can put legal services alongside other markets such as utilities, health and education”

not prevented the legal services market being opened up to competition: the public service ethos demands not just pro bono advice for the poorest but also affordable services for the majority. So, with significant deregulation under way, whither pro bono?

Improving access

When we talk about pro bono advice we almost always mean better-off lawyers volunteering in a community advice centres or law centres. The lawyers are trading down from well-off, better-informed and more demanding consumers to help the poorest and most vulnerable clients. That is simply because pro bono advice needs a pool of consumers who are unable to get the advice they need. It is primarily about improving access.

The problem of access is not unique to the legal services market. It is probably a feature of any part of our economy or society where the demand is universal. We see similar issues in energy and other utilities; we see it in health and education and we even see it in postal services.

These services deploy a range of tools to meet that difficult to meet demand among the poorest and most vulnerable consumers. In the postal market we have a universal service requirement on the Royal Mail to ensure that the rural poor are not excluded. In energy we have social tariffs that provide access to the lowest cost tariffs to potentially three million customers regardless of income and credit rating. In health and education we offer public services paid for through general taxation – i.e. we collectivise risk and responsibility so that those with most need to do not shoulder their burden alone. And in the legal services market we have legal aid – access to the

market paid for through general taxation.

All of these are state interventions into the operation of markets to protect those unable to play a full and equal part in that market. Can pro bono do the same for the poorest consumers?

Potential consumers of legal services undoubtedly struggle to get the advice they need. But do pro bono services help tackle that problem? There is little evidence that it makes it any easier for consumers to get the advice that is needed. Perhaps it even underpins some of the fragmentation of services that makes it almost impossible for disempowered consumers to choose and use legal services provider in any informed manner.

Pro bono advice adds some bandwidth to legal services, meaning that a law centre can help more people – but at what cost? There is the opportunity cost of the lawyer's time; the fees that are forgone in using their time for different work. There is the cost of any training and supervision of the pro bono advisers by both the provider and host firm/agency. Through proper analysis we could see if the benefits match the costs. Could those costs be deployed to improve access more efficiently and effectively?

Sacrificing quality?

To be a proponent of the sort of pro bono advice that is delivered in advice centres every week it is necessary to believe one of two things. You must be confident that the legal advice delivered by pro bono lawyers is of the same high quality as that delivered by legal aid or other lawyers. Or you must believe that it is worth sacrificing quality. Assuring the quality of pro bono advice

must then be central to supporting it.

Legal aid services are quality assured through a combination of regulatory and contractual requirements to ensure that any legal services business providing advice and representation to the poorest consumers are experienced and competent. Most of those services have been audited and many of those services have been peer reviewed. Many private legal services are assured through accreditations and panel membership. And some services are held to account by repeat consumers – such as much corporate law. Has the same commitment to quality been shown in pro bono advice or do we just accept that the poor have lost the right to excellence?

It is no more credible that a bright corporate lawyer can deliver excellent advice in homelessness, welfare benefits or discrimination than it is credible that a law centre solicitor should be trusted with a major property deal, company refinancing or other corporate work. It is not just that they are unlikely to have expertise in the law; it is also that they are not experienced in the strategies and tactics that underpin the law's use and application. If in doubt, ask the consumers.

Systematic services

This critique has focused on the most common sort of pro bono legal advice but there are other pro bono activities worth considering:

- **Supporting voluntary and community groups** – schemes such as LawWorks for Community Groups connect expert

advisers with small agencies that need help. The work is done predominantly in the lawyer's own office and within their area of expertise: it matches lawyers willing to give their expertise to a small business that will benefit from advice.

- **One-off cases** – many lawyers in private law firms take entire cases or pieces of representation for consumers pro bono. It ensures that consumers get the legal services they cannot afford. It is, however, inevitably haphazard and small scale. Some of these cases are high profile, such as death row cases, but others are just consumers unable to afford the next step in their case. Consumers have to have found their way into the system already to benefit.
- **Training and support** – many lawyers provide training to advice services without charge. It supports the delivery of better legal advice to consumers. But many would argue that this is just marketing of a firm or chambers – value-added work to encourage instruction.

There are probably many other forms of pro bono advice underway but it is surely the case that the overwhelming majority of support goes into supporting advice centres and law centres. Why is that? Perhaps law firms see value for them in this sort of pro bono? Perhaps it is good corporate social responsibility work; perhaps it is a good way to teach trainees how to engage with a range of clients; perhaps it helps them get the litigation experience needed?

“Can pro bono advice ever deliver acceptable quality in its current, mainstream form?”

A symbiotic relationship between law firms and pro bono advice must be a good thing. If law firms gain from the deal they will be more likely to contribute.

What next?

The boundary between voluntary action and state services is not a one-way flow. It is a shifting one, an occluded front that moves as both state and voluntary action alter in the social, economic and political landscape. The academic literature is wide in this area but goes back a hundred years or more. How do voluntary legal services fit in?

