Justice Will Prevail (With a Little Help From Her Friends): Pro Bono in Utah

Steven B. Scudder
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The Utah State Bar wants more lawyers to work for free. The state’s 7,000 lawyers are encouraged to perform fifty hours of free, or pro bono, work each year, but fewer than a third are reporting it when they annually renew licenses. “It’s not discouraging, but it’s not encouraging,” said Brooke Bruno, the bar’s pro bono coordinator. The state bar this fall will create a committee, the Utah Access to Justice Council, to study free legal work as well as other issues. “We want to better define the role of pro bono work,” bar spokesman Toby Brown said. The American Bar Association recommended Utah set up a group to oversee efforts up and down the state.”¹

I. INTRODUCTION

The Utah State Bar’s decision to create the Access to Justice Council speaks volumes about the bar’s understanding of the need to change the dynamics of pro bono in Utah. In this author’s twenty-two plus years of work in the pro bono field, there has always been somewhat of a glass half empty/glass half full phenomenon at play when evaluating the state of volunteer lawyer involvement in meeting the legal needs of the poor. This is not a reflection on the number or percentage of lawyers doing pro bono work. Nor is it a suggestion that there have not been significant steps forward in the pro bono movement. There have been, in fact, important advancements.

Pro bono is much more fully integrated into the overall legal services delivery system than it was a quarter century ago, and there have been noticeable improvements in the quality and scope of programs. Law firms and law schools

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have become increasingly more organized and committed to public service, innovative pro bono delivery models have been developed, and statewide policies have been adopted that focus more attention on pro bono. Nonetheless, the culture of pro bono always seems to be ebbing and flowing—sometimes stronger, sometimes not so strong—without any clear indicators of what causes these fluctuations in interest, commitment, and involvement.

The Utah Access to Justice Council has an important opportunity to explore new recruitment strategies, develop new program models, and identify policy approaches that can be used to expand pro bono legal services delivery. Maybe most importantly, the Council might just identify the key to filling up the pro bono cup in the state—moving more and more lawyers forward, on a regular and continuing basis, to helping meet the legal needs of low-income Utahns.

This Article explores some of the collective wisdom of the American Bar Association ("ABA") and others who have done work in the pro bono field, presenting it as a resource for the Access to Justice Council and for every legal professional in the state. It offers information about the historical underpinnings of the current organized pro bono movement in America, probes the level of pro bono participation nationally, describes how pro bono has grown into an integral component of the legal services delivery system, answers why lawyers volunteer (and why they don't), provides some insight into pro bono delivery in Utah, explores strategies for changing the culture of pro bono nationally, and offers some very practical recommendations for consideration.

II. LOOKING BACK

A. The Delivery Systems Study, Private Attorney Involvement, and More

In 1983, the Clearinghouse Review devoted an entire issue to Private Attorney Involvement in Legal Services for the Poor. The discussion was framed as two debates. The first addressed the quality and cost-effectiveness of reallocating ten percent (and later twelve and one-half percent) of a legal services grant, as required by the Legal Services Corporation ("LSC"), to private attorney involvement ("PAI") activities. The second assumed pro bono was here to stay and

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2 Private Attorney Involvement in Legal Services for the Poor, 17 CLEARINGHOUSE REV. (SPECIAL ISSUE) 175 (1983).
3 Gregory R. Dallaire, Some Thoughts Concerning Private Attorney Involvement in Legal Services in the 1980s, 17 CLEARINGHOUSE REV. (SPECIAL ISSUE) 175, 175 (1983).
4 The LSC Board issued an instruction to programs in January 1982 regarding the allocation of ten percent of LSC funds for private attorney involvement activities. In February and March of 1982, three regional conferences were held to assist in developing private bar programs. In 1985, LSC enacted 45 C.F.R. pt. 1614 (1985), a regulation which replaced the ten percent instruction with a more detailed twelve and one-half percent funding requirement. See id. § 1614.1(a).
focused on how to best organize the work.\(^5\) With the obvious benefit of hindsight, this section looks at some of the doubts and concerns raised during the early days of organized pro bono.

At the same time the PAI regulation was adopted, programs were suffering a significant cut-back in their LSC grants. It is understandable that the idea of further reductions in cash flow would seem like pouring salt on the wound. After all, the benefit to the clients from an investment in the private bar was not likely to be measurable, or certainly not cost effective, for some time to come. On the other hand, the LSC had just completed its Delivery Systems Study,\(^6\) a five-year exploration of complements to the staff attorney model. Pro bono, hardly a new concept, was determined to be a very viable method of serving the legal needs of the poor.\(^7\)

Nonetheless, the debate raged as to whether pro bono attorneys could provide, dollar for dollar, quality representation to clients. Of particular concern was how well private attorneys could deliver on issues unique to low-income people. Legal services programs’ early referrals to private lawyers were limited mostly to types of cases where they felt the pro bono lawyer could do no harm. These frequently fell into three categories of matters: simple ones that required little skill, more complex ones where the private lawyer already had expertise, or ones where there were really no remedies for the clients.

Despite ongoing concerns about the wisdom of the PAI requirements, legal services programs began to take a more serious look at how to involve the private bar. They engaged their local bar associations as partners in the delivery system and developed programs located at the legal aid or bar offices. As pro bono gained momentum, some communities chose to create free-standing programs. By September of 1982, ninety percent of LSC programs had PAI activities in place, with eighty-four percent using pro bono as the primary model.\(^8\) As a direct result,

\(^5\) Dallaire, \textit{supra} note 3, at 175.

\(^6\) The Legal Services Corporation Act of 1974 required a study of delivery systems to determine which approach (staff model, judicare, contract, pro bono, mixed systems, et al.) was most effective and cost efficient. \textit{See} Pub. L. No. 93-355, § 2, 88 Stat. 378 (codified as amended at 42 U.S.C. § 2996f(g) (2000)). Funding under the Delivery Systems Study ("DSS") began in 1976 with thirty-eight bar demonstration programs and sixty staff programs included. \textit{See} ALAN W. HOUSEMAN, CTR. FOR LAW & SOC. POLICY, PAST AND CURRENT EFFORTS TO ENSURE QUALITY WITHIN THE CIVIL LEGAL ASSISTANCE COMMUNITY 1–2 (2004), available at http://www.lri.lsc.gov/pdf/04/04houseman_quality.pdf. The DSS was completed in June 1980 but was inconclusive about the best system. \textit{Id.} at 2. The study did find that, while no other model performed better than the staff model, pro bono met LSC’s feasibility and performance criteria. \textit{Id.} at 4–5.


there was an increase in the involvement of private attorneys in LSC program PAl efforts from 9,700 in 1980 to 42,000 in 1982.\(^9\)

Over time and after much experience, it became apparent that pro bono lawyers were eager to learn, brought with them expertise and new perspectives, and truly cared about making a difference in clients' lives. It also became clear that the partnership with the private bar offered intangible benefits to the broader legal services delivery system.

**B. The Growth of Organized Pro Bono\(^{10}\)**

Over the past twenty-five years, pro bono work for civil legal matters has grown in scope and visibility. Law firms, law schools, corporate counsel offices, and government law offices have worked toward integrating pro bono functions and policies into their environment.

The growth of organized pro bono programs in bar associations, legal services organizations, and independent entities is the most important example of how pro bono has been integrated into the legal profession. In 1980 there were approximately eighty-three organized pro bono programs dedicated toward referring civil matters for low-income clients to private attorneys. Now, twenty-five years later, there are over 900 such programs that serve increasingly diverse legal needs of clients and target an equally varied volunteer pool.\(^{11}\)

Increasingly, large law firms measure themselves against their peers by the strength of their pro bono programs. In 1989, with a grant from the Ford Foundation, the ABA Standing Committee on Pro Bono and Public Service formed the Law Firm Pro Bono Project and in 1993 challenged large firms around the country to contribute three to five percent of their total billable hours to the provision of pro bono legal services.\(^{12}\) Today, over 140 law firms are signatories to that challenge,\(^{13}\) contributing hundreds of thousands of hours of pro bono legal services. Increasingly, many of these and other law firms are hiring full-time

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\(^{9}\) *Id.* at 187.

\(^{10}\) This section is taken substantially from a 2005 report completed by the ABA Standing Committee on Pro Bono and Public Service. [STANDING COMM. ON PRO BONO & PUB. SERV., ABA, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 6–7 (2005), available at http://www.abanet.org/legalservices/probono/report.pdf] [hereinafter SUPPORTING JUSTICE].

\(^{11}\) See American Bar Association, Standing Committee on Pro Bono & Public Service and the Center for Pro Bono, Directory of Pro Bono Programs, http://www.abanet.org/legalservices/probono/directory.html (last visited Nov. 18, 2006).

