

Pro Bono Work in Colombia: How Can It Help Broaden, Equalize, and Ensure Access to Justice

ANA BEJARANO RICAURTE*

Empirical data in Colombia demonstrates that pro bono work by lawyers is both urgently needed by scarce-resourced communities and limitedly offered by the legal community. The restrictions of the legal market, especially with regards to its offer of legal services for the underprivileged, has direct consequences in the levels of poverty and inequality in Colombia. Thus, this paper hopes to contribute an answer to the question: how can pro bono work help broaden, equalize, and ensure access to justice in Colombia? Part I includes an explanation of the statistics obtained from the survey of PBF law firm pro bono coordinators and interns and relevant data from the National Survey of Unmet Legal Needs. Part II comprises a discussion of the four main challenges identified through the empirical analysis. First, triage obstacles arise when assigning a case to one of the available legal aid outlets, and pro bono plays into these dynamics. Second, there is a significant gap between the first-order legal needs of the low-income population, and the type and amount of services offered through pro bono arrangements with law firms. Third, as a legal transplant, pro bono work faces infrastructure challenges. Finally, the fourth challenge stems from how improper practices can arise structurally around the figure of the pro bono intern in law firms. Part III explores the possibilities presented by pro bono programs in light of the current challenges assessed in the previous sections. It identifies actors in the legal community who could contribute to positive change, as well as recommendations for new legislation, changes to law school curricula, institutional improvements, and prevention of the misuse of certain pro bono mechanisms. Part IV presents the conclusions drawn from the specific findings of this article.

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INTRODUCTION

The lawyer threw up his hands.
'That's the way it is,' he said. 'Human ingratitude knows no limits.'

Gabriel García Márquez, *No One Writes to the Colonel*.

In Colombia during the 1840s, only a few decades after the country's declaration of independence from the Spanish crown, a famous lawyer from Bogotá offered free legal counsel to robbers, murderers, and vagrants.¹ He was known as a "defender of inmates in almost every proceeding," and "his knowledge of these low classes, inhabited by addiction and misery, was considerable."² His name was Jose Raimundo Russi, and he was executed after being found guilty of murder by a jury.³ Historians disagree over the circumstances of his death, but concur that his defense of the poor and the outcast made him a hated individual.⁴ Russi was continually persecuted by elite groups and politicians who saw him as a threat to the status quo.⁵ According to Camacho, a mid-nineteenth-century historian, Russi himself "credited his position to the pity that the poor classes inspired in him, stuck in prisons without counsel or anyone to look after them."⁶

Among Colombian litigators, there is an old saying, "*Pleito gratuito, pleito maldito*," (free case, damned case), which betrays their leeriness of providing pro bono counsel. This saying conveys lawyers' almost superstitious belief that if they do not charge for their services on a case, the proceedings are sure to take a wrong turn. It is easy to see why Russi's free defense of the poor riled the Colombian legal community, which has remained systematically indifferent to under-resourced clients until recently.

*Professor of procedural Law and Academic Director of the Judicial Formation Program in Universidad de Los Andes School of Law—Bogotá. Litigator and pro bono coordinator in Bejarano Abogados. Lawyer from Los Andes University and Master in Law from Harvard Law School.

1. José Eduardo Rueda Enciso, *Guaches vs. Cachacos: La Sociabilidad Democrática en Bogotá 1845-1876*, 11 REVISTA HISTORIA Y ESPACIO 41, 51 (2015).

2. *Id.*

3. N. de la D., *Acerca del Juicio a José Raimundo Russi*, 4 ELEMENTOS DE JUICIO. REVISTA DE TEMAS CONSTITUCIONALES 287, 291 (2009).

4. See generally JOSE MARIA CORDOVEZ MOURE, REMINISCENCIAS DE SANTA FE DE BOGOTÁ (Imprenta Nacional ed., 1942) for versions regarding Russi's culpability.

5. *Id.*

6. SALVADOR CAMACHO ROLDÁN, MIS MEMORIAS CH. 23 (Smashwords Inc., 2019) (ebook).

In 2009, almost 200 years after Russi's death, the Pro Bono Foundation (PBF), the country's first institutionalized provider of free legal counsel for low-income populations opened its doors.⁷ This organization provides a clearinghouse service that screens cases from potential clients and refers them to pro bono lawyers in member law firms.

The PBF was founded by the lawyer Paula Samper, among others, and benefited from the ground-level participation of several well-known firms in Bogotá.⁸ In the country's absence of a Bar Association that might encourage or even require pro bono work through attorneys' codes of conduct and ethics,⁹ the PBF alone has taken on the task of promoting this type of work. The PBF approaches law firms to ask them to take on pro bono cases, and/or to create a pro bono program within their firm. The PBF's mission is to grant access to justice for vulnerable populations through the provision of free, high-quality legal counsel.¹⁰

Thus, institutionalized and trackable pro bono work in the Colombian legal community depends entirely on the PBF's efforts. In January 2018, the PBF had forty member law firms. Each of these institutional members appoints a pro bono coordinator who acts as the point of contact between the PBF and her firm or company. These coordinators are the "face" of pro bono within each of their firms, and key players in the cultural shift towards support of this work.

Colombian lawyers now generally accept the notion that all citizens should have access to justice regardless of their ability to pay. Numerous decisions by the constitutional court have recognized this right. The court has defined it as the opportunity for everyone living in the country to access the judicial system to secure the protection or restoration of their rights, with strict adherence to previously established procedures.¹¹ However, there is still a significant gap in

7. See *¿Cómo actúa la Fundación ProBono?*, FUNDACIÓN PRO BONO COLOM., <https://probono.org.co/quienes-somos/> (last visited Jan. 13, 2020, 8:28 AM).

8. Cf. Daniel Bonilla, *Los mandarines del derecho: El trabajo jurídico pro bono en perspectiva comparada*, in LOS MANDARINES DEL DERECHO: TRASPLANTES JURÍDICOS, ANÁLISIS CULTURAL DEL DERECHO Y TRABAJO PRO BONO 29, 42 (2017).

9. Bar Associations in Colombia are private, and they do not stem from any regulation. They have no functions over disciplinary aspects of the profession. There is also no exam that authorizes or denies lawyers the exercise of law. See MAURICIO GARCÍA VILLEGAS & MARÍA ADELAIDA CEBALLOS BEDOYA, *LA PROFESIÓN JURÍDICA EN COLOMBIA: FALTA DE REGLAS Y EXCESO DE MERCADO* (2019) (providing a full discussion of the legal profession and professional rules of Colombia).

10. *Declaración Pro Bono ¿Qué es?*, FUNDACIÓN PRO BONO COLOM., <http://probono.org.co/quienes-somos/declaracion-probono/> (last visited Apr. 20, 2017, 12:45 AM).

11. Cf. Corte Constitucional [C.C.] [Constitutional Court], mayo 16, 2013, Sentencia T-283/13 (Colom.).

Colombia between the formal recognition of this right and its materialization.

The right of access to justice is not realized simply with an opportunity to cross the threshold into a courtroom; it must also take into account whether legal problems are resolved. Access to justice will be adequate when utilization of the legal system has materially resolved the matter presented, when the resolution has come in a timely manner and can also be duly enforced.¹²

In addition, if access to justice is to be fair and meaningful, it follows that people from all walks of life should be attaining analogous resolutions to similar justice problems.¹³ Since legal services within the court system are most often adversarial, pitted against an opposing party's legal team, equality in the quality and amount of these services becomes de facto as important as the right to justice itself. This is especially important and challenging in one of the most unequal countries in the world.¹⁴ If the system is to be effective and give everyone an opportunity for peaceful conflict resolution (in a country where injustices provide very fertile soil for violence),¹⁵ then access to it must not be contingent upon income, gender, or race.

The limitations of the legal market, especially with regards to its offer of legal services for the underprivileged, has direct consequences in the levels of poverty and inequality in Colombia. When a significant part of the population finds its problems and legal needs are not seen as important by institutions, or economically worth it for legal professionals, they seek other ways to find a resolution—or even prefer to do nothing.¹⁶ In this case, as in many others, the market is incapable of self-regulating so it can provide a fair array of services to its different

12. See MIGUEL EMILIO LA ROTA ET AL., ANTE LA JUSTICIA: NECESIDADES JURÍDICAS Y ACCESO A LA JUSTICIA EN COLOMBIA 34 (Antropos ed., 2014).

13. Rebecca L. Sandefur, *The Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy*, 42 LOY. L.A. L. REV. 949, 949 (2009).

14. For an analysis of these problems, see Daniel Bonilla Maldonado, *The Mandarins of the Law: Pro Bono Legal Work from a Comparative Perspective*, 27.1 IND. J. GLOBAL LEGAL STUD. 131 (2020). The 2015 CEPAL publication regarding equality of income in Latin America gives Colombia approximately 0.55 in the Gini coefficient for 2014. Econ. Comm'n for Latin Am. & the Caribbean, *Social Panorama of Latin America 2015*, LC/G.2691-P, at 50 (2016).