Before the days of legal aid, pro bono was the central method of meeting the needs of the poorest consumers. But poor man lawyer schemes of the East End of London were replaced by legal aid. Some would argue the post-war contract with the legal profession was that all lawyers would undertake legal aid work at lower prices and the state would not create a national legal service. Over 60 years that contract has fallen away: less than half of law firms undertake legal aid work and the percentage of the workforce engaged on legal aid is lower still. The majority have spurned legal aid to concentrate on corporate and commercial work; some to concentrate on private clients. That is not a poor reflection on lawyers but an inevitable response to market forces.

With not all lawyers contributing to either legal aid or pro bono we have to think again about whether the whole of the legal profession should be engaged in access to justice. The market tells us not – we do not expect builders, supermarkets or car manufacturers to support the poorest consumers. But law is different. It is the rule

of law that underpins our economy and society. It is access to justice that underpins democracy. Without the means to enforce our rights our rights are meaningless. So as a public good we can put legal services alongside other markets such as utilities, health and education.

That necessitates examining thoroughly whether pro bono advice delivers effectively. Can pro bono advice ever deliver acceptable quality in its current, mainstream form? If it can, then it must be as an explicit responsibility, with the regulatory, quality and consumer focus the same as with paid for services.

Alternative options

Alternatively, should we consider options that raise additional money for an access to justice fund that supports real and substantial improvements in access such as a legal direct telephone and web service?

There are some 150,000 regulated lawyers in practice in the UK. These operate through over 10,000 law firms, chambers and other forms of practice. A levy of £100 per lawyer would raise £15m per annum. A structured levy (based on turnover, profits, or fee earners perhaps) averaging £5,000 per firm might raise an additional £50-60m or a charge of one per cent of profits might conceivably raise in excess of £35m. As the legal services market grows so the income from a levy will grow ensuring that the poorest share in improving access to justice from a better regulated market.

Pro bono advice may have a role to play, but so might other interventions. But we should not forget that the objective is not to increase pro bono work – it is to harness and regulate market forces and to intervene where necessary so as to deliver access to justice.

The American dream

Suzie Turner, partner, Dechert (Washington), and **Steven B Scudder**, committee counsel, American Bar Association standing committee on pro bono and public service

“The introduction of competition and challenges into the pro bono system has served to be an effective tool in increasing the amount of pro bono services provided by law firms in the US”

Pro bono in the United States has grown by leaps and bounds over the last two decades. A recent survey of attorneys found that 73 per cent of the respondents had provided free legal services to someone of limited means or an organisation serving the needs of people with limited means in the past 12 months. Pro bono is now a critical element of the American system of providing legal services to the poor, but where did the impetus come from?

Legal aid underfunding

Legal aid is underfunded in the US, resulting in a significant amount of unmet need. Government funding for civil legal aid in the US pales in comparison to funding for legal aid in the UK.

In 2009, overall funding for civil legal aid was approximately US\$1.3bn. The largest single source of that funding was the federal Legal Services Corporation (LSC), which allocated US\$390m. The remainder was from a variety of sources including other federal programmes (for instance, funding

“League tables measure only quantity and not quality, and undermine the true spirit of pro bono, creating competition where there should be none”

to serve the legal needs of the disabled), state and local governments, IOLTA programmes, foundations and private contributions.

A legal needs study by LSC, completed in 2005 and again in 2009, entitled ‘Documenting the Justice Gap in America’, showed that LSC grantees consistently have to turn away 50 per cent of eligible applicants requesting their help. A national legal needs study conducted by the American Bar Association (ABA) in 1994, and many statewide studies conducted since, have found that only 20 per cent of the legal needs of low-income Americans are being met.

As a result of the low levels of legal aid funding and the resulting ‘justice gap’, pro bono must play a prominent role in ensuring that legal services are delivered to those who cannot afford it.

Ethical standards

In the US, the effort to inspire lawyers to do pro bono work has been greatly enhanced because pro bono service is considered an ethical responsibility. The ABA adopted its first Canons of Professional Ethics in 1908 and the responsibility of lawyers to serve those in need has been included as part of the professional ethos of lawyers, in one iteration or another, since then.

The current governing rule, which was developed by the ABA Standing Committee on Pro Bono and Public Service, is model rule 6.1 of the Rule of Professional Conduct which provides, in part: “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.”

Additionally, the highest courts in many states across America have used court rules as a way of leveraging pro bono service. Some promote pro bono through mandatory or voluntary reporting systems. Seven jurisdictions require lawyers to report their pro bono contributions and 12 have voluntary reporting systems. Other states allow pro bono service to be counted toward mandatory continuing legal education requirements.

