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Placing Pro Bono Publico in the National Legal Services Strategy

Mark N. Aaronson

UC Hastings College of the Law, aaronson@uchastings.edu

Charles F. Palmer

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By Charles F. Palmer and
Mark N. Aaronson

A GREAT DEAL has been written in recent years about the social responsibility of lawyers and their ethical obligation to provide *pro bono publico* legal services. Unfortunately, very little has been said concerning the development, organization, and utilization of *pro bono* resources as part of an over-all strategy for delivering effective legal services to the poor and unrepresented.

This article is an effort to outline a framework for the development of *pro bono* legal representation. Our objectives are twofold. First, we want to underscore the necessity that the valuable, but limited, voluntary *pro bono* resources be utilized in conscious coordination with the government-funded paid staff attorney programs so as to maximize the beneficial impact of both for the poor. Second, we want to emphasize the need for the Legal Services Corporation to develop a coherent, long-term, national policy for the complementary utilization of its staff programs and *pro bono* programs. Particular consideration should be given to ensuring that the corporation's funding of local *pro bono* programs is consistent with that policy. In short, the corporation and the private bar should abandon their historical treatment of *pro bono* programs as demonstration pilot projects and seriously seek to support and sustain them on a nationwide basis.

Recent years show pressure to increase the *pro bono* effort

Prior to the advent of federally supported legal services in 1965, most civil legal aid programs utilized volunteer lawyers in conjunction with paid legal staff. Because the financial resources available were so minimal, approximately \$4 million nationally in 1964, volunteer time was an essential element in providing even a limited service.

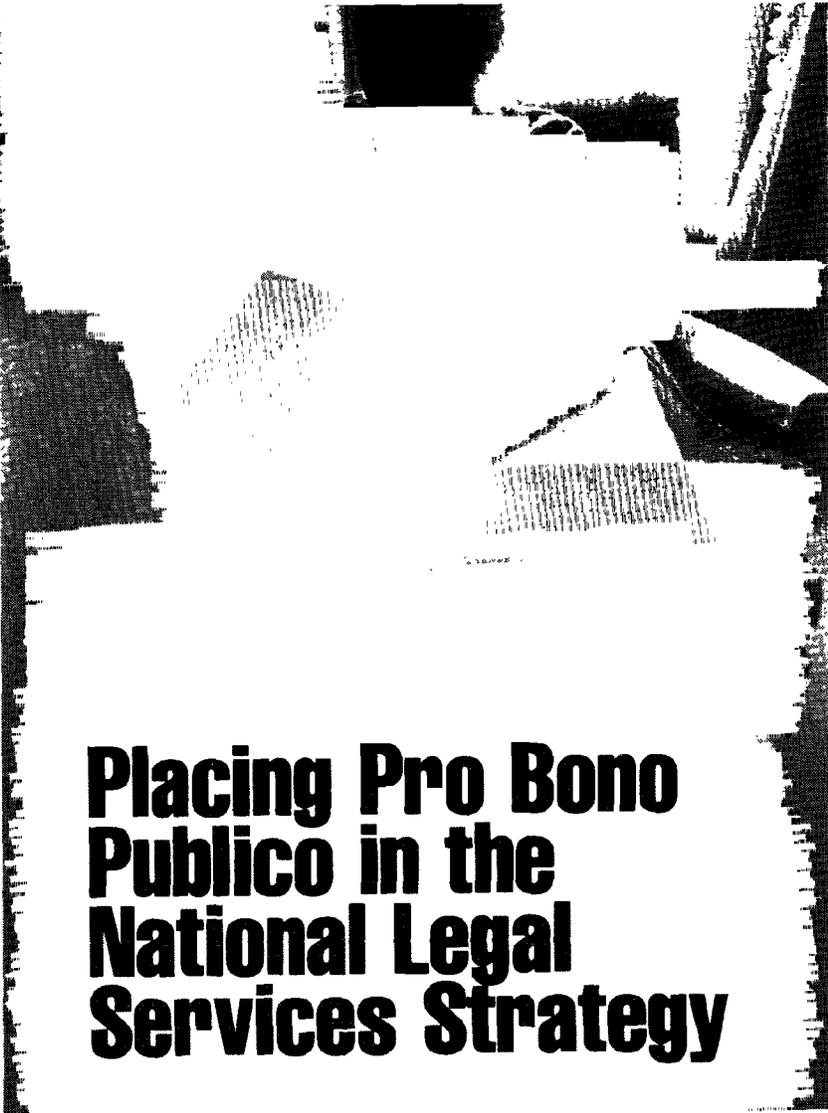
With the initiation and expansion of federal funding for legal services during the past 15 years, legal aid programs turned away from the use of volunteer lawyers in favor of full-time, paid-staff programs. For most of this period, *pro bono publico* activities de-

veloped independently of the government's effort.