\(^{12}\) See Pro Bono Institute at Georgetown University Law Center, Law Firm Pro Bono Challenge, [http://www.probonoinst.org/challenge.php] (last visited Dec. 29, 2006). The Law Firm Pro Bono Project is now operated by the Pro Bono Institute. For more information about the Project, see *id*.

lawyers and staff to coordinate their pro bono work. Some medium and small law firms, government law offices, and corporate legal departments are also increasing their level of pro bono participation in an organized way.

Until relatively recently, formal law school pro bono programs were rare. Most students’ exposure to public interest causes and low-income clients occurred in clinical courses, externships, or summer jobs. In the late 1980s, a growing number of faculty, administrators, and students began encouraging law schools to take a more active role in promoting pro bono service, and Tulane instituted the first law school pro bono service requirement. Over the next fifteen years, most schools developed formal pro bono programs, and about a fifth adopted public service graduation requirements. Today, thirty-one accredited law schools have pro bono or public service graduation requirements, with roughly another ninety-five schools having a formal, administratively supported voluntary program, and the remainder relying on student groups to provide opportunities. Only a small minority of schools have no organized pro bono or public service program.

Some states have adopted rules that encourage pro bono contributions. Five states—Florida, Maryland, Nevada, Mississippi, and Illinois—have mandated the reporting of pro bono hours on an annual basis, with a range of sanctions for failure to report hours (but not for failure to perform pro bono work). Of the forty states that mandate continuing legal education, five permit credit toward that obligation for pro bono service. Fourteen states have adopted pro bono emeritus

18 These five states are Delaware, Del. Sup. Ct. R. 69(d)(i)–(ii), available at http://courts.delaware.gov/Rules (follow “In Re Supreme Court Rules 69(b)(ii), 69(d)(ii) . . .” and
rules allowing retired lawyers to continue to practice law when providing pro bono legal services to the poor. In addition, at its 2006 Annual Meeting the ABA House of Delegates approved a policy recommendation sponsored by the ABA Commission on Law and Aging encouraging state and territorial bar associations, and other attorney licensing entities, to adopt practice rules that would allow pro


bono legal service by qualified, retired, or otherwise inactive lawyers, under the auspices of qualified legal services of other non-profit programs.  

C. The Role of the ABA

Throughout this time period, the ABA was active in developing new pro bono programs and providing resources to existing programs. To accomplish this mission, the ABA devoted financial and organizational resources to build the infrastructure to support those programs. As early as 1971 the ABA was engaged in promoting pro bono activity within the private bar through efforts of the Section on Individual Rights and Responsibilities. The ABA Private Attorney Involvement Project (now the Center for Pro Bono), was established in 1979 and shifted to a more permanent position as a project of the ABA's Pro Bono Committee in 1996.  

In 1983 the ABA Pro Bono Committee sponsored the first national pro bono conference. This conference brought together stakeholders in the pro bono legal services movement to share experiences and develop new ideas about growing pro bono.  

In 1992, the ABA’s Pro Bono Committee began the arduous task of creating standards for the operation of pro bono programs. Its pro bono standards project was supported by an advisory committee that included funders, client advocates, bar leaders, and others with a stake in the development of high-quality pro bono programs. Public hearings were held and testimony considered in the development of the Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means. Throughout this Article there are references to the Pro Bono Standards. They are recommended to the staff and volunteer leadership involved in expanding pro bono in Utah as a well-presented discussion of the core elements of what makes a pro bono program successful.  

Over the four-year process during which the Standards were developed, one of the most hotly debated issues was how to evaluate the effectiveness of pro bono

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21. The ABA’s Pro Bono Committee itself has gone through a number of iterations over the years. Starting as a special committee in 1973, it became the Standing Committee on Lawyers Public Service Responsibility and is now the Standing Committee on Pro Bono and Public Service.  
22. In 1999, the ABA Pro Bono Conference was enveloped as part of the newly created Equal Justice Conference, in partnership with the National Legal Aid and Defender Association. The pro bono content has remained a critical component of the Equal Justice Conference, but it is now considered in the broader context of the overall legal services delivery system.  
programs. Those involved will recall months of heated discussion about whether a cost-per-case analysis, then used to evaluate a legal services program's effectiveness, was a valid measurement of a pro bono program's success. Ultimately, the cost/benefit analysis was reduced to one factor of many. The Standards caution that whether such a measure is meaningful must be considered in light of the qualitative evaluation of the services provided and the program's costs of facilitating the provision of high-quality legal services by volunteers. The Standards suggested that because a cost-per-case analysis does not take these factors into consideration, there could be little value in assessing pro bono programs on this basis.

Today, the phrase “cost-per-case” is a remnant of the history of pro bono. The focus has shifted instead to the measurement of outcomes and the real impact private lawyers provide through their pro bono representation of clients.

In a 2005 report about American lawyers’ pro bono work, the ABA Standing Committee on Pro Bono and Public Service stated:

Notwithstanding this expansion of interest in and attention to pro bono activity . . . . [t]he [ABA’s] Pro Bono Committee recognizes that more can and should be done to increase pro bono activity and promote a greater understanding of the legal needs that exist and the pro bono opportunities and resources available. Beginning to measure pro bono activity nationally is one step towards meeting these goals.

III. A SNAPSHOT OF PRO BONO TODAY: THE ABA PRO BONO DATA COLLECTION STUDY

A. Objectives and Methodology

While ample evidence demonstrates the growth of pro bono in the last twenty-five years, there has been little national quantitative data to help illuminate the extent of this growth and the nature of the pro bono work done by individual attorneys. To address this gap in information the ABA’s Standing Committee on Pro Bono and Public Service determined in 2004 to undertake a national, comprehensive study of attorneys doing pro bono. The Committee’s goal was to produce a national survey that captured the amount of pro bono work being done by lawyers in the United States and to obtain a clearer understanding of why attorneys do, or do not, volunteer their time to offer legal assistance to people of limited means. The survey, conducted at the end of 2004, consisted of telephone

24 Id. at standard 2.12 cmt.
25 Id. at standard 2.12 cmt. n.125.
26 SUPPORTING JUSTICE, supra note 10, at 7 (footnote omitted).
27 Part III of this Article is taken substantially from a 2005 report completed by the ABA Standing Committee on Pro Bono and Public Service. Id. at 4–5, 8.
conversations with 1,100 lawyers throughout the country in private practice, corporate counsel, government, and academia.

In undertaking a national, statistical survey of individual attorney pro bono activity, the primary objectives of the Pro Bono Committee were:

1. To provide broad, quantifiable information on attorney pro bono activity, including:
   - the number of attorneys who participate in pro bono in the U.S.
   - the number of hours of pro bono attorneys do each year
   - the substantive practice areas in which attorneys volunteer their time
2. To develop an understanding of attorneys' motivations for providing or not providing pro bono service, including obstacles faced in doing pro bono
3. To develop an in-depth understanding of demographic issues affecting pro bono activity.28

The study examined practicing attorneys' pro bono contributions over a one-year period from approximately November 2003 to November 2004, asking how much and what kind of volunteer legal services they provide, in what substantive areas they focus their efforts, and why they do or do not engage in pro bono. Lawyers were selected randomly to create a representative sample of full-time practicing attorneys from all fifty states in the United States.

**B. Key Findings**

The Pro Bono Committee released the final report of its data collection study in August of 2005. Key findings of the study include:

- Two-thirds of respondents (66%) reported doing some level of free pro bono services to people of limited means and/or to organizations serving the poor.
- Attorneys surveyed, on average, reported providing approximately 39 hours of free pro bono service to persons of limited means or organizations serving the poor.
- Attorneys surveyed, on average, said they provided an additional 38 hours of free pro bono service to individuals or groups seeking to secure or protect civil rights, to community organizations and other non-profits and toward efforts to improve the legal system.
- 46% of the lawyers surveyed met the ABA's aspirational goal of providing at least 50 hours of free pro bono services.

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28 *Id.* at 8.
There was a direct correlation between age and incidence of providing pro bono. Older attorneys were more likely to report doing pro bono than younger attorneys.

The prime motivator for attorneys who have done pro bono is the combined sense of professional duty and personal satisfaction derived from the work (70%). The second largest factor was recognition of the needs of the poor and responding to specific requests for assistance (43%).

The main discouragement from doing—or doing more—pro bono, is a lack of time (69%). Other demotivators include employer-related issues (15%), such as billable hour expectations, and the lack of specific expertise or skills in the required practice area (15%).

Providing pro bono work by substantially reducing legal fees is much less common than providing free legal services. Only 33% of the attorneys indicated doing any “substantially reduced fee” pro bono work.