15. See generally MAURICIO GARCÍA VILLEGAS ET AL., JUECES SIN ESTADO: LA JUSTICIA COLOMBIANA EN ZONAS DE CONFLICTO ARMADO (Mauricio García et al. eds., 2008) (for a research project that measures the complex dynamics between the causes and consequences of violence and the judicial system in Colombia).

16. See generally Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112 (Pascoe Pleasence et al. eds., 2006) (analyzing the “do nothing” response to civil justice problems).

types of users.¹⁷ The market inevitably excludes an important part of them from a determinant aspect of their citizenship and exercise of their basic rights.¹⁸

How can the legal profession help convert this formalized right—which is essential for the protection of many other rights—into a vested, exercisable one? How can access to justice be ensured? Furthermore, how can it be ensured on equal terms for all citizens?

Since one of the most important expressions of the right to access justice is the right to an attorney,¹⁹ particularly in a legal system where almost every type of proceeding requires one,²⁰ equal access to legal counsel is fundamental. As the National Survey of Unmet Legal Needs (NSULN)²¹ shows, legal aid outlets in Colombia for people who cannot afford a lawyer are scarce and insufficiently funded. The only real options people have outside of private counsel are University-based Legal Aid Clinics (ULACs)²² and public defenders for criminal proceedings.²³

In this context, pro bono work offers a viable partial solution to the lack of access to legal counsel among the low-income population. In order to do pro bono work, this effort must be: (1) legal work, (2) offered by lawyers, (3) free, (4) voluntary, (5) institutionalized, (6) for low-income people, and (7) in service of the public good.²⁴ In Colombia, the promotion, education, and growth of pro bono work have almost singularly relied on the PBF, at least insofar as an institutionalized version of pro bono exists.

The PBF has grown since 2009 and is now a well-known institution within the legal community, particularly among large- and medium-

17. See generally Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 *MIC. L. REV.* 953 (2000) (analyzing the economic realities of lawyering and monopolistic tendencies).

18. See Daniel Bonilla Maldonado, *Las obligaciones sociales de los abogados*, in *ABOGADOS, SOCIEDAD Y DERECHO DE INTERÉS PÚBLICO* 11, 11-58 (Carlos Morales de Setién Ravina et al. eds., 2016).

19. See Bonilla, *supra* note 8, at 38.

20. CÓDIGO DE PROCEDIMIENTO PENAL [C.P.P.] art. 118; CÓDIGO DE PROCEDIMIENTO Civil [C.P.C.] art. 73.

21. LA ROTA, *supra* note 12, at 34.

22. Legal Aid in Universities are legally mandated clinics that all educational institutions that teach law must offer to serve the under resourced population. L. 196/71, febrero 12, 1971, *DIARIO OFICIAL [D.O.]* art. 30 (Colom.). Though the legislation regulating this type of legal aid is very outdated, its intent remains to offer access to the justice system for the “poor,” and also to provide practical experience and training for future lawyers. *Id.*

23. See LA ROTA, *supra* note 12, at 34.

24. See *Las obligaciones sociales de los abogados*, *supra* note 18, at 38 (defining pro bono work).

sized firms.²⁵ Its “Rock and Law” music contest and the “Futsal Cup,” where firms form teams and compete against one another, have become established annual events in the law firm community.²⁶ However, as the institution and its brand recognition have grown, the participation level in its pro bono program has not increased by significant numbers, as this paper demonstrates.

In addition, there is evidence that the higher profile enjoyed by pro bono programs may be more attributable to an international discourse that values pro bono, than to a first-hand experience of and belief in the social benefits that institutionalizing this practice brings.²⁷ Indeed, the adoption of pro bono culture via legal implant from the United States, can, at its worst, translate into inefficiency and misuse of pro bono institutions.

This article does not discuss whether pro bono programs should exist in Colombia, or whether they cause positive transformation in the legal profession. These issues are examined in other types of legal literature, and this author departs from the standpoint of viewing this type of work as a positive practice within the legal culture.²⁸ The main thesis of this article is that pro bono work is still developing in Colombia, both in its numbers of participating attorneys and clients, as well as in the ways it is affecting the legal culture. As important as it might be, the work of the PBF has not yet reached significant service levels, and there are still structural barriers to the emergence and solidification of a pro bono culture in many law firms, particularly the smaller ones, and solo practitioners in Colombia. The removal of these barriers might contribute to the elimination of structural social inequalities and a more significant contribution of the legal profession to this goal.

How is institutionalized pro bono serving its purpose of broadening and equalizing access to justice in Colombia? How are law firms, in particular, responding to this goal? Who else needs to chip in to make the system work better for the under-resourced population? In short, and in addition to providing a detailed description of the current state of pro bono efforts in the country, this paper seeks to answer the question: how can pro bono institutions and lawyers in Colombia increase the quality and volume of their services?

This article presents empirical analysis to evaluate whether pro bono work has increased citizens’ exercise of their right to access justice,

25. *¿Cómo actúa la Fundación ProBono?*, *supra* note 7.

26. *Id.* (describing the “Copa Futsal” and “Rock and Law” activities).

27. See Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 97-98 (2004).

28. See *Las obligaciones sociales de los abogados*, *supra* note 18, at 11-58 for a robust explanation of the arguments in favor and against pro bono work.

and whether institutionalized forms of it have been successful. Statistics from the PBF are the primary resource for measurement of the pro bono efforts carried out by its member law firms annually. Also, during the first month of 2017, the author surveyed the pro bono coordinators of the PBF member firms. This survey was also distributed to the first group of pro bono interns from Los Andes University Law School. It gathered information on pro bono structure, institutions, internships, and overall prioritizing of pro bono efforts at each of the firms.

Data from the latest National Survey of Unmet Legal Needs (NSULN)²⁹ is also incorporated into this paper as a “denominator” to the quantifications of income-accessible legal services. The scope of legal needs among the general and under-resourced populations is a fundamental piece of how the success of these programs can be defined.

The use of data-based research to inform the answers to social science questions is especially important in formulating policy, with particular emphasis on statistics over what lawyers subjectively believe could help.³⁰ This type of analysis has often been overlooked by legislators and influencers in the judicial public policy arena in Colombia but has great importance in the access to justice field internationally.³¹ By looking at service level numbers as they compare to unmet legal needs in Colombia as well, it is possible to track pro bono programs’ progress towards the country’s ambitious goal of ensuring equal access to justice. A quantitative viewpoint helps identify pro bono challenges and generate ideas for new strategies.

Many lawyers from older generations, current supreme mandarins (bureaucrats),³² report that throughout their careers, they have

29. See generally LA ROTA, *supra* note 12 (The NSULN is one of the most complete empirical studies carried out in Colombia for unmet legal needs, although it is in urgent need of renovation).

30. See generally Christina L. Boyd, Response, *In Defense of Empirical Legal Studies*, 63 BUFF. L. REV. 363 (2015) (analyzing the empirical legal studies movements and its contributions to policymaking and the legal system).

31. See generally, e.g., Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101 (2013) (describing the data-based research methods being conducted on Access to Justice by organizations such as the American Bar Foundation).

32. Daniel Bonilla offers an interesting categorization created by pro bono work: the mandarins and servants of the law. Mandarins occupy a higher position than servants, for class and epistemological reasons. Mandarins have the opportunity to access the knowledge required to move with success through the judicial system, and the servants, lacking these positions and knowledge, are dependent on the mandarins when confronting a legal need. Mandarin beginners are those in formation, in the process of becoming supreme mandarins in the future. Bonilla, *supra* note 8, at 42.

sometimes offered free legal services to people in need.³³ Often, they do not see this work as part of a bigger pro bono system, but rather as a sporadic social service,³⁴ which makes these situations difficult to quantify and assess. Surveying PBF member firms was, therefore, the most accurate available way to measure institutional expressions of pro bono work in Colombia. It is important to bear in mind that lawyers and firms outside of the PBF can, and surely do, offer some free legal services to poor people, such that the PBF data can be taken as an assumed baseline.

This article is composed of four main parts. Part I includes an explanation of the statistics obtained from the survey of PBF law firm pro bono coordinators and interns. This first part also studies PBF reports, and relevant data from the NSULN.

Part II comprises a discussion of the four main challenges identified through the empirical analysis. First, triage obstacles arise when assigning a case to one of the available legal aid outlets, and pro bono plays into these dynamics. Second, there is a significant gap between the first-order legal needs of the low-income population, and the type and amount of services offered through pro bono arrangements with law firms. This dynamic is complicated by the frequent reticence among lawyers about offering certain necessary services for free. Third, as a legal transplant, pro bono work faces infrastructure challenges. Differences between the United States and Latin America create and expose limitations to a one-size-fits-all model. Relatedly, firms face the challenge of providing sufficient and quality infrastructure for pro bono work while still focusing on their primary corporate objectives and for-profit interests. Finally, the fourth challenge stems from how improper practices can arise structurally around the figure of the “mandarin beginner”³⁵ in law firms, which has consequences for the dynamics of their pro bono work.