Pressures on the profession for a greatly increased *pro bono publico* effort have recently developed both within and without the bar. In 1975 the American Bar Association House of Delegates explicitly reaffirmed the professional obligation of each lawyer to provide public interest services, and in 1979, the bar began serious discussions on mandating a minimum service as part of the proposed Rules of Professional Conduct. At the same time, state and local bar organizations have found it necessary to respond to heightened general antagonism to the profession and its perceived failure to meet its public service obligation responsibly. Most have at least established committees to study how they might augment

and co-ordinate *pro bono* efforts, and some recently have established locally financed *pro bono* programs.

In establishing the Legal Services Corporation in 1974, Congress specifically directed that it make a "comprehensive independent study of existing staff attorney programs . . . and, through the use of appropriate demonstration projects, of alternative and supplemental delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms . . ." The corporation responded by establishing its Delivery Systems Study in 1976, which between 1977 and 1979 funded 38 demonstration projects, six of which were *pro bono publico* programs. In addition, four other programs involving private lawyers were funded in



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To be effective, *pro bono* programs must be made a part of the national, co-ordinated policy for delivering legal services.

1978 as part of the corporation's Quality Improvement Project.

The Delivery Systems Study concluded in 1980, and the corporation now has to determine its future policies toward the types of programs studied. The growing recognition within the organized bar that *pro bono* programs should be fostered, coupled with the corporation's approaching decisions regarding the role of private lawyers in its program, makes this an especially appropriate time for the corporation and the bar generally to address the most effective utilization of *pro bono* resources.

How to organize an effective *pro bono* strategy

Pro bono programs have tended to develop from a general sense of need without a clear focus. The principal goal has been to generate a substantial number of volunteer lawyers. There has not necessarily been corresponding consideration of how to utilize *pro bono* resources so as to maximize their substantive impact within the local community.

This single-minded focus has resulted in little ongoing interaction between most *pro bono* programs and local legal services or public interest programs. This separation has been encouraged by the funding posture of the Legal Services Corporation, which has supported and reviewed *pro bono* programs on a separate and limited demonstration basis. To the extent there has been interaction, it has been at the largely fortuitous self-initiation of local *pro bono* program staff. Rarely have the government-funded legal services programs for the poor sought to integrate systematically *pro bono* resources as part of their over-all delivery of services.

Our starting point is that in any legal community there are finite limits on the numbers of lawyers who will or can participate in *pro bono* efforts. Volunteer services should be given substantive direction and focus. Without rational and integrated planning, *pro bono* programs are likely to have beneficial effects for only a few directly represented clients. For example, in Los Angeles the Legal Aid Foundation estimates that it is able to reach 10 per cent of the eligible poor who need legal services, leaving more than 750,000 poor who cannot get free representation

from a government-supported program. An extraordinarily successful *pro bono* recruitment effort might result in 1,000 lawyers volunteering to provide services annually. Even if each were to take five clients every year, there would be a less than 1 per cent increase in representation for people now without services.

The unavoidable conclusion is that providing individual representation alone is not sufficient. To be optimally effective, *pro bono* programs must begin to target for priority attention specific substantive areas and client groups.

It is not necessary that *pro bono* priority setting be conducted in the formal and rigorous fashion utilized by the government-funded programs. The time needed and the expense involved are likely to exceed the resource capabilities of most local *pro bono* programs. It is, however, important that there be a self-conscious process of deliberation that takes into account relevant information already available or easily obtainable.

In seeking to establish priorities for local *pro bono* programs, the following elements are essential: (1) an assessment of the general legal needs of the poor in the particular community; (2) an accurate assessment of the breadth and quality of other local legal services programs; (3) an analysis of the willingness and ability of local volunteer lawyers to provide particular kinds of services; (4) a plan for mobilizing and structuring volunteer lawyer commitments within the limited financial resources available for *pro bono* administration; and (5) a comparative evaluation of the range of benefits likely to result from providing particular services.