Overall, pro bono clients are most likely to be referred by a friend or family member (40%) or by some type of organized pro bono program (36%), and this finding varied significantly by practice location, setting and size and age of the attorney.29

From the Committee’s perspective, the study shows both the profound sense of responsibility that attorneys have for engaging in public service and the need that exists for helping to facilitate an increase in the amount of pro bono legal services that attorneys provide for the poor.

This is the first survey of its kind and a useful tool for measuring pro bono activity and identifying strategies for expanding pro bono service around the country. Most importantly, it provides guidance for the Pro Bono Committee, the Utah Access to Justice Council, and others in positions of guiding, supporting, and promoting the expansion of pro bono legal services delivery.

IV. STRATEGIES FOR EXPANDING PRO BONO

A. What Is Being Recommended Nationally30

A recent report by the LSC confirmed there is a “major gap between the legal needs of low-income people and the legal help that they receive.”31 Forty-nine

29 Id. at 4–5.
million Americans currently qualify for civil legal assistance provided by LSC-funded programs. The report acknowledged that lawyers in LSC-funded programs cannot begin to handle this case load. At best, they can provide assistance to fewer than one in five poor Americans and to less than half of those clients who find their way to a legal services office.

In August 2005, then-ABA President Michael S. Greco responded to the unmet need for legal services by calling for a "Renaissance of Idealism in the Legal Profession." The ideal called for "a recommitment to the noblest principles that define the profession: providing legal representation to assist the poor, disadvantaged and underprivileged; and performing public service that enhances the common good." He appointed a commission to develop approaches for advancing these goals among lawyers in every segment of the profession.

At the 2006 Midyear Meeting, the ABA House of Delegates adopted a policy presented by the Renaissance Commission that urged all lawyers to engage in community service activities. At the 2006 ABA Annual Meeting the House of Delegates adopted a policy presented by the Renaissance Commission that urged all lawyers to engage in community service activities.


33 See LSC REPORT, supra note 31, at 18.


36 The commission included lawyers drawn from diverse practice settings, including the managing partner of one of the nation's largest law firms, the former managing partner of another, solo and small firm lawyers, the general counsel of a major corporation, government and military lawyers, a lawyer for a nonprofit organization, a law school dean, and a sitting federal judge. See COMM'N ON THE RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION, ABA, RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION: FINAL REPORT 25 (2006), available at http://www.abanet.org/renaissance/downloads/finalreport.pdf [hereinafter RENAISSANCE FINAL REPORT].

37 Id. at 11. The policy reads as follows:

RESOLVED, That the American Bar Association urges all lawyers to contribute to the public good through community service in addition to exercising their professional responsibility to deliver pro bono service in accordance with Model Rules of Professional Conduct Rule 6.1, where applicable.

FURTHER RESOLVED, That the American Bar Association urges legal providers and other entities that employ lawyers to adopt policies and practices that afford lawyers the time and opportunity to engage in community service,
Delegates adopted three additional policy strategies recommended by the Commission that were specifically focused on pro bono.\footnote{\textit{Id.} at 12–17. The three additional policy strategies were included in reports 121A (corporate and government support for practice setting pro bono), see REPORT 121A, \textit{supra} note 30; 121B (law school support for pro bono), see COMM’N ON THE RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION, ABA, REPORT TO THE HOUSE OF DELEGATES No. 121B (2006), \textit{available at} http://www.abanet.org/renaissance/downloads/121B.pdf [hereinafter REPORT 121B]; and 121C (judicial support for pro bono), see COMM’N ON THE RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION, ABA, REPORT TO THE HOUSE OF DELEGATES No. 121C (2006), \textit{available at} http://www.abanet.org/renaissance/downloads/121C.pdf [hereinafter REPORT 121C]. The content of these reports is reproduced in the current and following sections of this Article in substantial part.}

\textbf{B. Practice Setting Pro Bono}\footnote{This section is taken substantially from a report submitted to and approved by the ABA House of Delegates at its 2006 Annual Meeting. REPORT 121A, \textit{supra} note 30, at 7–18.}

The Renaissance Commission’s research throughout the year led to the conclusion that the pace and pressures of modern legal practice make it harder and harder for lawyers to continue to provide pro bono and public service work in their communities. Too many young lawyers enter the profession eager to make a difference, only to become frustrated as their practice leaves them little opportunity to do so. The Commission concluded that for this situation to change, lawyers must be able to strike a better balance in their lives and law practices. The key to that balance, the Commission concluded, is persuading the decision-makers in America’s law offices to free up time to enable lawyers to volunteer their skills to those in need, to help improve their communities, and in the process to find greater satisfaction in their legal careers.

Recognizing that much of the responsibility for changing the culture of pro bono rests with those in leadership positions within law practice settings, the Commission addressed its first 2006 Annual Meeting report to lawyers in solo and small firms, larger law firms, corporate law departments, and government and military law offices. The policy recommendation calls on lawyers to participate in pro bono and public service activities consistent with applicable rules of professional conduct. In a more direct manner it urges the firms, departments, and law offices to adopt effective strategies to provide them with opportunities to do pro bono work and to adopt specific internal policies and procedures to support such work. Finally, it calls on bar associations and legal service providers to assist and urges law schools and state, local and territorial bar associations to take all appropriate steps to facilitate and encourage lawyers to undertake such service.
lawyers in undertaking and carrying out pro bono and public service work and urges lawyers to seek out such assistance.40

The report submitted to the House of Delegates for resolution 121A provided detailed comments outlining strategies for each practice setting to consider. A summary of these recommendations follows.

1. Strategies for Promoting Pro Bono Participation by Lawyers in Solo and Small Firms

The vast majority of attorneys in America—and certainly in Utah—practice as solos or in firms of ten or fewer. According to ABA membership data, over eighty-three percent of attorneys practice in such settings.41 While many of these lawyers actively participate in pro bono work, recent studies identified special challenges that prevent many solo and small firm practitioners from doing so.42

Some of the factors that inhibit small firm and solo practitioners from committing to pro bono work include: limited time, inadequate resources, reluctance to tackle unfamiliar areas of law, and difficulty in locating the right opportunity. In the latter instance, the problem is not an unwillingness to volunteer so much as a lack of information about how to do so.

The ABA Standing Committee on Pro Bono and Public Service’s data collection study43 identified some pro bono obstacles specific to solo and small firms. For example, the survey revealed that only thirty-seven percent of pro bono attorneys working in solo or small firm practices with fewer than ten attorneys received their pro bono referrals from organized programs.44 This is an indicator that lawyers in small firm settings are less likely to be connected to the resources, support, and assistance such programs have to offer.

A key to increasing the pro bono participation of small firm lawyers is to develop partnerships with bar associations and legal services providers that can provide them with the resources and support they lack, from pro bono referrals to client screening, training, mentoring, malpractice insurance, forms and materials and other kinds of assistance. The Renaissance Commission’s final report urges

40 The resolution of Report 121A reads as follows: “That the American Bar Association urges all lawyers and law practices to seek out and utilize the resources and support offered by state, local and territorial bar associations and legal services providers that enable these lawyers to do pro bono and public service work.” Id. at 1–2.
43 See SUPPORTING JUSTICE, supra note 10, at 21.
44 Id. at 14.
solo and small firm practitioners, bar associations, and legal services programs to enter into such partnerships.45

2. Strategies for Promoting Pro Bono Participation by Lawyers in Larger Law Firms

For many reasons major law firms have increasingly shifted from largely ad hoc and informal pro bono programs to structured, proactive efforts supported by top firm leadership, overseen by active and respected pro bono committees, and focused on maximizing pro bono participation by lawyers across practice areas, offices, and seniority. The American Lawyer magazine now includes pro bono in the set of criteria used to determine whether a law firm will make its “A-List.”46

In addition, large law firms participate in the Pro Bono Institute’s Law Firm Pro Bono Challenge.47 Signatories to the challenge commit substantial resources—either three or five percent of the firm’s total billable hours or sixty or one-hundred hours per lawyer—to providing free legal services to those of limited means.48

Yet despite these innovative and successful efforts, significant obstacles stand in the way of greater lawyer participation in pro bono and public service work. In addition to those obstacles identified in the Pro Bono Committee’s data collection study, an ongoing study of over 5,000 young lawyers indicates that those working in large firms report the highest levels of satisfaction with compensation but much lower levels of satisfaction with the work they do and other aspects of their work environment, including longer hours, a lack of independence and responsibility, and insufficient opportunities to connect their work with broader social issues.49

Not surprisingly, these factors contribute to relatively high rates of attrition among larger firms. Given the substantial investment these firms make in recruiting and training young lawyers, these attrition rates carry a substantial cost.50

45 See RENAISSANCE FINAL REPORT, supra note 37, at 10.
47 The Law Firm Pro Bono Challenge, first instituted in 1993, has played a leading role in encouraging law firms to commit to a series of policies and practices closely related to those recommended here. See supra note 12 and accompanying text.
48 See supra note 12 and accompanying text; see also supra note 13 (listing participating firms).
49 AFTER THE JD, supra note 42, at 47–50.
50 Stephanie B. Goldberg, Restoring Lawyers as Public Servants, STUDENT LAW., March 2006, at 14, 16 (“According to [ABA President] Greco, if an associate leaves a firm after one to three years of service, the firm is out the hundreds of thousands of dollars it has spent to recruit and train him. More pro bono means a lower associate attrition rate for law firms, which will more than offset the loss of billable hours.”).
The ABA’s Renaissance Commission concluded that providing opportunities for lawyers to perform pro bono service can help law firms stem attrition. Pro bono work provides attorneys with a sense of responsibility, autonomy, and accomplishment, and offers early professional-skills development and client contact opportunities that may otherwise be unavailable in some large firms.