Part III explores the possibilities presented by pro bono programs in light of the current challenges assessed in the previous sections. It identifies actors in the legal community who could contribute to positive change, as well as recommendations for new legislation, changes to law school curricula, institutional improvements, and prevention of the misuse of certain pro bono mechanisms. Part IV presents the conclusions drawn from the specific findings of this article.

33. Interview with Ramiro Bejarano Guzmán, Pro Bono Partner, Bejarano Abogados, Bogotá, Colom. (Apr. 1, 2017); Interview with Jairo Parra Quijano, President of the Colombian Ass’n of Procedural Law, Bogotá, Colom. (Mar. 2, 2017).

34. Interview with Ramiro Bejarano Guzmán, *supra* note 34; Interview with Jairo Parra Quijano, *supra* note 34.

35. See Bonilla, *supra* note 8, at 42.

EMPIRICAL DATA

The Work of the Pro Bono Foundation (PBF)

To measure the amount of pro bono work, it is necessary first to define and distinguish it from other types of social efforts carried out by the legal profession. Daniel Bonilla, one of the founding members of the PBF, offers a complete definition that synchronized into the internal processes of the organization. Pro bono work is the name given to the group of voluntary free legal services that are institutionalized, and offered by lawyers, either to under-resourced clients or to organizations that promote such clients' interests and/or the common good.³⁶

According to a 2016 report issued by the PBF, there has been a constant increase (since its creation in 2009) in the cases it considers. In 2009, it took 28 cases; by 2016, they had 727. Although still working with small numbers, the PBF has experienced constant growth in requests from its key demographic.

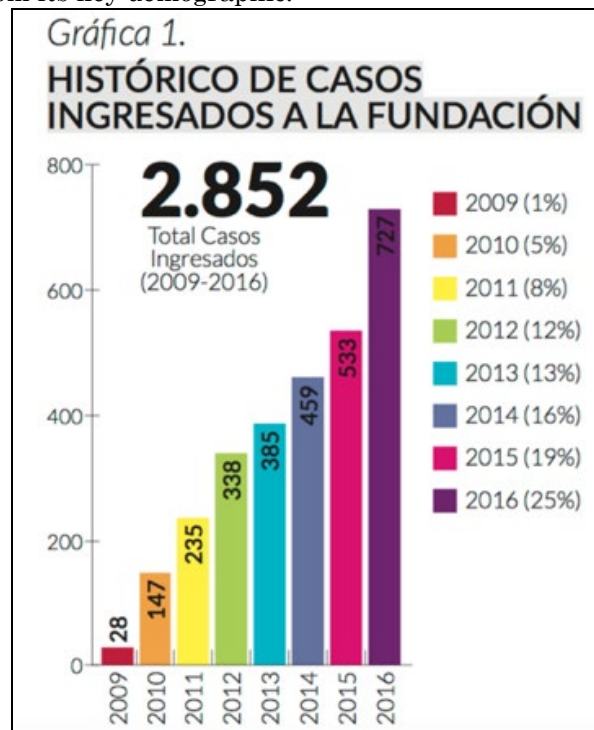


Chart 1 – History of cases admitted to the PBF

36. See *Las obligaciones sociales de los abogados*, supra note 18, at 19.

It is important to understand that the number of cases received or admitted is not equal to those cases that are worked on. The PBF's system of classification of their pro bono cases is as follows:

- Admitted cases: all the requests for free legal assistance that reach the PBF.
- Accepted cases: all the requests for free legal assistance that, once they are studied, satisfy the criteria to become a pro bono matter.
- Assigned cases: all the requests for free legal assistance that are chosen by a lawyer for the provision of his or her services.
- Rejected cases: all the requests for free legal assistance that do not satisfy the PBF criteria.
- Discontinued cases: all the pro bono cases that the client or lawyer does not wish to or cannot see to completion.
- Discarded cases: viable legal assistance requests, which, after being available in the system for a given period, are not accepted by any lawyer.³⁷

If the number of admitted cases grows, but assigned cases do not, the positive growth in the work of the PBF has limited meaning. Troublingly, this dynamic seems to be the case. For example, in 2015, there was a significant increase in the number of admitted cases (533) as compared to 2009 (28), but only 243 of them were assigned.³⁸ Between 2015 and 2016, the number of assigned cases remained almost the same, at 243 and 249 respectively.³⁹ Given that 2016 saw a significant jump in cases received, these statistics reveal what may be the start of a worrying trend: in 2015, of the 533 cases received, 46% were accepted by lawyers, while in 2016, of the 727 received cases, only 34% were accepted.⁴⁰ If this trend continues in future years, it could mean that the PBF's success in becoming more well-known among its key demographic is counterbalanced by the fact that their panel of pro bono lawyers is not growing enough to keep up with the increased demand for representation from the PBF's client base.

Is the current PBF system working at capacity? Further statistics help round out the picture: in 2015, of the 1065 lawyers who are

37. FUNDACIÓN PROBONO COLOM., INFORME DE GESTIÓN 2016 12 (2016), <http://probono.org.co/pdf/informe-de-gestion-provisional-2016.pdf>.

38. FUNDACIÓN PROBONO COLOM., INFORME DE GESTIÓN 2015 18-20 (2015), <http://probono.org.co/pdf/informe-de-gestion-2015.pdf>.

39. INFORME DE GESTIÓN 2015, *supra* note 38, at 18; INFORME DE GESTIÓN 2016, *supra* note 38, at 31.

40. INFORME DE GESTIÓN 2015, *supra* note 38, at 20; INFORME DE GESTIÓN 2016, *supra* note 38, at 31.

members (through their law firms’ affiliation), only 243 (22%) undertook pro bono matters.⁴¹ The average pro bono work performed during that year by each of those lawyers was twenty-four hours.⁴²

The 2016 information shows that pro bono cases requiring representation in court are those least chosen by volunteer lawyers. Of the Foundation’s categories of its cases, judicial representation also had the lowest rate of case resolution or completion (29%) in that year. The other two PBF case categories and completion rates were as follows: concept-making⁴³ (98% resolved) and consultation (56% resolved). (Chart 2).

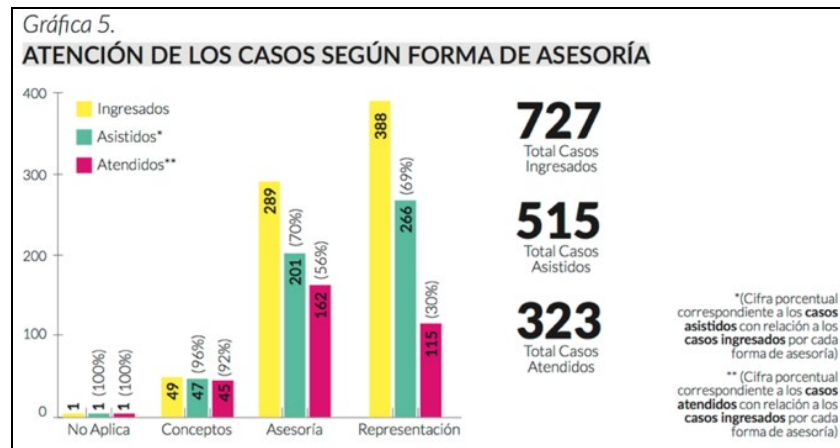


Chart 2⁴⁴ — Resolution of cases by the legal service provided

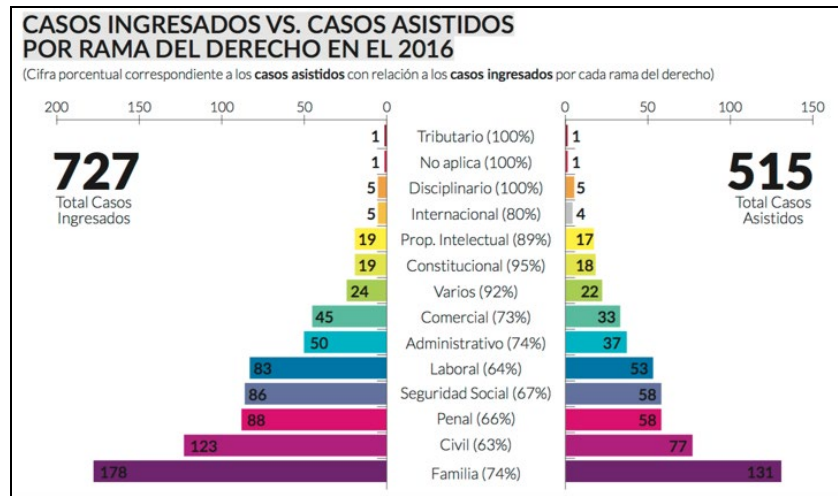
The areas of law with the lowest rates of assignment in 2016 were employment law (64%), criminal law (66%), social security and public benefits law (67%), and family law (74%). (Chart 3).

