Being Mindful About the Connection Between Pro Bono and PD

by James G. Leipold

For the last year NALP members have been reading about the many connections between pro bono and PD through frequent tips and articles from our Pro Bono and Professional Development Task Force. That group’s work culminated with a live Roundtable event that was held in Washington, DC, on January 31.

The task force was charged with exploring how firms, schools, and corporate counsel offices can more deliberately and strategically use pro bono to meet many of their lawyer professional development needs while at the same time helping to address the critical shortage of access to affordable legal services that so many communities face. During the Roundtable a panel of experts took up these pressing questions.

Jim Sandman, the President of the Legal Services Corporation and the moderator of the Roundtable, framed the issues for the group at the beginning of the conversation: “We see every day the impact that inadequate resources have on low-income people who need representation. Last year in the State of New York, for example, 2,300,000 people appeared in the state courts without a lawyer. More than 90% of tenants in eviction proceedings had no lawyer; more than 90% of parents in child support proceedings had no lawyer; 65% of people in foreclosure cases had no lawyer. At the same time, we see a need for a more practical learning experience, both in law schools and in law firms, where the opportunities to get real-life skill training on matters are sometimes difficult to come by.”

Aric Press, the Vice President and Editor in Chief at American Lawyer Media, immediately pushed back on Sandman’s premise: “It’s not clear to me that this notion of yoking professional development and skills development is much of an answer to the pro bono issue…. It’s a very crabbed view of what pro bono might be about…. There continues to be a crying need for a broader vision of lawyers and their responsibilities in the society and as a professional rather than just another excuse or argument for [skills development].” Press also wondered about the availability of relevant pro bono developmental experiences for transactional lawyers.

There are in fact many pro bono opportunities for transactional lawyers. Amanda Smith, the Pro Bono Partner at Morgan Lewis & Bockius, ticked off a list of possibilities, including assisting nonprofits with incorporation and with applications for tax exemption, and even structured finance pro bono work with microfinance programs. Beyond those, she noted, “I think that many of the traditional poverty law matters that you see — family law, Social Security, landlord-tenant — where the need … is greatest are much less adversarial than some of the other … substantive practice areas where we do pro bono work, and I think there is room to argue that the kinds of skills that you need in a transactional practice area like negotiation skills are really well developed in some of those traditional poverty law areas.”

There was a consensus in the room that there was a strong business case to be made for pro bono, even leaving aside the important skills-acquisition piece. David Udell, the Executive Director for the National Center for Access to Justice at the Benjamin N. Cardozo School of Law at Yeshiva
University, put it this way: “It’s clear to me in New York City that many of the leaders of the bar are people who are doing well by doing good. So some of the most highly regarded firms in the city, some of the most highly regarded partners, some of the most commercially successful, prosperous firms and partners are also those who are the leaders in doing pro bono in the city and very involved in initiatives to strengthen the courts, very involved in initiatives to help the legal services community, very involved in initiatives that are really making a difference on the ground. And also I think … what the senior partners do is an inspiration to what the junior people in the firms are doing.”

Returning to the question of more closely integrating pro bono and PD, Maria Minor, the Professional Development and Pro Bono Manager at Neal, Gerber & Eisenberg, noted that a number of recent developments make this an ideal time to try to integrate the two more closely: “I think there have been some changes in the professional development world that make integrating pro bono and professional development much easier now. I think a lot of firms have moved to this core competency model where we’re expecting associates to develop client service skills, professionalism skills. And pro bono has a place in a lot of those core competencies. Legal aid service providers have caught on and are also getting much more sophisticated and are pitching their work in terms of ‘this will satisfy the client service work.’ When you are dealing with a pro bono client, you’re having to strategize: Is that a legal judgment? Check. So I think while the new legal economy is kind of scary, there also have been some really good changes that make it easier to bring pro bono in and not count it as a cost, but really count it as part of what we’re promising our associates we’re going to help them develop into.”