In this and other ways, pro bono work benefits not only the lawyers who perform these services, but also the law firms that employ them. Much has been written about the value to law firms of organized, committed, and active pro bono programs. Those benefits include enhanced opportunities for recruiting the top law school graduates, providing training and professional development for all lawyers in the firms, improvement of lawyer morale, and enhancement of the firm’s reputation in the community.51

There are many different methods and models that firms have used to successfully implement a culture of pro bono. Based on its examination of these successful approaches, Report 121A recommends that firms adopt written policies and practices that support and reward pro bono work, including policies and practices that:

- Count pro bono hours as billable hours. It is essential that pro bono hours be counted as billable hours and that they also count toward annual billable hours targets, requirements or expectations. The failure to treat pro bono hours as billable hours sends a signal that the firm does not truly value and support this work,
- Consider attorneys’ commitment to pro bono activity as a favorable factor in advancement and compensation decisions. If a pro bono culture is to flourish, the attorneys who engage in pro bono work need to know that their efforts will be viewed favorably by the firm when the time comes to make advancement and compensation decisions.
- Set annual goals regarding the number of hours contributed through firm pro bono programs and the number of attorneys who participate. By setting goals, firms can continually monitor participation while demonstrating their commitment to pro bono and public service to their lawyers, clients and prospective recruits.
- Establish and maintain systems that ensure that firm pro bono programs are managed effectively, that participating attorneys receive training and guidance, and that the highest levels of firm management oversee and participate in their programs. Law firms

need a structured program, supported by the highest levels of firm management, which not only demonstrates the level of the firm’s pro bono commitment but ensures an organized and cohesive approach to maximize the program’s success.

- Support the pro bono commitment and involvement of senior and retired lawyers. As lawyers near the age when they are ready to retire or wind down the practice of law, having the support of the law firm to do pro bono work provides added incentive for them to stay engaged.

- Report to law school placement offices specific information regarding their pro bono policies, practices and activities. More and more law students want to know what pro bono opportunities they will have with a prospective employer. Full disclosure of a law firm’s pro bono activities will provide incentives for law firms to meet their goals in order to favorably compare with firms competing for the best and the brightest law school graduates.\(^{52}\)

These strategies serve the interests of America’s law firms by providing lawyers with active, meaningful, and rewarding opportunities that improve society and enrich their professional lives.

3. Strategies for Promoting Pro Bono Participation by Lawyers in Corporate Law Departments\(^ {53}\)

Research demonstrates that active corporate citizenship is critical to business success. Many Americans report that they feel a company’s image in the community is important: they factor social responsibility into their investment decisions and would switch their allegiance to a company involved in a good cause.\(^ {54}\) Corporations have many strategies available to them for achieving their corporate citizenship goals. For lawyers in corporate law departments, one critical strategy involves pro bono work, which “enables companies to effectively combine the donation of product and employee time.”\(^ {55}\)

\(^{52}\) Report 121A, supra note 30, at 11–12.

\(^{53}\) The Commission recognized that many smaller corporate law departments may not have the numbers of lawyers or infrastructure needed to carry out the recommendations of the Pro Bono Policies and Procedures set forth in 121A. Such departments are urged to undertake the steps recommended for solo and small law firms as described in Part I of the report.


A well-designed pro bono program can enhance a company's philanthropic initiatives to increase its impact in the community while fulfilling internal objectives that ultimately strengthen the company's performance. Those objectives include enhancing lawyer recruitment, development, and retention, facilitating internal communication, and fostering innovation. A successful pro bono program also can strengthen a company's relationship with partner organizations.  

In addition to the impact a pro bono program can have on a corporation's overall status in its community, integrating pro bono work into the company's business practice provides job satisfaction for attorneys in the legal department and an incentive for potential recruits. Pro bono service creates an opportunity for attorneys to hone their legal skills, as well as other essential skills as communication, collaboration, team building, and creative thinking. With respect to recruitment, corporations competing for top candidates from leading law schools and law firms often find that the opportunity to do pro bono and public service work is a significant inducement.

There has been a substantial increase in organized corporate pro bono activities in recent years. National organizations including the American Bar Association, the Pro Bono Partnership, and Corporate Pro BonoSM (CPBO—a project of the Pro Bono Institute and the Association of Corporate Counsel) have helped to develop resources, model programs and policies, awards programs, and more. State, local, diversity, and specialty bars have also developed resource, referral, and project opportunities for their corporate law department members and constituents. In addition, pro bono programs across the country have identified corporate lawyers as an important untapped resource that is available to make significant pro bono contributions.

Corporate leaders have used a number of successful approaches to implement a culture of pro bono. Based on its examination of these successful approaches and on its understanding that corporate law departments have many similarities to large firm practices, the ABA's Renaissance Commission included in Report 121A specific recommendations for corporate law departments. The Commission recommended that corporate law practices adopt written policies and practices that support and reward pro bono work, including policies and practices that:

(a) count pro bono hours as billable hours if attorneys are expected to meet targets for billable hours;
(b) consider attorneys' commitment to pro bono activity as a favorable factor in advancement and compensation decisions;

56 Id.
(c) set annual goals regarding the law department’s pro bono commitment including, as appropriate, the number of hours contributed, the number of lawyers and legal department staff to be involved, and the number of cases to be handled;
(d) establish and maintain systems that ensure that law department pro bono programs are managed effectively, that participating attorneys receive training and guidance, and that the highest levels of law department management oversee and participate in their programs;
(e) support the pro bono commitment and involvement of senior and retired lawyers; and
(f) report to law school placement offices specific information regarding their pro bono policies, practices and activities . . . .

By adopting these policies and practices, corporate law departments can play a critical role in serving the needs of their communities.

4. Strategies for Promoting Pro Bono Participation by Lawyers in Government Offices

It is a widely held belief that government attorneys are prohibited from doing pro bono work, either because of bar rules or because of perceived conflicts of interest. Through Report 121A the Renaissance Commission sought to reveal this for the myth it is, albeit a particularly persistent one. In actuality, while they must comply with some special rules and restrictions, thousands of federal, state, and local government lawyers have contributed their time and talents to pro bono service, and they are actively encouraged to do so.

Although the ABA Rules of Professional Conduct and most state bar rules have long made pro bono service a component of lawyers’ professional responsibility, coordinated efforts to promote pro bono work among federal government attorneys only began in 1996, with President Clinton’s issuance of Executive Order 12988. The executive order directed federal agencies to develop policies to enable their attorneys to do pro bono work, and instructed the Attorney General to “coordinate efforts by Federal agencies to implement” the order. The

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59 REPORT 121A, supra note 30, at 4.
60 This recommendation does not apply to attorneys who are court employees. The Renaissance Commission addressed how court-employed attorneys could become active in pro bono in REPORT 121C, supra note 38.
61 The ABA Government and Public Sector Lawyers Division developed a web site providing their members and others with extensive information about government attorney pro bono. American Bar Association, Government and Public Sector Lawyers Division, http://www.abanet.org/govpub/probono.html (last visited Nov. 18, 2006).
64 Id.
President's executive order not only endorsed pro bono but made it a component of federal service. 65

After the executive order was issued, a number of agencies, including the Department of Justice, instituted pro bono policies to provide guidance to their attorney employees. 66 Attorney General Janet Reno convened an Interagency Pro Bono Working Group (the “Working Group”) to assist agencies in developing pro bono policies and otherwise complying with the executive order. Since that time, the Working Group has assisted many agencies in adopting formal pro bono policies and actively encouraging pro bono work. 67