41. INFORME DE GESTIÓN 2015, *supra* note 38, at 12.

42. *Id.*

43. There are some clients of the PBF that request a legal opinion regarding a specific problem and how to solve it. For example, an NGO might ask about the possibility of regulating a particular topic and what the legislation to do so would look like. This is a service that requires research and the drafting of an opinion letter; when that is presented, the pro bono attorney-client relationship ends. Paula Samper, Law Faculty, University of Los Andes, Seminario Las Obligaciones Sociales de Los Abogados: Trabajo pro bono y clínicas jurídicas, lecture notes (Jan. 31, 2019).

44. INFORME DE GESTIÓN 2016, *supra* note 38, at 32.

Chart 3⁴⁵

Pro bono Efforts of Foundation Members

The survey was carried out to measure different variables and dynamics within the organization's law firm members and to evaluate how the PBF's efforts have helped to manifest the right of access to justice in Colombia. The survey asked for general information regarding the firm's work, the role of the pro bono coordinator, pro bono policies within the firm, incentives and motivations for pro bono work, case selection, evaluation methods, and the pro bono internship program run with some Bogotá law schools.

The survey was emailed to the pro bono coordinator of every firm, who was in charge of filling it out. Emails and phone calls were sent and made to follow up with those who did not answer initially.

The survey was designed⁴⁶ and conducted by the author of this paper during the months of January and February of 2017. The questions were modeled with reference to other similar efforts, such as the one documented in Cummings's and Rhode's paper, *Managing Pro Bono: Doing Well by Doing Better*, written in the legal context of the United States. Additional questions were included due to the differences in pro bono work between the two countries. For example, the

45. *Id.*

46. See generally Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 *FORDHAM L. REV.* 2357 (2010) (describing similar pro bono evaluation efforts in the U.S.).

Colombian survey included questions regarding pro bono interns, an effort not discussed in Cummings's and Rhode's survey.

Though the Colombian survey was modeled on the one used by Cummings and Rhode, which had similar data collection methodology, this author expected the results to differ, especially because pro bono culture is still incipient in Colombia. Also, since measuring and evaluation of pro bono work are rare and often done only superficially in Colombia, coordinators may not have access to the same detailed information beyond simple knowledge, as their counterparts would in the US. When satisfaction with the services provided and the experience of providing those services is measured in pro bono clients and lawyers, US coordinators might have essential information regarding processing times and practices, efficiency of the outcomes, and issues that might help improve client-lawyer relationships in the future that Colombian coordinators do not have access to.

The PBF had forty members as of publication, of which seven are not law firms but other types of organizations such as financial institutions (for example Bancolombia) or legal publishing companies (for example egis). Of these forty members, thirty-two (80%of members) answered the survey anonymously.

The Role of the Coordinator

Since coordinators play such an important role in their firms' pro bono programs, as well as in their institutional relationship with the PBF, a specific part of the survey was dedicated to fleshing out the scope and contours of this role. Most of the coordinators who answered belong to another area of the firm (90.6%), and carry out their coordinator work as a secondary assignment. In all cases, the role is secondary; none of the respondents indicated that more than 40 %of their time is spent coordinating their firm's pro bono practice. In terms of gender breakdown, 69% of PBF members' pro bono coordinators are women.

Many firms have other pro bono bodies as well: 18.8% have a designated pro bono partner, 21.9% have a pro bono committee, and 25% have another form of pro bono institution. Also, 84.4% of the firms present and discuss pro bono policies and results with their governing bodies. In 65.6% of the survey responses, coordinators indicated that their firms have an institutionalized pro bono policy. Approximately half have an assigned budget for the pro bono area.

Main Pro Bono Interests

When asked about specific pro bono projects or areas the law firm undertakes, the coordinators answered very generally, which might indicate that very few of the member firms have predetermined or specific projects of interest. Various members indicated that their signature projects were cases with “high social impact,” while others listed specific cases that they had taken on in the past. Only one of the surveyed coordinators described a specific signature project that seems to have a longer-term goal and timeframe.⁴⁷

More than two-thirds (65.5%) of the member law firms have a policy of not accepting certain types of cases. Most of the corresponding cases come from the criminal and family law areas, in some cases because these are areas the firm does not offer, and in others, because they are wary of “reputational” consequences. The coordinators also pointed out that conflicts of interest between the law firm’s interests and those of potential pro bono clients also contribute to the rejection of cases. Several coordinators reported that their firms did not undertake any litigation.

Case Selection

Most coordinators agreed that the top two reasons for doing pro bono work are: (1) that it meets a need—the provision of free, high-quality legal services to people who cannot afford them—and (2) that the work has a positive structural impact in society as a whole. The reputational benefits of doing pro bono work are also incentivizing factors, though to a lesser degree.

According to coordinators, lawyers usually choose pro bono cases according to their interest in the matter from a legal point of view. Other reasons that inspire the choice of a case are the personal story of the potential client and the interest it may garner from partners. The survey answers revealed, again to a lesser degree, that lawyers also choose cases because they feel those cases will give them useful, practical experience.

47. Surveyed coordinator No. 15, Bogotá, Colom. (Jan. & Feb. 2017) (“We counsel Fundacion Bancolumbia and Fundacion ANDI in the structuring of surveys that contribute to the identification of legal needs of small businesses and non-profit organizations.”).

Evaluating the Pro Bono Lawyer and Client Satisfaction

The quality of pro bono work is evaluated at 53.1% of the firms. Of those that do assess their pro bono work, 54.2% measure client satisfaction as part of that process. In very few cases does the pro bono work of attorneys or other employees have a direct effect on their evaluation and/or remuneration. Only 9.4% of the member firms that do pro bono work integrate it into their bonus or promotion system. For 37.5% of firms, doing pro bono work will have no consequence whatsoever in the remuneration, promotion, or evaluation of their lawyers. Of the surveyed organization members, 43.8% have no set goals for minimum pro bono hours.

The Pro Bono Internship Program

The Pro Bono Internship Program started in 2010. It allows law schools from elite universities in Bogotá to send their best students to conduct pro bono-related work at some of the biggest law firms in the country. Of the thirty-two surveyed members of the PBF, 53.1% participate in this program. Half of the pro bono coordinators who answered the survey think the presence of an intern is crucial during case selection. Regarding the development of the case, 38.5% report that the intern is fundamental, and 46.2% observed that without the presence of an intern, the tasks relating to the case slow down. The existence of pro bono interns has a direct effect on their case selection, according to 40.7% of the lawyers, who stated this to coordinators.

The Los Andes University Internship Program

The Los Andes University Law School participated in the PBF's Internship Program for the first time during the first semester of 2017. That internship had six students who were preselected by the law school after the submission of an essay and subsequent interviews. These interns were then selected, via a review of their resumes, by six of the biggest and most prestigious firms in Colombia, which work within both national and international jurisdictions.

In April 2017, the first generation of these interns was surveyed via email. They were asked to assess the nature and quality of the pro bono work in their host law firms. One hundred percent of the interns responded.

Regarding the nature of the work they carried out, all of them reported they had interviewed clients, and 66.7% had prepared legal briefs. Half of the interns were asked to oversee proceedings in

courthouses or obtain documents and information for cases. Five out of six interns were asked to do legal research for a case.

Two thirds of the interns observed that tasks in their pro bono cases slowed down during the summer and holiday periods when they were not present. The average perceived level of their firm's commitment to pro bono was 3.9, with 0 being not at all committed, and 5 indicating the maximum commitment.

Regarding attorneys, who were considered by the interns as sometimes not responsible for their pro bono work, the interns pointed to a lack of time invested in the case, lengthy periods used to review tasks assigned to the interns, or lack of communication with the pro bono clients. One surveyed student stated that uninvolved lawyers left cases to be managed by the interns in their entirety. Another intern noted that most attorneys who are not interested in pro bono work do not accept any cases, while the ones who do are quick and interested in providing high-quality service.

Interns pointed out that their firms had policies to not accept cases in the following areas of law: employment, family, and criminal. At least half of the interns said that their firms did not take any cases that involved possible litigation. According to the interns, the main reasons their attorney colleagues cited for avoiding these types of pro bono cases were the long duration of proceedings, the lack of knowledge in certain areas of law, and a lack of interest.