Julie Carpenter, Partner and Pro Bono Committee Co-Chair at Jenner & Block agreed: “At Jenner & Block … we’ve had this really long history of pro bono interest, and people come to Jenner to do pro bono … and only lately really have we focused more on the professional development aspect of it…. As the practice of law got more sophisticated and clients got more sophisticated and the cost of lawyering went up for clients, the clients started to say, I really don’t want a first-year lawyer doing my deposition; we started to see places where pro bono could fill in some of those gaps. So really as a result of that and of our adopting a competency guidelines sort of a metric for measuring associate development and evaluation, we started to try and fill in those gaps with pro bono experiences. So instead of starting from professional development and moving to pro bono, we really started with pro bono and used that to fill in some of the gaps that we saw developing in the professional experience.”

Aimee Imundo, Senior Counsel for Competition Law & Compliance for General Electric weighed in with the in-house perspective: “As the representative of in-house, I can say that companies are really appreciative of the professional development efforts incorporating pro bono and other ways to get real practice for associates, because then, of course, that means they’re ready for us to hire when they reach the senior associate ranks.” This brought knowing if somewhat uncomfortable laughter to the room. Imundo confessed that companies worry a lot less about development opportunities for their lawyers than law firms do because corporations expect to hire lawyers who are “fully baked.” She noted, however, that in-house lawyers often turn to pro bono for an opportunity to stretch in a different direction since much of what they do on a daily basis can be repetitive or at least narrow in scope. She also affirmed the importance of partnering with their law firms on pro bono projects as a way of building relationships and accomplishing mutually desirable goals.

There was broad consensus that law firm/corporate partnerships in the pro bono arena were very valuable for all of the parties involved. Marc Kadish, the Director of Pro Bono Activities and Litigation Training at Mayer Brown put it this way: “For a while, I’ll be honest, I thought that client-corporate partnerships were a bit of smoke and mirrors and there wasn’t a reality, but … I see now a whole movement that involves diversity, pro
bono, the environment, financial contributions, all being rolled into one thing… Whenever you get an RFP nowadays [the potential client] wants to know about your pro bono statistics [in addition to your diversity statistics]. So it all melds together.”

Amanda Smith provided a great example of one very successful law firm/corporate pro bono partnership: “Morgan Lewis and our client, Hewlett-Packard, jointly sponsor an Equal Justice Works Fellow. It ties into many of the things we’ve discussed. We sponsored her salary for two years to go out and provide transactional legal services in rural California helping small, green businesses, mostly immigrant-owned businesses, form. And we agreed that the Morgan Lewis and Hewlett-Packard legal departments would connect with those clients and provide legal services to those clients and, in fact, went out and did something called a Justice Bus and took 18 Morgan Lewis and HP lawyers and put them on a bus and drove them out to the central valley in California and had a set of meetings with the six community organizations who are forming green co-ops. They’re forming community gardens to feed the people in their communities. And I have to say it has been something that is a nice synergy…. It helped support our strategic initiatives for our pro bono practice, but also allowed us to work more closely with our corporate client and gave us an opportunity to develop those relationships. So I really do recommend that as a way to be more strategic about your pro bono and professional development initiatives.”

Before closing, the conversation turned to the legal services perspective. Udell reminded the Roundtable participants that “pro bono wasn’t invented to confer skills, but it can confer skills.” He and others spoke about the importance of partnering with local pro bono services providers who are struggling with huge case loads of “not very sexy” cases and few resources. Firms need to approach those relationships with sensitivity, and with an eye to providing broad support, including through funding contributions, rather than just seeing legal services organizations as an opportunity to provide development opportunities for associates. Ann Shalleck, Professor of Law and Director of the Women and the Law Program at American University, Washington College of Law, suggested that the most fruitful way to approach relationships with legal services providers was as co-counsel. She advocates “sharing in the most interesting parts of the representation rather than seeing the legal services people as doing the teeing up, the sorting through of the messy stuff, and then giving the plums to the law firms, sharing with the pro bono people those opportunities to do that work with organizations that have enormous resources and skills that very few legal services offices have these days.”

Michael Nannes, the Chair of Dickstein Shapiro, had the last word: “From the law firm perspective, I guess, as much as we’ve talked today about the connections between training and the pro bono mission, I just want to say that we can never lose sight of what value people get personally out of the pro bono experience…. So the tie is good, but the moral imperative is really what’s going to inspire people.”

To read the full transcript of the Roundtable program, or to view film clips from the discussion, visit www.nalp.org/probonoandpdroundtable.

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