In addition, government attorneys at the state, territorial, and local agency levels across the country constitute a large pool of potential volunteers. Pro bono programs and government agencies are designing new ways and opportunities for engaging these government attorneys in pro bono and public service work. As at the federal level, support for pro bono participation at the highest levels and the institution of clear policies at the state, territorial, and local levels, have eased many former barriers to pro bono. 68 The involvement and support of bar associations and the legal services community have been critical; they have worked with government attorneys to develop volunteer opportunities tailored to the restrictions faced by government employees. 69

A corollary to the myth that government attorneys cannot do pro bono work is the belief that there is a vast array of laws and ethical requirements that prevent any meaningful contribution by federal, state, territorial, or local attorneys. In fact, while various restrictions do exist—conflicts of interest, acting in one’s individual

65 Id.
66 STANDING COMM. ON PRO BONO LEGAL SERVS., ABA, REPORT OF THE STANDING COMMITTEE ON PRO BONO LEGAL SERVICES 9–10 (2002).
67 In 2005, John C. Cruden became the first government lawyer to serve as President of the District of Columbia Bar. Upon taking office, he wrote to the general counsel of every federal government agency, urging each of them to promote pro bono service, develop pro bono policies, and provide a formal representative to the Working Group. At his request, ABA President Michael S. Greco sent a letter to every general counsel expressing his support for President Cruden’s request. To date, thirty-three federal agencies have joined the Working Group.
68 “For example, the Attorney General in Maryland established a Pro Bono Program Committee in 1989 to coordinate and oversee the Attorney General’s Pro Bono Program. The Committee sets policy for the Program, provides administrative support, and resolves questions about potential conflicts of interest.” American Bar Association, Standing Committee on Pro Bono & Public Service and the Center for Pro Bono, Government Attorneys, http://www.abanet.org/legalservices/probono/government_attorneys.html (last visited Dec. 29, 2006). Similar programs and policies have been adopted by the Attorneys General in Washington, Texas, New York, Pennsylvania, and Ohio. See id.
69 Many legal service providers also offer training, mentoring, and sample pleadings to assist the volunteers, which is particularly important to government lawyers who have minimal resources available to them through their employer.
capacity, use of official time, and use of official resources—they can generally be accommodated.\(^{70}\)

In summary, although government attorneys are subject to some practice limitations, those limitations do not preclude them from engaging in pro bono work. Once they have determined they are in compliance with agency policies, government attorneys can participate in a wide range of pro bono activities.

### C. The Role of Law Schools in Promoting and Supporting Pro Bono\(^{71}\)

The Renaissance Commission's second policy report to the House of Delegates at the 2006 ABA Annual Meeting—Report 121B—urges law schools to require legal employers that recruit on campus to provide information to their law students and alumni regarding the employer's pro bono policies, practices, and activities. It specifically urges law schools to adopt pro bono disclosure requirements.\(^{72}\) The report further urges law schools to provide information to their faculty, students, alumni, and prospective students about the policies and practices the law school maintains to enable and encourage pro bono work by all members of the law school community.

The Commission based its recommendations on the premise that the future of pro bono rests with our nation's law schools. Over the last two decades, the ABA has adopted several policies seeking to institutionalize the importance of law school pro bono programs and instill an ethic of public service among the students they serve. In 1988, the ABA urged law schools to adopt a policy asking legal employers that recruit on campus to provide a written statement of their pro bono policies, if any.\(^{73}\) In 1993, the ABA encouraged law schools to develop pro bono/public service programs as components of their skills training curricula or programs and to exchange information about such programs through the Section of Legal Education and Admissions to the Bar.\(^{74}\)

In 1996, the ABA amended its Standards for Approval of Law Schools to provide that "[a] law school should encourage its students to participate in pro bono activities and provide opportunities for them to do so."\(^{75}\) Subsequently, in February 2005, the Accreditation Standards were revised to provide that "a law school shall offer substantial opportunities for . . . student participation in pro bono

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\(^{70}\) Report 121A expands in much more detail on these restrictions and explains why there do not have to be limitations on a government attorney's ability to do pro bono work. See Report 121A, supra note 30, at 14–18.

\(^{71}\) This section is taken substantially from a report submitted to and approved by the ABA House of Delegates at its 2006 Annual Meeting. Report 121B, supra note 38, at 3–8.

\(^{72}\) See id. at 2.


\(^{74}\) Id. at 259.

\(^{75}\) ABA Standards for Approval of Law Schools 302 (1996). Former Standard 302(e) was revised in February 2005.
Thus, the revised Accreditation Standards require, rather than merely encourage, schools to provide pro bono opportunities. They also require schools to establish policies with respect to full-time faculty members’ obligations to the public, including participation in pro bono activities.

While the 1988 ABA policy urged law schools to ask legal employers that recruit on campus to provide a written statement of their pro bono policies, many schools do not do so. Those that do ask often find that asking is not enough, some employers do not provide the information, and when they do it is often not very helpful.

The National Association for Law Placement (NALP) asks employers to complete an annual workplace questionnaire that attempts to make law firm pro bono policies and practices more transparent to law students by tracking and capturing such information for use by the students in their career decision-making process. While the questionnaire is a valuable tool, NALP cannot compel law firms to complete it. Law schools can require such information, however, and they should. Thus, the Renaissance Commission, through Report 121B, urges law schools to require legal employers that recruit on campus to disclose, and to make available to students and alumni, specific information regarding their pro bono policies, practices, and activities. In its recommendation to the House of Delegates the Commission suggested that employers disclose:

- stated goals regarding the number of pro bono hours to be contributed by the employer each year;
- the number of actual pro bono hours contributed by the employer in the prior calendar year;
- the average number of pro bono hours contributed by junior associates, midlevel associates, senior associates, and partners at the firm in the prior calendar year;
- whether and to what extent pro bono hours are counted as billable hours (if attorneys are expected to meet billable hours targets);
- whether and to what extent attorneys’ commitment to pro bono activity is considered a favorable factor in advancement and compensation decisions;
- what formal structures the employer maintains to manage its pro bono program and to provide training and guidance to participating attorneys; and

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77 Id. at standard 404; see also id. at pmbl. (stating that law schools “must provide an educational program that ensures that its graduates understand the law as a public profession calling for the performance of pro bono legal services”).
• whether the employer provides opportunities to participate in pro bono activities through sabbatical and part-time pro bono programs, fellowships, or rotation programs.\textsuperscript{79}

Today’s students and young lawyers want and need inspiration to engage in pro bono as well as specific information that will help them incorporate this work into their practice. Such information will enable them to critically evaluate a prospective employer’s commitment to pro bono and assist in making pro bono opportunities part of their decision in selecting among employer options. Moreover, given the vigorous competition among employers for strong candidates, if enough students express an interest in pro bono work, legal employers will improve their pro bono programs and make this an important selling point to students.

Law schools should also provide members of the law school community with information about their own pro bono policies and practices. The Accreditation Standards require schools to provide appropriate pro bono service opportunities for students and to encourage such service by faculty members. However, many institutions neither keep nor disclose specific information concerning the policies and practices the law school maintains to enable and encourage pro bono work by all members of the law school community.

For law schools, pro bono programs prove beneficial in several respects apart from their educational value for students. Successful projects contribute to law school efforts in recruitment, public relations, and development. Individual faculty can profit as well from community contacts and from opportunities to enrich their research and teaching.\textsuperscript{80} Hence, the absence of well-supported pro bono programs represents a missed opportunity for both the profession and the public.

In her new book, \textit{Pro Bono in Principle and in Practice}, Deborah L. Rhode observes that “[a]lthough support for public service has grown dramatically over the last two decades, most practitioners have yet to embrace the view, set forth in bar ethical codes, that ‘every lawyer has a professional responsibility to provide legal services to those unable to pay.’”\textsuperscript{81} One of the reasons Rhode cites is the lack of support for pro bono in America’s law schools. She notes that “[m]any practitioners entered law school with interests in social justice and public interest work and encountered too little support for such concerns.”\textsuperscript{82} Although a majority of surveyed graduates believed that their school supported pro bono service, responses to specific questions identified major institutional failures. For example, only about a third of responding lawyers believed that financial resources devoted to pro bono activities were adequate; only 3\% reported support from faculty, and

\textsuperscript{79} \textit{REPORT 121B, supra} note 38, at 2.
\textsuperscript{81} DEBORAH L. RHODE, \textit{PRO BONO IN PRINCIPLE AND IN PRACTICE} 25 (2005).
\textsuperscript{82} \textit{Id.} at 165.
only 1% recalled public service issues arising in orientation programs and professional responsibility courses.