Unmet Legal Needs of the Under-Resourced Population in Colombia

The NSULN was conducted in 2014 and remains the most comprehensive survey and complete empirical research available in Colombia as far as information on access to justice. It was carried out in fourteen cities,⁴⁸ which limits its scope, especially when it comes to assessing the relationship of rural communities, which makes up 20.5% of Colombia's population,⁴⁹ to the justice system. The NSULN was spearheaded by DeJusticia, an academic non-government organization (NGO) that specializes in justice issues. DeJusticia's interest in filling this statistical void was to contribute to the discussion regarding

48. Bogotá, Medellín, Cali, Barranquilla, Bucaramanga, Cartagena, Pasto, Montería, Tunja, Neiva, Pereira, Villavicencio, Florencia, and Quibdó. LA ROTA, *supra* note 12, at 76.

49. *Población rural (% de la población total): Estimaciones de personal del Banco Mundial sobre la base de las Perspectivas de la urbanización mundial de las Naciones Unidas*, BANCO MUNDIAL, <http://datos.bancomundial.org/indicador/SP.RUR.TOTL.ZS> (last visited Apr. 11 2017, 3:00 PM).

judicial public policy, and how it can improve in terms of real numbers.⁵⁰

The survey distinguished between the general population, people living in extreme poverty,⁵¹ and the disabled population. Although pro bono work targets under-resourced populations, a focus on only the group of “people living in extreme poverty” would yield an incomplete analysis. The category of “general population” includes the low-to-middle classes who are also typical pro bono clients. The definition of “unmet legal need” was a social problem between two or more parties related to the recognition or enforcement of a right.⁵²

Tabla 6. Conflictividad por dimensiones			
	PG (N=8,056,057)	ANSPE (N=145,323)	PD (N=337,043)
Vivienda pura	4,5%	6,9%	2,5%
Servicios públicos	12,5%	8,6%	8,6%
Vecinal	12,8%	7,3%	5,4%
Relación familiar	6,9%	11,6%	7,5%
Agresión familiar	1,0%	2,4%	1,3%
Trabajo	5,2%	1,9%	2,9%
Agresión trabajo	0,5%	0,3%	0,1%
Salud	14,3%	12,1%	14,7%
Educación	2,5%	3,7%	1,9%
Económica y patrimonial	5,5%	4,4%	4,0%
Consumo	0,2%	0,7%	0,6%
Hurto y estafa	19,4%	10,7%	14,2%
Violencia sexual	0,3%	0,4%	0,1%
Lesiones y homicidio	1,9%	4,9%	1,5%
Desplazamiento y desaparición	1,2%	8,7%	2,0%
Amenaza	1,0%	2,8%	0,7%
Injuria y calumnia	1,0%	1,6%	0,1%
Libertad de expresión	0,2%	0,3%	0,1%
Discriminación	2,6%	4,9%	19,9%
Hábitat	5,1%	4,5%	10,8%
Asuntos con el Estado	1,3%	1,2%	1,1%
Total	100%	100%	100%

Chart 4⁵³

Reporting their most important unmet legal needs, the general population pointed to theft and fraud (19.4%), health (14.3%), disputes with neighbors (12.8%), and public services (12.5%). The population living in extreme poverty reported their main unmet legal needs as

50. LA ROTA, *supra* note 12, at 76.

51. According to the National Department of Statistics, 7.9% of Colombians live in extreme poverty. DEPARTAMENTO ADMINISTRATIVO NACIONAL DE ESTADÍSTICA (DANE) ET AL., POBREZA MONETARIA Y MULTIDIMENSIONAL EN COLOMBIA 2015 3 (2016), https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/bol_pobreza_15_.pdf.

52. LA ROTA, *supra* note 12, at 31.

53. *Id.* at 76.

health (12%), family disputes (11.6%), theft and fraud (10.7 %), and forced displacement and disappearances (8.7%) (see Chart 4).

When asked whether they had taken specific action regarding a particular problem, of the general population 40.9% answered they had done nothing,⁵⁴ 31.9% had gone to a state-related authority, and 26.3% tried to fix the problem on their own. Of the respondents living in extreme poverty, 42% reported they did nothing, 23.6% said they went to a state or similar authority, 18.7% said they tried fixing the problem on their own, while the rest did not know how to answer the question.

	PG (N= 8,056,037)				ANSPE (N=145,323)				PD (N=337,043)			
	Total	Mujer	Hombre	Dif.	Total	Mujer	Hombre	Dif.	Total	Mujer	Hombre	Dif.
No hizo nada	40,9%	43,1%	38,6%		42,0%	41,5%	44,8%		47,4%	49,4%	45,5%	
Acudió a autoridad del Estado o particular	31,9%	31,7%	32,0%		23,6%	22,7%	27,9%	*	32,5%	31,6%	33,3%	
Intentó arreglar por su propia cuenta	26,3%	24,6%	28,1%		18,7%	18,9%	17,9%		19,5%	18,5%	20,4%	
No sabe	0,9%	0,6%	1,2%		15,7%	17,0%	9,5%	***	0,7%	0,4%	0,9%	
Total	100%	100%	100%		100%	100%	100%		100%	100%	100%	

Notas: unidad de análisis corresponde a conflictos. n para cada población: 821 para PG (población general); 1429 para ANSPE (población en extrema pobreza); 1261 para PD (población con discapacidad)
***p<0,01; **p<0,05; *p<0,1

Chart 5⁵⁵

When questioned about their access to lawyers, 92% of people in the general population answered that they did not have one, while 97.3% of the population living in extreme poverty stated the same.

	PG (N= 8.056.037)				ANSPE (N=145,323)				PD (N=337,043)			
	Total	Mujer	Hombre	Dif.	Total	Mujer	Hombre	Dif.	Total	Mujer	Hombre	Dif.
No	92,0%	91,6%	92,5%		97,3%	97,5%	96,3%		95,9%	97,5%	95%	
Sí	8,0%	8,4%	7,5%		2,7%	2,5%	3,7%		4,1%	2,5%	5%	
Total	100%	100%	100%		100%	100%	100%		100%	100%	100%	

Notas: unidad de análisis corresponde a conflictos. n para cada población: 821 para PG (población general); 1429 para ANSPE (población en extrema pobreza); 1261 para PD (población con discapacidad)
***p<0,01; **p<0,05; *p<0,1

Chart 6⁵⁶

When this information is broken down by socioeconomic group, it shows how access to lawyers increases along with the level of resources. Among the lower classes (strata 1 and 2)⁵⁷ 93.7% did not access a lawyer; for middle classes (stratum 3) this number was 83.6%; and for the middle-to-upper classes (strata 4 to 6), 79.2% said they did not have a lawyer to assist with their unmet legal needs. While it is important to

54. LA ROTA, *supra* note 12, at 88. Structural consequences, not only for the judicial system but for society as a whole, result from people's inactivity when facing a justice problem. See generally *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, *supra* note 16 (analyzing the "do nothing" response to civil justice problems).

55. LA ROTA, *supra* note 12, at 88.

56. See *id.* at 113.

57. See *id.* at 114 (regulations in Colombia categorize citizens into "strata" or groups, from zero to six, depending on their economic capacity).

note that not all legal problems require a lawyer for adequate resolution (Chart 4), the percentage of people who did not use a lawyer for their legal need is very high, whichever class is analyzed (see Chart 7).

Tabla 31. Contó con la asistencia de abogado - Estrato						
	PG (N=6.077.389)			PD (N=300.895)		
	Estratos I-II	Estrato III	Estratos IV-VI	Estratos I-II	Estrato III	Estratos IV-VI
n	252	160	80	732	394	131
Sí	6,3%	16,4%	20,8%	2,9%	4,8%	8,4%
No	93,7%	83,6%	79,2%	97,1%	95,2%	91,6%
Total	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

Chart 7⁵⁸

Inequality of access also registers as a factor, as people with basic education and people with a technical or college education report on the absence of a lawyer in meeting their legal needs: 92.5% of those with a basic education did not have an attorney, versus 81.7% among those with the further education (see Chart 8).

Tabla 33. Contó con la asistencia de abogado - Educación de la persona						
	PG (N=6.077.389)			PD (N=316.778)		
	Primaria y secundaria	Técnica y superior	sign.	Primaria y secundaria	Técnica y superior	sign.
n	288	204		749	507	
Sí	7,5%	18,3%	***	5,0%	2,7%	
No	92,5%	81,7%		95,0%	97,3%	**
Total	100%	100%		100%	100%	

***p<0,01; **p<0,05; *p<0,1

Chart 8⁵⁹

When the general population was asked what type of lawyer they could access, 89.4% said it was a private one, 4.8% answered that they went to a University-based Legal Aid Clinic, and 5.7% said they had a public defender. Of the population living below the poverty line, 45.9% accessed a private lawyer, 31.2% went to a University-based Legal Aid Clinic, and 22.9% had a public defender (see Chart 9).