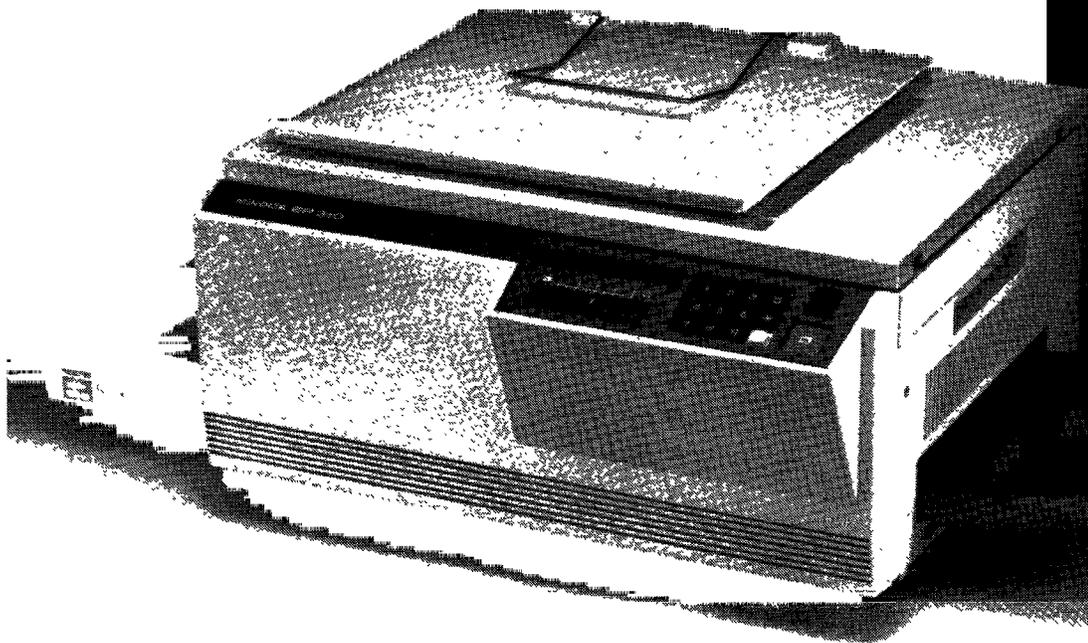
In metropolitan areas information is generally available concerning the legal needs of the local poor and the nature and quality of existing programs. The Legal Services Corporation each year requires its grantees to determine and rank local legal needs. There is no reason for a *pro bono* program to repeat this process. It is important, however, that the considerations that went into the development of these priorities be explored in depth with the local program as well as community leaders. These discussions will be helpful in identifying the level of services already available in the local community as well as pinpointing the nature of the services required to meet these needs.

The evaluation of the size and skills of the available volunteer lawyer pool is essential. This task is best done by private lawyers familiar with the nature of the local bar. Particular attention should be paid to matching those previously identified substantive areas of community need with areas in which volunteers are willing to provide services and capable of doing so. This is not always self-evident. For instance, one critical area of need in California is the representation of indigents involved in child custody disputes. Public Counsel in Los Angeles initially designated this area as one of its substantive priorities. Its volunteer attorney pool, however, while large, had few family law practitioners. With few exceptions volunteer attorneys refused to accept child custody disputes on a *pro bono* basis. Subsequent efforts to involve family law practitioners have also proved unsuccessful. The San Francisco Lawyers' Committee has similarly been unsuccessful in efforts to deal with family law matters in large part because the committee's pool of volunteer lawyers comes mostly from the corporate bar.

Attention must be paid not only to whether there is a demand for services in a particular area but also to the relative impact the contemplated *pro bono* effort would have. For instance, many legal services programs have declined to provide family law services on the ground that their limited resources could be swallowed up by that single area without any discernible impact other than the service rendered to individuals. On the other hand, the same resources applied to consumer fraud or housing cases are likely to result in substantive changes in business practices with potential benefits for many more persons than the individual clients receiving direct services.

It also is important to consider the complementary knowledge and skills of full-time legal aid and private lawyers.

The eventual conclusions reached as a result of a *pro bono* priority-setting process will differ from community to community. What is essential is that an evaluation of the numbers, skills, and interest of potential volunteer lawyers be made and that this information be matched with an actual assessment of client community needs not otherwise likely to be adequately met. Particularly if done in consultation with local legal aid programs, priority setting advances substantially the development of a responsive and co-ordinated system of



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legal assistance for the poor.

Pro bono service is the most crucial untapped resource realistically available to the national legal services effort. If operated in close conjunction with full-time, staffed programs and with an explicit set of priorities, organized *pro bono* programs can substantially supplement both policy impact and individual service work on behalf of the poor. This is particularly the case in communities that have healthy staff attorney programs that can give direction to and work with *pro bono* programs.