These findings suggest that although law schools have come a long way in demonstrating their long-term commitment to the development of pro bono programs and initiatives, more must be done to institutionalize pro bono within the law school environment. Perhaps the most important step law schools can take to demonstrate their support for pro bono is to increase the visibility of their pro bono activities. Report 121B urges law schools to make available to their faculty, students, alumni, and prospective students information regarding the policies and practices they maintain to enable and encourage pro bono work by all members of the law school community.83

By requiring law firms that recruit on campus to provide complete information about their pro bono policies, practices, and activities, and by providing such information about their own pro bono programs, America's law schools can play an important role in establishing a culture of pro bono in this country. In so doing, they will benefit the academic and legal communities and will ensure greater access to justice for the indigent and underserved.

D. The Role of Judges in Promoting and Supporting Pro Bono84

The Renaissance Commission's final recommendation to the House of Delegates at the 2006 ABA Annual Meeting, Report 121C, focused on the role of judges in promoting pro bono. Given their pivotal role in the administration of justice and the respect they command within the bar, judges are uniquely situated to influence lawyers, including those who practice before them, to provide pro bono representation to indigent parties in civil cases. By helping to ensure access to counsel, judges can also help reduce the backlogs and delays created by large numbers of pro se litigants, enhancing both the reputation and the effectiveness of their courts.

Although members of the judiciary are unable to represent clients themselves, they can demonstrate their commitment to pro bono in a number of important ways. The ABA Model Code of Judicial Conduct permits judges to engage in

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83 While the ABA Standards for Approval of Law Schools already require schools to provide appropriate pro bono service opportunities for students and to encourage participation by faculty, it is unclear what a school must do to comply. The ABA Council of the Section of Legal Education and Admission to the Bar has been asked to provide an interpretation of what pro bono means in this context. The Council has asked the Standing Committee on Pro Bono and Public Service to work with it on developing this interpretation. The interpretation will be presented to the ABA House of Governors for concurrence at the 2007 ABA Annual Meeting.

84 This section is taken substantially from a report submitted to and approved by the ABA House of Delegates at its 2006 Annual Meeting. REPORT 121C, supra note 38, at 4–5.
activities related to promotion of pro bono services by lawyers. Judges are free to support local pro bono programs by writing general letters to local bar members, encouraging them to join the pro bono panel. Judges may appear at pro bono recognition events and present recognition awards to recipients. These and other activities are permitted under most judicial ethical rules and are of great assistance to pro bono programs.

Members of the judiciary have played a leadership role in promoting and supporting pro bono at every level of government. The Conference of Chief Justices has encouraged judges to do so in its adoption of a resolution calling on the chiefs of the highest courts in each state to lead efforts to expand pro bono. The Maryland Judicial Commission, established by the Maryland Court of Appeals’ Chief Judge, issued a report in 2000 that includes findings and recommendations regarding the role of the judiciary in supporting pro bono.

Florida, Nevada, Maryland, and Indiana are examples of states that actively involve judges in a “hands-on” manner in promoting pro bono. In these states, court rules establish a system in which pro bono efforts are organized into districts with local judges responsible for each district’s efforts. The involvement of judges at the local level in these states has been influential in helping to increase local bar support for pro bono and the recruitment of additional pro bono lawyers.

Judges can encourage and facilitate pro bono representation in many simple and practical ways. For example, they can assign pro bono counsel a specific time for appearances to reduce their waiting time. In some courts, pro bono cases are placed first on the docket. Such accommodations for those who devote their time to serving indigent litigants (and spare the court the additional time that would be required if such litigants were to proceed pro se) should be encouraged.

Judges can also reward pro bono by providing public recognition to those who accept these cases. Such recognition can take many forms, from a simple statement to litigants about the invaluable contribution of pro bono counsel to the parties and the court system to formal award ceremonies and presentations. Judges can also appear at bar association events to present awards and recognize pro bono lawyers for their contributions to the administration of justice.

Finally, courts can set an example for the bar by encouraging their own lawyer-employees to do pro bono work. These lawyers are subject to the rules of professional responsibility where they are admitted to practice, and they should have the opportunity to engage in pro bono and public service work. Lawyers who

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are court employees engage in a wide range of pro bono work, including estate planning, benefit counseling, landlord-tenant disputes, and debtor-creditor issues. Naturally, such matters should be carefully screened to ensure that the lawyer’s pro bono work does not create conflicts of interest.

By encouraging and enabling the attorneys within their jurisdiction, the lawyers who practice before them, and their own lawyer-employees to perform pro bono work, judges can help set the tone for the legal profession and enrich the communities they serve.

V. A REVIEW OF PRO BONO IN UTAH

Until now this Article has focused principally on a national perspective of pro bono. This foundation of understanding will help to provide a context for what is happening in Utah, and what can happen in the future in terms of promoting an expanded pro bono culture in the state.

In 2004, representatives from Utah Legal Services, Inc. ("ULS") and the Utah State Bar Association ("USB") jointly contacted the ABA Center for Pro Bono about a possible consulting visit. The Center had several conversations with staff from both organizations regarding efforts to improve the pro bono delivery efficiency within the state. As a result of these conversations, consultants assigned by the Center visited Utah in February 2005. 88

During the visit the consultants met in-person with staff, leaders, and volunteers of ULS and the USB. Additionally, the consultants reviewed extensive written materials both prior to and during the visit, including budget materials, case statistics, meeting minutes of pertinent committees and boards, form letters, and newsletters. At the conclusion of the visit, the consultants presented a summary description of their findings and a preview of their full recommendations. A full and comprehensive report was subsequently sent to the programs, expanding on the preliminary findings and recommendations. While only general conclusions will be discussed in this Article 89 there are many important observations that can be related about this visit.

The Center consulted with ULS and the USB in advance about the objectives for the peer consulting visit. Both programs identified similar issues as to the overall pro bono legal services delivery system in the state, seeking advice on their

88 The consultants were Jane Gill Kellenberger and Jesse Gaines in a voluntary capacity and Steven Scudder, Counsel to the ABA Standing Committee on Pro Bono and Public Service and the author of this Article. Ms. Kellenberger is a private consultant from Denver, Colorado. Mr. Gaines is CEO of Legal Aid of Northwest Texas.

89 The Center for Pro Bono’s report to its clients was submitted confidentially and its details are shared only as has been deemed appropriate. Many of the recommendations are program- or personnel-specific and are not relevant to this Article’s scope. In addition, the Center for Pro Bono is aware that, in the almost two years since the consulting visit, much has changed within the USB and ULS regarding pro bono in response to the report and other factors.
individual program structures, the allocation of resources to support pro bono efforts, the manner in which they coordinate their efforts, and strategies for improving the culture of pro bono in Utah. It is particularly noteworthy that the Center’s clients both felt strongly that the issue of pro bono culture in Utah required particular attention.

A. General Observations

The following observations about pro bono in Utah have to be read in the context of the consulting visit conducted by the ABA in February of 2005. It is understood that some important organizational and policy changes have been made in the meantime. Nonetheless, these reflections on how pro bono was operating then, at least sets the stage for some of the recommendations that will next be discussed.

ULS is a strong organization with a well-respected staff. The respect of the legal community and community at large is a valuable asset to ULS in building on and expanding its pro bono efforts. The decentralized structure of ULS allows its field offices flexibility to adapt to the needs of the local communities, as well as to build relationships within the local communities.

In addition, the consultants found that ULS’s management staff is flexible and open to change, a critical building block for further development of ULS’s pro bono efforts. It was noted that the program’s close relationship with and support from the USB provide opportunities for a valuable pro bono collaboration between the organizations.

The consultants were pleased to observe that ULS staff attorneys are active in the local bar associations. This helps to build good relationships with the local bar for the program and lays the groundwork for pro bono recruiting and participation.

One of the significant challenges for pro bono in Utah is the state’s geographical scope. The geography presents a myriad of challenges for promoting, developing, and supporting pro bono. ULS serves an incredibly large service area with relatively small staff, both program-wide as well as at the field office level. In addition, the local bar associations generally lack the structure necessary to be of much real help.

Judges at all levels of the state’s judicial system believe they can play an active role in helping support pro bono. The ABA’s consultants were encouraged by the willingness of the judges with whom they spoke on this score and suggested to these judges they take a more active and affirmative interest in exploring ways they could be involved.

The consultants were advised that only a small percentage of lawyers in Utah are active participants in any organized pro bono project. The lack of volunteers hampers the delivery system’s efforts to serve clients, particularly in areas where demand far exceeds available resources. Many volunteer attorneys are underutilized, due to volunteering in an area of law that is not a priority for the local office. At the same time, clients in need of services in non-priority matters are not being served. In addition, although both the USB and ULS reach out to
lawyers about pro bono opportunities, there is no comprehensive pro bono plan in place.