Tabla 62. ¿Qué tipo de abogado tuvo o tiene?			
	PG (N= 554.215)	ANSPE (N=3.098)	PD (N=3.118)
Particular o privado	89,4%	45,9%	31,8%
Consultorio jurídico	4,8%	31,2%	59,4%
Defensoría del Pueblo	5,7%	22,9%	8,8%
Total	100%	100%	100%

n para cada población: 56 para PG (población general); 30 para ANSPE (población en extrema pobreza); 12 para PD (población con discapacidad)

Chart 9.⁶⁰

58. LA ROTA, *supra* note 12, at 114.

59. *See id.*

WHAT ARE THE NUMBERS SAYING?

With the empirical information presented, it is time to look at the many challenges these numbers reveal. One of the most salient, immediate observations is the very low assignment rates that the PBF achieves. The low number of law firm attorneys (members of the PBF) who volunteer for pro bono work (22%), only exacerbates the very low service rates.

Another question that arises from the empirical contrast is whether the services provided by PBF members are reaching those who are most in need and, therefore, whether they are helping the cause of equal access to justice in Colombia.

The survey distributed to the pro bono coordinators of PBF's member law firms, along with the NSULN, helps identify areas that need improvement if pro bono activities are to make a dent in the enormous task of ensuring, broadening, and equalizing access to justice in Colombia. These challenges, as identified in this paper, are triage restrictions, specialties and services limitations, institutional restraints, and the misuse of the mandarin beginners.

Triage Restrictions

When under-resourced people find themselves with a legal problem that they cannot solve on their own, but rather requires the intervention of a third party (whether it be the court system or another government agency), there are only a few options they can turn to in Colombia to get the legal assistance they need. As the NSULN shows, the options are a University-based Legal Aid Clinic, a public defender, or a private lawyer (pro bono).

In Colombia, state-wide recognition of social inequalities has pushed toward legislation that demands that certain professions offer free services to those who are most in need. In the last years of law school, future legal professionals are required to offer their services as "lawyers for the poor," as the outdated legislation from 1971 states.⁶¹ These services are offered in University-based Legal Aid Clinics (ULACs).

The coverage of these clinics and public defenders is restricted by law, which means that triage decisions are, in some ways, predetermined by the legal system. Proponents of triage-type systems claim that scarce resources should be employed in ways that allow goals

60. See *id.* at 142.

61. L. 196/71 (Colom.), *supra* note 22, art. 30.

to be met in the most efficient manner.⁶² In the Colombian judicial system, this idea is especially important, due to the extremely limited and inefficient administration of resources,⁶³ and the low number of legal aid outlets that can help poor people access the system.

The authority of a ULAC to designate a final-year law student as the legal representative of an under-resourced person is regulated by Law 583 of 2000.⁶⁴ This statute allows students to act in:

1. The criminal courts, in cases of personal injury, crimes against property, minor offenses that require a complaint to be pursued, cybercrime, and animal brutality.⁶⁵
2. The civil jurisdiction, in malpractice suits, probate court, celebration of civil marriages, neighbor disputes over horizontal property, commercial disagreements, and bankruptcy filings.
3. Family proceedings where child support and alimony are determined.⁶⁶
4. Small claims against the state.
5. Small claims regarding labor and employment disputes.
6. Other types of special proceedings, such as disciplinary cases for public officials or fiscal responsibility collections for small claims judgments.

The legal authorization for Public Defenders limits their scope of action to criminal proceedings.⁶⁷

When set against the most pressing unmet legal needs of both the general and the under-resourced populations (see Chart 4), both the ULACs' and the public defenders' services prove insufficient.

62. *See generally* GERALD R. WINSLOW, TRIAGE AND JUSTICE (1982) (analyzing social justice alternatives to triage systems).

63. *See* SERGIO CLAVIJO, COSTOS Y EFICIENCIA DE LA RAMA JUDICIAL EN COLOMBIA: POLÍTICAS DE CHOQUE-OPERATIVO 48 (2011).

64. L. 583/00, junio 12, 2000, DIARIO OFICIAL [D.O.] art. 1 (Colom.).

65. CÓDIGO DE PROCEDIMIENTO PENAL [C.P.P.] art. 37 (jurisdiction of the lower criminal courts).

66. CÓDIGO DE PROCEDIMIENTO Civil [C.P.C.] art. 17 (jurisdiction of small claims courts).

67. *See* L. 941/05, enero 14, 2005, DIARIO OFICIAL [D.O.] art. 12 (Colom.) (establishing that Public Defenders will act only in criminal proceedings). This regulation reflects the current status of the National Public Defenders System. Still, it is important to point out that Law 24 of 1992, which created the Public Defenders program, gave it no limitation to any area of law. *See* L. 24/92, diciembre 15, 1992, DIARIO OFICIAL [D.O.] (Colom.).

Legal Authority for ULACs and Public Defenders to assist the Unmet Legal Needs of the general population



Chart 10⁶⁸

For the general population, in claims regarding public services (12.5%) or health matters (14.3%), a ULAC can only offer counsel for specific issues in administrative proceedings, and judicial representation only in small claims courts against public companies. For neighbor disputes (12.8%), a clinic can offer legal counsel regarding specific issues in administrative proceedings, but no judicial representation. In cases of theft and fraud, both the ULAC and public defenders are permitted to represent clients, but the former is restricted to small claims courts (see Chart 10).

This means that ULACs are not allowed to litigate on behalf of an under-resourced person in a neighbor dispute, which leaves this important legal need largely unmet. Even though ULACs can offer legal counsel for a private consultation, this service alone may well be insufficient for resolving the problem. For public services or health issues, ULACs are also limited to offering legal counsel in one-on-one consultations and to litigating only when the defendant is a public company. This leaves patients of private health providers without any state-sponsored representation.

68. Prepared by the author through the contrast between the legal authority granted by law which determines which cases legal aid clinics and public defenders can take versus the unmet legal needs of the general population.

Legal Authority for ULACs and Public Defenders to assist the Unmet Legal Needs of people living in extreme poverty

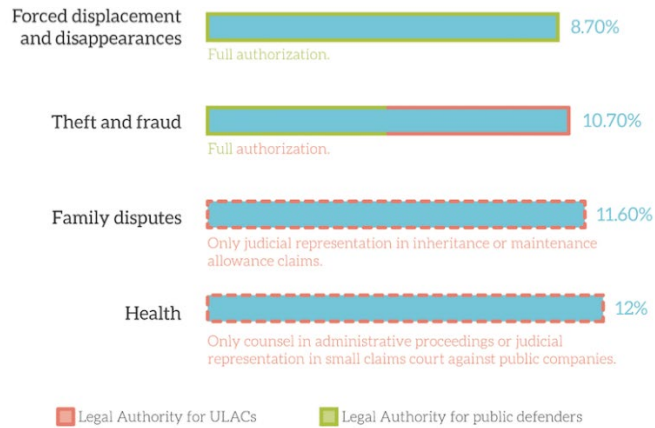


Chart 11⁶⁹

For the population living in extreme poverty, there are more criminal law needs (forced displacement and disappearances, 8.7%; theft and fraud, 10.7%), which means this group has greater coverage from public defenders. Still, for family law disputes (11.6%), ULACs can only assign students for inheritance or maintenance allowance claims. A whole range of important family dispute legal services, such as divorce and custody filings, remain unavailable (see Chart 11).

Thus, the comparison between the most pressing unmet legal needs of Colombians and the legal aid outlets available shows that most of the first-order legal needs are not completely covered by state-sponsored legal aid. In the case of family disputes, which usually take place in courthouses rather than administrative agencies, litigation is strictly limited to two types of problems, which barely cover a small portion of the overall number of issues that arise in family law.

When looking at this contrast, it is important to remember that not all unmet legal needs require a lawyer for resolution: for example claims in public services offices or to health providers can easily be done by a layperson. But people are usually unaware of their rights or the avenues of enforcement and often feel they need a lawyer in order to

69. Prepared by the author through the contrast between the legal authority granted by law which determines which cases legal aid clinics and public defenders can take versus the unmet legal needs of people living in extreme poverty.

know whether and how to present any type of claim. Frequently, the reality is that the involvement of a lawyer is indispensable to making a successful claim, regardless of the informal or administrative nature of certain procedures.

Imagine a low-income person who wants to file a claim with a provider (a private company) regarding errors or abuses on her water bill. They can go to a ULAC for special advice on how to present a claim but cannot obtain representation for litigation. Without the advice from the ULAC, people usually face obstacles from these types of companies who place procedures, requirements, forms and other barriers in the way to complicate the presentation of claims by regular people with no specialized knowledge. Thus, the access to some degree of legal counsel, but without the threat of judicial representation to back it up, can render that counsel insufficient or even useless.