Matching services

The growth of pro bono has also been supported by the development of an infrastructure of pro bono clearing houses designed to recruit, train and match lawyers with appropriate pro bono matters. The growth of organised pro bono in America can be traced to the Legal Services Corporation Act of 1974, which incorporated a requirement to study pro bono and other delivery strategies in addition to the staff attorney model. The result of the study was the adoption of regulations requiring LSC grantees to use 12.5 per cent of their federal funds to support private attorney involvement.

Since the private attorney involvement regulation, over 1,000 pro bono clearing houses have sprung up across the country (compared to only 80 in 1980). Some of these are free-standing non-profits, while others operate as part of Bar associations or legal aid organisations. In addition, there are a multitude of NGOs and human and civil rights organisations that routinely attempt to leverage their ability to provide services by using pro bono assistance.

To improve the chances of success for these programs, the ABA has developed standards for their operation. These

standards have proven to be extremely useful in guiding new pro bono programmes and in improving and evaluating existing programmes so they can effectively and efficiently facilitate the provision of high-quality pro bono legal services.

Law firms' programmes

Law firms have risen to the occasion in providing much needed legal assistance. As with its UK counterparts, American firms have made great strides in institutionalising their pro bono programmes. In addition to public service, reasons cited by firms for institutionalising their pro bono practices include the recruitment, retention and training of attorneys and the impact of pro bono on a firm's reputation.

In both countries, many firms, particularly large firms, employ dedicated professionals who are responsible for managing the pro bono practice. One positive development in the US is the increasing number of lawyers at a partner or counsel level holding these positions. In America, most of these positions focus specifically on the management of legal pro bono work whereas, in the UK, the position is often merged with managing a corporate social responsibility program.

Challenges and league tables

The introduction of competition and challenges into the pro bono system has served to be an effective tool in increasing the amount of pro bono services provided by law firms in the US.

An example of a successful challenge is the Law Firm Pro Bono Challenge, originally developed by the ABA and run by the Pro Bono Institute. Geared to law firms

with 50 or more attorneys, the challenge asks firms to commit to spending either three or five per cent of total billable hours on pro bono matters annually. There is no penalty for failing to meet the target. The results of the challenge are reported collectively, and not for individual firms. In 2009, the Pro Bono Institute reported that 58 per cent of the reporting challenge participants met or exceeded their commitment. A similar challenge has now been developed for corporate law departments.

Pro bono league tables have proven to be a very effective motivator for American law firms. In 1994, *The American Lawyer* magazine started ranking firms on their pro bono performance. An even larger impact was made, however, when the magazine decided to publish an annual 'A-list' incorporating pro bono as one of the four factors defining an 'elite' law firm.

In an attempt to look beyond simply measuring profits, the magazine assesses firms on four factors: revenue per lawyer, commitment to pro bono, diversity among lawyers, and associate training and satisfaction. Importantly, statistical weight given to revenue per lawyer and pro bono is doubled. The pro bono rankings are based on two quantitative measures: the average number of pro bono hours per attorney, and the percentage of firm attorneys contributing at least 20 hours of pro bono work.

Both the challenges and league tables have their critics. Complaints include that they measure only quantity and not quality; the definitions developed to ensure that law firms are being compared on the same basis are too narrow or ambiguous; and that they undermine the true spirit of pro bono

“Law schools have played a large role in trying to inculcate a pro bono ethic in law students that will, hopefully, infuse their professional careers”

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creating competition where there should be none. However, firms continue to participate and the results are a marked increase in pro bono work nationwide.

It starts at law school

Finally, law schools have played a large role in trying to inculcate a pro bono ethic in law students that will, hopefully, infuse their professional careers. In America, the ABA Standards for the Approval of Law Schools specifically provide that a “law school shall offer substantial opportunities for... student participation in pro bono activities”. Currently, there are 34 American law schools that require pro bono service of their students and another 116 that have voluntary pro bono programs.

Pro bono in the US has developed around a need to fill a gap in the justice system. An ethical foundation, combined with support of the professional bodies, courts, law schools and private attorneys, has ensured that pro bono is on its way to becoming a truly integrated part of the American system of delivering legal services to the poor.



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Pro bono: good enough?

The uneasy relationship between volunteer legal activity and access to justice

The 'Justice Gap' refers to the increasing section of the public too poor to afford a lawyer and not poor enough to qualify for legal aid. At the heart of any notion of a decent society is not only that we have rights and protections under the law but that we can enforce those rights and rely upon those protections if needed.

To that end, the Attlee government introduced our system of legal aid in 1949 as a fundamental building block of the welfare state. The architects of that welfare state decreed that legal aid shouldn't be restricted to those people 'normally classed as poor' but should also include those of 'small or moderate means'. Something has gone wrong. That scheme is in danger of being reduced to a minority sink service. Eligibility for legal aid dropped from 80 per cent of the population in Attlee's day to less than one in three of us.

This unique series co-produced by *Jures* and *Solicitors Journal* is about closing the justice gap.

Michael Mansfield QC

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