Both the University of Utah S.J. Quinney College of Law and the J. Reuben Clark Law School at Brigham Young University have taken seriously what they can do to educate their students about pro bono and to afford them opportunities to engage in pro bono work. In addition, they have actively sought out projects with ULS and the USB through which their students can be involved.

B. Taking on the Challenge

The perspective on pro bono in Utah outlined above is consistent with the situation in many other states. There is a solid foundation on which to build, but a lot of building still to do. Clearly the leaders of the legal profession in the state understand the challenges ahead. The recommendations that follow are offered as guidance to consider as the Utah Access to Justice Council and others in the state begin their work on expanding pro bono.

The following ideas are presented from the most macro to the most micro. During and after their visit to Utah in 2005, the ABA Center for Pro Bono’s consultants developed a number of recommendations about how bar association and legal services leaders in the state could most effectively integrate pro bono into Utah’s existing legal services delivery system. Many of these are incorporated here. Others are offered in the broader context of pro bono nationally, as discussed earlier in this Article.

1. The Definition of Pro Bono

At the time of the ABA’s visit, an important first issue became clear during the consultants’ interviews. There did not seem to be a clearly communicated or agreed upon definition of pro bono in Utah. More than one local bar leader noted that many attorneys in rural Utah count in their definition of pro bono those cases for which they end up not getting paid. Another factor impacting the definition of pro bono was the way that lawyers provide mediation services for The Church of Jesus Christ of Latter-day Saints. This important and valuable dispute resolution system is utilized in many communities throughout Utah. The complicating issue is that lawyers who participate believe they have provided pro bono service even though the individuals involved may or may not be financially eligible for what would normally be considered pro bono.

Subsequent to the ABA’s visit, the Utah Supreme Court adopted significant revisions to the Utah Rules of Professional Conduct, including Rule 6.1—the pro bono rule.90 The changes adopted were consistent with those recommended by the

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90 *See Utah Rules of Prof’l Conduct R. 6.1 (2005).*
ABA through its Ethics 2000 project, and as adopted in the ABA Model Rules of Professional Conduct.91

The jury is still out on whether the Rule 6.1 definition of pro bono has had an impact on changing the manner in which lawyers in Utah consider their pro bono responsibility. An important role for the Access to Justice Council will be to develop and implement a plan for communicating that definition to the state’s lawyers. Focusing on promoting a consistent and clear pro bono definition in the state will help considerably in building a stronger culture of pro bono in Utah.

2. Promoting a Renaissance of Idealism in Utah

The recent action of the ABA House of Delegates in adopting resolutions sponsored by the ABA’s Renaissance Commission92 provides an outstanding opportunity for all components of the legal profession in Utah to refocus their pro bono development strategies. Using these policy statements as springboards to activate energy, focus, and initiative about pro bono, offers the profession’s leadership new tools to use in their arsenal of pro bono development resources.

A renaissance of pro bono activism in Utah depends on and must begin with leadership at the state, local, law practice, law school, and bar association levels. Where the advocacy comes from and how it is coordinated will be key first issues to be resolved. Additionally, leadership development will be a critical part of pro bono development plans developed during the coming years.

Reviewing the ABA’s renaissance policies93 reveals that leadership must come from both inside and outside of law practice settings, including judges, bar leaders, law school deans, legal services program management, law firm managing partners, chief government attorneys, and corporate general counsel.

(a) Judges

While many factors contribute to successful pro bono initiatives, judicial support is a critical component of a strong pro bono culture within the legal community. Behind the success of states that have fully integrated pro bono into their legal services delivery system are judges, from all levels of the court, who have helped to cultivate and sustain support for pro bono among the legal community at large.

(b) Bar Leaders

Bar leadership for pro bono sends an important, positive message to the association’s members. By personally engaging in pro bono work, spreading

92 See RENAISSANCE FINAL REPORT, supra note 36.
93 Id.
the pro bono message to members through visits across the state, and advocating for additional resources to support pro bono projects, bar leadership provides an excellent platform for advocacy. Bar leaders can also help to build links between other pro bono programs and initiate efforts to allocate more resources for pro bono activities.

(c) Law Schools

Law school pro bono projects are driven by student initiative, career services office staff, and faculty. Key to ensuring that the law schools fully integrate and support these projects are law school deans. In addition, the deans can be instrumental in adopting policies for the law school such as the Pro Bono Disclosure Requirements for Law School Recruiters.94

(d) Legal Services Program Management

ULS must be a major player for pro bono to spread in the state. The program’s leadership needs to train its staff to know and understand the role they have in integrating the private bar as a critical component of the program’s legal services delivery model. The clear identification of ULS as a primary pro bono advocate gives staff a context for internal changes that must take place to successfully incorporate pro bono.

(e) Law Firms

For pro bono to become an integral part of a law firm’s culture, the managing partner must take the lead. First and foremost, the partner must become educated about the benefits to the law firm in expanding its pro bono commitment and about the various policy and programmatic strategies that are available. Armed with this knowledge, the managing partner can move forward with developing and implementing a pro bono plan for the firm.

(f) Chief Government Attorneys

The state’s Attorney General, county attorneys, and others in positions of authority in government law offices are critical to engaging government attorneys in doing pro bono. Efforts should first include exploring potential obstacles and developing strategies for overcoming them. In addition, while the simple act of speaking out in support of pro bono is useful, taking the next step toward developing policies and practices that support government attorney pro bono work is essential.

94 See REPORT 121B, supra note 38, at 2.
(g) Corporate General Counsel

Similar to law firm managing partners, in-house general counsel are uniquely situated to make a difference in their institution’s support for pro bono. By promoting pro bono partnerships with their law firm clients, developing policies that allow their attorneys to participate in this work, and advocating to the company’s management about how pro bono promotes the company’s community image, general counsel can make a major difference.

3. Building Pro Bono Resources

For pro bono to succeed and expand in Utah, additional resources need to be allocated. Both programmatically and at the statewide oversight level, pro bono advocacy will not succeed if funded as an afterthought.

Probably the most critical key to the success of pro bono in Utah during the coming years is how well-integrated pro bono becomes within the main and branch offices of ULS. The benefits the program is able to offer clients will multiply dramatically once the necessary resources are devoted to pro bono, and pro bono is understood by all the program’s staff and volunteer leadership to be integral in meeting clients’ needs.

ULS must be willing to donate significant financial resources toward the development of its pro bono program on the state and local levels. This includes ensuring there is sufficient staffing in the Salt Lake City office to manage the program’s statewide pro bono efforts. This statewide coordinator’s job description, and placement within the program’s management structure, must make it clear how valued and supported pro bono is within the program.

Ideally each branch office of ULS would have a coordinator to manage and develop the local pro bono effort that is reflective of the needs of the local client community and available resources. These coordinators will also be able to form collaborative partnerships with the local bar association in each branch office location.

The USB should allocate adequate staff and other resources to support both pro bono programmatic activities and related efforts. It is essential that sufficient staff resources be available to carry out the USB’s responsibilities in establishing a strong pro bono presence in the state, including someone to cover the administrative functions required in maintaining the bar’s commitment to pro bono.

The USB must also allocate adequate resources for training staff and bar leaders about pro bono development, for travel expenses of state bar leaders and the pro bono staff coordinator to visit different areas of the state, to support pro bono continuing legal education programs, and to manage other aspects of its pro bono advocacy, particularly the work of the Utah Access to Justice Council.

There are a number of specific ways the USB can provide in-kind contributions to promote and support pro bono. It can better incorporate promotion of pro bono participation into existing projects and publications, whether
sponsored by the USB at large or any of its sections. It can also continue to effectively utilize its website to provide its members with information about its pro bono efforts. The website is also a valuable way of obtaining new volunteers and giving current volunteers a place to go if they need assistance with a case. Other areas of pro bono development for the USB should include a provision of malpractice insurance and providing mentors.

4. Collaborative Efforts

The success of the pro bono efforts in Utah rests on the existence of a true collaborative relationship between the USB and ULS and, as appropriate, collaborations between these organizations, the courts, law schools, social services organizations, and others. However narrow or broad these collaborations may be in scope, they should always focus on how best to meet the needs of those clients for whom a pro bono lawyer might be a viable option for achieving justice.

C. Governance

One way to facilitate collaboration between ULS and the USB would be to co-appoint a pro bono committee to coordinate efforts, facilitate communication, and provide leadership for their joint pro bono initiatives. This suggestion flows from two basic premises: (1) that any pro bono initiative needs volunteer leadership solely focused on the growth of that program, and (2) that in the context of this particular collaboration, a joint oversight committee provides the opportunity for discussion and planning on all aspects of pro bono program expansion.