This limitation in the triage of legal services for the under-resourced population translates to serious obstacles in their chances of understanding the full array of rights they are entitled to and the legal solutions ways they can use to materialize them. These cognitive barriers allow social inequalities to become stronger and more difficult to eradicate with time.

Specialties and Services Limitations

Advocates of pro bono work usually argue that it allows lawyers to practice and learn specialties of law that differ from their specific areas of expertise. This motivation was echoed by many pro bono coordinators in the survey they answered. Still, this idea has faced two main obstacles in Colombia: the gap between the specialties offered by law firms and those needed by the low-income population, and the hesitation lawyers feel in offering the type of services that are most needed.

If the unmet legal needs of the general and under-resourced populations in Colombia were described by the area of law they fall under, these would be: health (whether private or public, in administrative proceedings or judicial claims), family, criminal, employment, social security, and neighbor disputes.⁷⁰

70. See LA ROTA, *supra* note 12. As the NSULN shows, disputes between neighbors are common among Colombians; they are present in all social classes. Still, there is very little knowledge of the options the legal system offers for resolving them. Police authorities have jurisdiction over these disputes, and complaints are supposed to be lodged with them. These claims are partially informal, and efficient in comparison with other types of claims. The new Police Code regulates these short proceedings. See L. 1801/16, julio 29,

These areas include some of pro bono attorneys' least favorite fields to work in. As the PBF's 2016 report conveyed, their accepted employment cases were taken on for representation only 64% of the time; criminal cases, 66% of the time; social security issues, 67% of the time; and family law cases, 74% of the time (see Chart 3). Looking at which PBF member firms offer these areas in the course of their regular practice, none of them offer family law, and only 8% of them provide criminal or social security law services. The statistic for labor and employment law is somewhat better, with 46% of the firms having this practice area. These numbers represent a major hurdle, since in the survey of PBF members, at least six pro bono coordinators pointed out that their firm's policy was not to take cases in areas of law that they do not specialize in.

With so many low-income people in need for this type of legal counsel, family law experts and practitioners become an essential tool for the realization of low-income people's right to access justice.

The reasons for the absence of these areas from firms' services, and the hesitance of lawyers to take these types of cases, can be explained through three lenses: first, a lack of awareness regarding the social value of these areas of law; second, economic reasons; and third, positional conflicts or direct conflicts of interest.

The ethical and social implications of specializing in family law are very rarely explained, either in family law classes or ethics courses in law school curricula.⁷¹ Students learn family law as they do any other legal area, without dealing with policy questions regarding the need for it in low-income communities. This dynamic holds true as well for criminal and employment law instruction. It is exacerbated by the fact that, since these areas of law are most needed by the underprivileged, they are less likely to be offered by firms, whose main reason for being is to generate revenue for their partners.

This cannot be said of all the areas of law where the unmet legal needs of the under-resourced lay. While to a lesser degree, there are firms that specialize in criminal, employment, and family law. As noted above, even among PBF members, 46% have employment law expertise.⁷²

2016, DIARIO OFICIAL [D.O.] art. 222 (Colom.). More information about this resource should be offered to the general public.

71. See *Las obligaciones sociales de los abogados*, supra note 18, at 51. Ethics courses are usually deficient in their coverage of lawyers' social responsibilities.

72. See *Actores Probono*, FUNDACIÓN PRO BONO COLOM., <https://probono.org.co/actores-probono/> (last visited Jan. 13, 2020, 8:28 AM) (describing the law firms that are members of the foundation and who have labor law specialists).

However, these firms must observe norms governing conflicts of interest, which many times prevent them from accepting pro bono cases. A direct conflict of interest is present when there is a situation regulated by law⁷³ in which a lawyer cannot act in light of unwarranted interests that might compromise the quality and direction of the services they offer. In the PBF member survey, various coordinators pointed to conflicts of interest as one of the main reasons for rejecting cases.⁷⁴

That said, a direct conflict of interest is much less likely to occur than a positional conflict.⁷⁵ A positional conflict occurs when a pro bono client asks a lawyer to assert a legal position opposite to a position he has asserted before.⁷⁶ Whereas in conflict of interest situations, a firm is being asked to sue one of its already-paying clients (which it cannot),⁷⁷ positional conflicts describe an attorney's difficult position when she is asked to defend a tenant at the same time she is serving as counsel to various landlords.

These tensions can have a special presence in firms, where there are obvious class differences and conflicts between their pro bono clients and their potential paying clients. The Disciplinary Code of the Legal Profession, which governs Colombian lawyers' professional conduct, characterizes positional conflicts as misconduct, since they compromise the loyalty between lawyer and client that must be maintained. A lawyer commits an act of misconduct when he or she:

Counsels, sponsors or represents, simultaneously or successively, those who have conflicting interests, notwithstanding that, with everyone's authorization, she can carry out proceedings that work towards a greater good. This misconduct also applies to law firms or

73. In Colombia, various parts of the Disciplinary Code of the Legal Profession regulate conflicts of interest. See L. 1123/07, enero 22, 2007, DIARIO OFICIAL [D.O.] arts. 18(b), 28(21), 33, 34(h) (Colom.).

74. Survey carried out by the author of FPB members (on file with author).

75. See Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 L. & SOC'Y REV. 79, 87 (2007) ("[L]awyers appear hesitant to take on pro bono cases that place their firm in positions of conflict between the interests of classes of existing and potential paying clients and classes of pro bono clients. For example, a lawyer in a firm that does legal work for one major banking company may be presented with a potential pro bono client who is a consumer with a complaint against a different major banking company.")

76. Norman W. Spaulding, *The Prophet and the Bureaucrat: Positional Conflicts in Service Pro Bono Publico*, 50 STAN. L. REV. 1395, 1401 (1998).

77. See L. 1123/07 (Colom.), *supra* note 75, art. 34(e).

lawyer associations that represent conflicting interests.⁷⁸

The fact that positional conflicts are specifically listed as a type of professional misconduct adds to the hesitation of some lawyers, who shy away from entire areas of law in order to protect the positions they defend on behalf of their paying clients. Positional conflicts and their legal codification as misconduct can have serious effects on the distribution of pro bono work among members of the PBF.

Positional conflicts are especially strong in employment law firms. Partners from these firms argue that they cannot take any pro bono work for aggrieved employees due to their strict defense of the employer position.⁷⁹ Paula Samper points out that employment law firms are often the most difficult to engage with pro bono participation due to their belief that positional conflicts prevent them from offering pro bono services entirely.⁸⁰

When firms are more capable, or interested, in offering some areas of law and not others, there can also be consequences to the equal access to justice that pro bono efforts aim to accomplish. Family law specially exemplifies these barriers. None of the PBF member law firms offer this specialty.⁸¹ Keeping in mind the statement from various pro bono coordinators that their firms do not take cases in areas they do not provide services, this gap in the system may also have special effects on gender equality.

Economic inequalities between genders have strong social roots, and they are mirrored in the legal system and people's ability to access it.⁸² Disparities of income, social status, and education between genders do not escape the realm of the judicial process. These differences may have a special effect on the area of family law litigation.⁸³

78. *Id.*

79. *Cf. Samper, supra* note 44.

80. *Id.*

81. See *Actores Probono, supra* note 74, regarding the law firms that are members of the foundation and their specialties.

82. See generally Judith Resnik, *Asking About Gender in Courts*, 21 J. WOMEN CULTURE & SOC'Y 952 (1996) (detailing and analyzing the impact gender bias on the judicial and legal system).

83. "I feel as never before," wrote American feminist Elizabeth Cady Stanton to her colleague Susan B. Anthony in 1853, "that this whole question of woman's rights turns on the pivot of the marriage relation, and, mark my word, sooner or later it will be the topic for discussion." . . . Women's claims for equity in their personal lives with men came into conflict with patriarchal notions embedded in the family's foundations: its values, obligations, entitlements, customary behaviors, and expectations." CATHARINE A. MACKINNON, *SEX EQUALITY* 544 (2d ed. 2007).

Violations of family law and disagreements within the family can affect women's lives in a greater proportion than men's, due to the power imbalances in patriarchal societies such as Colombia. Family law disputes are closer to women's lives, and therefore have a stronger effect on their circumstances and the exercise of their rights. Although family litigation touches all genders, women are far more commonly and deeply affected by disputes such as "economic recognition of the value of the work of caregiving and of the needs of their children."⁸⁴

This gap exists not only between areas of law, but also between the services that firms are willing to offer and the ones that low-income people need. A significant fraction of legal needs require litigation assistance.⁸⁵ As one of the surveyed interns pointed out, firms should offer more litigation services because this is what PBF clients need the most.⁸⁶

Still, various pro bono coordinators indicated that their firms do not undertake pro bono litigation of any kind.⁸⁷ The main reason they give for shying away from litigation is its long duration.⁸⁸ Indeed, the 2016 World Justice Project (WJP) index places Colombia in one of the worst places in the region due to unreasonable delay and untimely adjudication in its justice system.⁸⁹ Other coordinators pointed out that their firms were specially focused on consultancy instead of litigation.⁹⁰

The lack of interest from lawyers and their firms in providing services in the areas of law that are most needed and sought out by pro bono clients constitutes a serious limitation on the efficiency of the work they do in terms of its contribution to more equal access to justice.