The decisions the Legal Services Corporation makes in 1980 concerning its posture towards these programs will play a decisive role. As the largest single source of financial assistance for legal services programs, the corporation is in a position to wield enormous economic influence on existing staff attorney programs and on the developing organized *pro bono* effort. Staffed programs can be expected to move in new directions if the corporation, their principal funding source, establishes specific financial incentives or conditions for encouraging *pro bono* co-operation. In addition, the corporation's position of national legal services leadership means that the organized bar is likely to be mindful of suggestions made by the corporation concerning *pro bono* needs and programmatic development.

We do not propose major increases in federal funding to organized *pro bono* programs at the expense of staff attorney programs. The core of the national legal services effort must continue to be staff attorney programs. Indeed, *pro bono* efforts are most effectively based on good working relationships with strong local staff attorney programs. For the most part, financial support should continue to come from nonfederal sources.

With congressional appropriations for legal services likely to remain more or less constant during the next several years, the Legal Services Corporation is at a crucial juncture both financially and in terms of program development. Several *pro bono* policy options are available.

One option would be for the corporation to withdraw from direct funding of organized *pro bono* programs and limit its involvement to public urging of increased *pro bono* efforts by the private bar. This course of action would likely result in continued ad hoc development of *pro bono*. Communities that lack organized *pro bono* would be less likely to develop them. *Pro bono* would

most likely continue its independent development outside the national or local legal services strategies. We reject this alternative as inconsistent with the much-needed effort to build ties between *pro bono* and staff attorney programs as ways to enhance the delivery of legal resources to the poor.

As a second option, the corporation could continue funding at present levels the existing *pro bono* demonstration projects it determines have shown a significant client service and make no new funding commitments to other programs. This would represent an abdication of leadership by the corporation with respect to *pro bono* efforts and would undercut the very purpose of demonstration projects, which is to develop models for replication elsewhere.

Legal Services Corporation is at a crucial juncture

A third alternative would be for the corporation to continue to fund new demonstration or pilot programs on a limited-term basis. After 15 years of demonstrations, it is difficult to understand what reasonable models remain to be funded. This approach continues the tradition of excluding *pro bono* from the national legal services strategy and effectively negates the potential for co-operative staff attorney and *pro bono* development. It also exacerbates the problem of what to do with demonstration projects at the end of the demonstration period.

We suggest a fourth option, which entails a flexible approach to meet various kinds of needs determined by the circumstances of particular localities. The lessons learned from the demonstration project and other existing *pro bono* programs should be useful in setting specific guidelines and in evaluating requests for proposals within our general framework.

First, the corporation should require local staff attorney programs to utilize *pro bono* participation as an integral part of their delivery of services. While this will vary from locality to locality, it is important that the programs themselves begin to work directly on the development of this resource, preferably, whenever practical, in close co-operation with local or state bar associations or other organized *pro bono* efforts.

Second, *pro bono* programs whose

basic costs of operation are already met from local financial resources occasionally need supplemental funds to improve or expand existing programs, to organize new programs, for capital expenditures designed to improve a program's efficiency, or for the assessment of what services are being provided by which agencies in the local community. The corporation could establish a program of limited one- or two-year special purpose grants for these purposes with no local program receiving more than \$30,000 annually.

Third, revolving cost funds with reimbursements made from future recoveries should be established. Lawyers and law firms willing to give generously of their time are not necessarily either able or willing to advance costs. There is considerable need for corporation funding of cost funds to be administered by local *pro bono* programs to ensure that volunteer attorneys have the minimum financial resources necessary to represent their clients. Our experience indicates that an initial \$5,000 would be sufficient in most metropolitan areas.

Fourth, in rural and urban areas without large corporate law firms, locally generated funds are not likely to be sufficient to support *pro bono* efforts. Funding may have to be direct to launch new *pro bono* programs or be given to staff attorney programs to incorporate the use of volunteer attorneys as an integral part of their over-all delivery services.

Great progress has been made toward extending civil legal services to the poor during the past five years. But the great bulk of the poor remain unrepresented, and the prospects of significant increases in government financial assistance are dim. Organized *pro bono* programs offer the most significant available potential for augmenting the national legal services effort. Full realization of that potential is a challenge that should be considered and met within the context of the entire legal services strategy, not in isolation. We believe the bar and the Legal Services Corporation in particular must move decisively to develop and implement such a strategy. The continuing needs of the poor demand it. *Journal*

(Charles F. Palmer is executive director of Public Counsel in Los Angeles, and Mark N. Aaronson is executive director of the San Francisco Lawyers' Committee for Urban Affairs in San Francisco.)