It is not by accident the Pro Bono Standards start right out with standards relating to program governance.95 The black letter and commentary to this section make it clear a governing body is fundamental to a pro bono program's ability to grow and develop. Generally, according to the Pro Bono Standards, the oversight committee (or board) should have input in and a commitment to the pro bono program's delivery design, case priorities, budget, staffing, and more.96 In addition, these standards frame a construct of governing body leadership in which members are involved with many of the issues relating to operational success—recruitment, fundraising, public relations, and recognition.97

The appointment of a joint pro bono committee does not preclude the work of the Utah Access to Justice Council or other pro bono committees either entity might want to appoint. In the former instance, the Access to Justice Council can and should focus on the macro issues relevant to enhancing the pro bono culture in Utah. The joint pro bono committee proposed, and any program-specific

95 See PRO BONO STANDARDS, supra note 23, at standards 1.1-1 to 1.2-3.
96 See id. at standards 1.1-1 to 1.1-3.
97 See id. at standard 1.1-4.
committee appointed, will have plenty to do by focusing more on oversight, planning, coordinating, and implementing specific pro bono initiatives. Particular goals of the joint committee, for example, could include the development and review of an annual ULS/USB pro bono plan, assisting in the recruitment and retention of volunteers, promoting active bar participation, and developing innovative programmatic strategies.

D. Local Bar Association Support

Standard 2.8 of the Pro Bono Standards provides that “[a] pro bono program should strive to develop and maintain an active, cooperative and collaborative relationship with the organized bar.”\(^{98}\) In addition to its strong relationship with the USB, ULS has solid relationships with the local bar associations to build upon in working to increase local bar support for pro bono. In cooperation with these local bars, particularly the bars’ leadership, there are many opportunities to engage many more attorneys not currently involved in any organized pro bono activity.

Local bar associations, or local judicial districts, should be encouraged to develop pro bono committees that can address the particular challenges and client needs of those areas. Of course, many of the local bar associations in Utah are very small and, in fact, over eighty percent of the lawyers and general population are located in Salt Lake County. Nonetheless, for the culture of pro bono to change on a statewide basis, there must be efforts across the state. Establishing a pro bono committee demonstrates the local bar’s commitment to pro bono, provides a contact point for pro bono-related issues, and can be a resource for recruitment.

Indiana provides an excellent example of the benefits of developing these committees. There are fourteen pro bono committees in Indiana, organized by judicial district.\(^{99}\) Each committee includes twenty to twenty-five lawyers along with a few judges. The members of the fourteen committees tend to be “pro bono oriented” and thus they encourage other members of their firms to take a few pro bono cases annually.\(^{100}\)

E. Involving Other Partners

To leverage resources and increase services, efforts should be made across the state to build collaborative projects with local organizations serving similar client populations. Standard 2.10 of the Pro Bono Standards provides, “A pro bono program should strive to develop and maintain active and cooperative relations

\(^{98}\) \textit{Id. at standard 2.8.}\n

with community organizations and social service agencies that serve clients.\footnote{101} Building partnerships with other community organizations allows pro bono programs to leverage their resources, increase services to clients, and provide volunteer opportunities that may appeal to attorneys interested in particular issues. For example, a truancy project might be attractive to attorneys interested in helping young people, or a hospice project would provide volunteer lawyers the opportunity to help meet the legal needs of elderly clients.

Resources that other organizations may bring to a partnership range from a location where volunteers can meet clients; complementary services, such as counseling for domestic violence survivors; additional means of outreach to a specific client population; and potentially, access to other funding sources.

As is common among legal providers, there are far more clients needing assistance than the legal services delivery system in Utah can serve with current resources.\footnote{102} Partnering with community organizations to join resources and develop projects that draw on the strengths of the organizations involved, particularly around issues that are appealing to potential volunteers, makes effective use of the resources available to increase client services. A simple way to begin would be to convene a meeting of stakeholders to discuss enhancing and building new partnerships.

\section*{F. Communicating Information about Where to Volunteer}

ULS must work to develop community awareness of the organization’s identity as the principal pro bono provider in the state. A strong and separate identity is certainly critical to recruiting and fundraising efforts. Interestingly, the ABA’s consultants interviewed a number of people who were not aware the USB had transferred the day-to-day operations of the pro bono project to ULS; others, in more rural parts of the state, commented that they have no contact with the local branch office in their community but certainly would take a pro bono case if asked.\footnote{103}

Prospective volunteers need to know for whom they are volunteering. As much as anything, they need to know to whom they can turn for help and support. But it’s also important for volunteers to know to whom they must report regarding the status of pending cases.

One component of the ULS and USB collaboration should be the development of an educational campaign that conveys to the community—including funders—the strong partnership between the USB and ULS while distinguishing between the two organizations. The campaign should delineate the

\footnotetext{101}{PRO BONO STANDARDS, supra note 23, at standard 2.10.}
\footnotetext{102}{See, e.g., source cited supra note 33 and accompanying text (stating that LSC attorneys cannot help all of those who ask for legal assistance).}
\footnotetext{103}{See supra note 88 and accompanying text (discussing consultation conversations between ULS and USB staff and the ABA Center for Pro Bono).}
organizations' different, yet complementary roles in support of the common mission of increased access to justice. Such a campaign would also provide an opportunity for the USB to highlight its participation in and support of the organizations' missions.

G. Offering Utah's Lawyers a Variety of Volunteer Opportunities

Standard 3.5-2 of the Pro Bono Standards states, "A pro bono program should develop effective strategies for utilizing volunteers to meet clients' legal needs."104 Although direct case referrals are the core and most important work for any pro bono program, many programs have found that volunteer attorneys can provide meaningful legal assistance to low-income clients in a variety of ways. Pro bono leaders in Utah should explore and develop other volunteer opportunities, such as court-based advice or representation programs, legal clinics, mentoring opportunities, and materials development.

Legal clinics provide volunteers with a defined, regular opportunity to volunteer. Lawyers are often more willing to take on a project with a defined commitment, such as working at a court clinic for four hours once a month rather than taking on a case with an unpredictable time commitment. For example, a program may conduct a reaffirmation clinic at the bankruptcy court on the day such hearings are scheduled. Another successful clinic model is a court-based eviction program that provides a range of services from brief advice to representation for tenants facing the loss of their housing.

Another possibility is to develop community legal education programs. Many attorneys are willing to conduct periodic community legal education programs on substantive topics related to their practice. Although setting up clinics or community education programs will require increased administrative support from the program, it may be possible to persuade a law firm or local bar association to "adopt" and administer the program.

It is essential that volunteer opportunities be offered that do not involve litigation or court appearances, such as mentoring of other program volunteers or researching and drafting substantive materials. Such opportunities offer attorneys the ability to volunteer on their own schedule. Also, research and drafting materials offers a means of participation for attorneys reluctant to go to court or those who may not be licensed in Utah. Finally, efforts should be made to explore ideas for serving client needs in transactional matters.

H. Promoting Pro Bono

Nothing promotes pro bono participation better than a personal approach, be it from other lawyers, law firm partners, judges, bar associations, community groups, or those needing the help. Developing and sustaining personal relationships pays

104 PRO BONO STANDARDS, supra note 23, at standard 3.5-2.
enormous dividends. Letters, e-mail solicitations, and talks by bar leaders do not hold a candle to a one-on-one invitation to join others helping the needy in their communities.

There is no single approach to recruiting pro bono attorneys. Nonetheless, pro bono leaders who make the effort to travel around the state need to first listen to what is happening in different areas of the state. Learning more about what lawyers think about pro bono—what motivates them, what support they need, and more—will help with the development of appropriate strategies for recruiting new volunteers.

These expeditions will also give the pro bono leaders the chance to promote specific pro bono programs, the resources and support that are available, and the various volunteer opportunities that exist. However, as noted earlier, getting the local bars to take ownership of the pro bono initiative is imperative.

After the local visits, frequent contact and follow-up is necessary to assess how things are going and to ask what else the local program needs. In addition, there should be regular reports about each visit to make sure that information about potential volunteers, projects, levels of interest, and partnerships are communicated.

VI. CONCLUSION

This Article has covered a range of issues concerning pro bono nationally and in Utah. The information and recommendations presented are intended to put the leadership of the legal profession in Utah in a stronger position to assess the state of and improve participation in pro bono legal services. It is essential that efforts focus on changing the culture of pro bono in the state by creating targeted, effective strategies for increasing pro bono opportunities and participation.