84. Resnik, *supra* note 84, at 964.

85. CÓDIGO DE PROCEDIMIENTO PENAL [C.P.P.] art. 118; CÓDIGO DE PROCEDIMIENTO Civil [C.P.C.] art. 73. Criminal cases of theft, fraud, forced displacement and disappearances require judicial intervention. *See* CÓDIGO DE PROCEDIMIENTO Civil [C.P.C.] arts. 159, 239, 453. For other cases, such as health disputes or social security, the issues can be solved through administrative proceedings, but these can be difficult for people with no legal knowledge. LA ROTA, *supra* note 12, at 76. Disputes among neighbors can be resolved by the police, but people are underinformed about this resource. LA ROTA, *supra* note 12, at 76. In short, the assistance of a lawyer without the possibility of judicial representation sometimes renders that very assistance—legal counsel—ineffective.

86. SURVEY RESPONDENT 6, UNIVERSITY OF LOS ANDES PRO BONO INTERN SURVEY (2017) (on file with author).

87. Survey carried out by the author of FPB members (on file with author).

88. Survey carried out by the author of FPB members (on file with author).

89. *See* WORLD JUSTICE PROJECT, RULE OF LAW INDEX 59 (2019), <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>.

90. Survey carried out by the author of FPB members (on file with author).

Institutional Restraints

In Latin America, pro bono culture in legal practice, and especially in law firms, is a legal transplant imported from the United States.⁹¹ In the United States, while pro bono culture was spreading and solidifying, it quickly received the support and offer of infrastructural backbone from bar associations.⁹² Once pro bono spread and became an area of interest in law firms, the position of the coordinator represented “a new wave of institutionalization.”⁹³

In Colombia, with the creation of the PBF, coordinators were set up in firms to be direct liaisons.⁹⁴ As the implementation of this institution in Colombia was not as organic as it was in the United States, law firm coordinators in Colombia sometimes lack the leverage to bring about substantial changes in pro bono work structures. Coordinators have the task of organizing, promoting, and supervising pro bono affairs; if they have decision-making power in their firms, they can also bring about changes that increase the quantity and quality of this pro bono work.

Only 6.3% of pro bono coordinators are partners, while 90.6% belong to other areas of the firm, and 3.1% dedicate their time exclusively to pro bono work. Of the pro bono coordinators, 35.5% dedicate only 10% of their time to this task, and the rest dedicate no more than 40%. Coordinators also usually take pro bono cases themselves.

These numbers show that, for as much good work as the coordinators do, their power within law firm settings is limited. Few coordinators have firm equity, and in most cases, they perform the pro bono job as a secondary role. If coordinators do not occupy a high position in firm hierarchy, they will face greater difficulties in achieving what the pro bono staff should—making pro bono a fundamental and appreciated part of the workplace culture.⁹⁵

Also, the presence of bar associations behind pro bono work in the United States came with an important set of regulations,⁹⁶ which are absent from the Colombian context. The Colombian Code of the Legal

91. *Las Obligaciones Sociales de los Abogados*, *supra* note 18, at 38.

92. According to Cummings, “[S]upport for the creation of legal services came only after the government agreed to a number of concessions, including a promise to direct funds to existing bar-sponsored programs.” Cummings, *supra* note 27, at 17. Still, in the crucial moment of expansion, the organized bar was “a critical transmission vehicle for pro bono initiatives.” *Id.* at 49.

93. Cummings & Rhode, *supra* note 47, at 2372.

94. Samper, *supra* note 44.

95. Esther F. Lardent, *Structuring Law Firm Pro Bono Programs: A Community Service Typology*, in *THE LAW FIRM AND THE PUBLIC GOOD* 59, 65 (Robert A. Katzmann ed., 1995).

96. See Cummings, *supra* note 27, at 30-33.

Profession concentrates heavily on the regulation of disciplinary proceedings, with no mention whatsoever of the social responsibilities of lawyers.⁹⁷ The private nature of bar associations also limits their ability to promote and demand socially responsible practices among lawyers and, in particular, law firms.

Highlighting the distance between the Colombian and United States' systems in pro bono matters is not meant to be a contrast of incomparable contexts, but it does speak to the different relevant features that can make socially responsible practices flourish in each system. The structural and institutional differences between these two contexts will affect how pro bono expands and solidifies in each.

Misuse of Pro Bono Interns

The Pro Bono Internship was founded and organized by the PBF to promote pro bono practices in law firms and to provide assistance to lawyers carrying these cases out. As described above, the program started in 2010. It has since expanded to include four competitive law schools, which participate in the program with a total of thirty-one student interns.⁹⁸

More than half of the surveyed members of the PBF (53.1%) belong to this program. The March 2017 survey revealed the law firms' heavy reliance on this program. While the surveyed interns gave their law firms a passing average grade of 3.9 (out of 5) on their commitment to pro bono, the students' feedback and information also raises some red flags regarding common practices around the institution of the pro bono intern.

As pro bono work lacks continuity in day-to-day firm activities,⁹⁹ the presence of the intern has become fundamental for processing pro bono matters, at least for half of the PBF members surveyed. Such reliance on student interns has negative consequences for both the attorneys carrying out this work and their pro bono clients. By trusting pro bono tasks to beginners—not even graduated professionals—firms send the rest of the organization the message that pro bono is the least important work.¹⁰⁰ For their part, clients receive a less prepared assistant to help them resolve their issue.

97. See L. 1123/07 (Colom.), *supra* note 75, ch. III (Disciplinary Code of the Legal Profession).

98. Telephone Interview with Sebastian F. Chaparro, Clearinghouse Administrator, PBF (Apr. 21, 2017).

99. *Las Obligaciones Sociales de los Abogados*, *supra* note 18, at 61.

100. *Id.* at 64.

The misuse of interns, along with triage, specialties, services, and institutional limitations pose obstacles that need to be addressed through various strategies, and with the help of a diverse set of actors within the legal community.

INCREASING PRO BONO NUMBERS

Reframing Triage Prioritization

One of the most common reasons used to justify pro bono work in Colombia is the presence of structural class disparities.¹⁰¹ Lawyers usually argue that because they live in a country with such high levels of poverty, and had access to quality education, they have a social duty to help the less fortunate.¹⁰² This perspective suggests that pro bono work in Colombia should specifically and primordially help those who need it the most, and should include services and expertise in the legal areas most relevant to the most pressing unmet legal needs. If the commitment is to do pro bono to help overcome social inequalities, lawyers should choose cases from among the most pressing needs left unattended by the public legal aid system—not the cases they are most interested in, or that will give them the most attention from partners or professional experience. If pro bono efforts in law firms intend to contribute to the broadening, strengthening, and equalizing of access to justice, these are the causes they should most be tending to.

There is substantial distance between the legal services that are offered in pro bono programs in law firms and the unmet legal necessities of the under-resourced population in Colombia.¹⁰³ This difference is accentuated in the case of family law.¹⁰⁴ Still, the specialties of law offered by firms, as well as the interests of lawyers willing to do this type of work, pose a second limitation to triage decisions for a low-income person when she decides what type of legal aid to turn to. Reframing triage prioritization means opening access doors by widening ULAC coverage areas, but also making sure that the most pressing cases not covered by the public legal aid system are those taken up by pro bono lawyers. In medical triage, the most badly affected

101. *Id.* at 50.

102. *Id.*

103. The same phenomenon takes place in the US: “Firm lawyers are trained in substantive areas that generally are not applicable to legal services or public interest work.” Cummings, *supra* note 27, at 71.

104. Survey carried out by the author of FPB members demonstrated that none of them had family law specialist; the list of members of the FPB points to the same conclusion. Survey carried out by the author of FPB members (on file with author).

patient is the one that receives medical attention first.¹⁰⁵ This type of prioritization system must be put into place in the Colombian judicial system if equal access is to be attained.¹⁰⁶

Promoting new legislation that grants ULACs broader jurisdiction over matters that are more crucially needed in underprivileged communities could widen access doors. Making more conscious decisions regarding ULAC coverage can also make the system more sensitive to the unmet legal needs of low-income groups. For example, and as detailed above, ULACs can only offer services in the family law matters of child support and alimony, or in probate court, but are authorized to assign students to bankruptcy filings. While divorce issues are off the table for ULACs, their students are authorized to represent cybercrime victims. These priorities must be reorganized. Assignment of ULAC cases based solely on what matters are tried before lower-court judges, without considering what is most needed, does no good in advancing equal access to justice in Colombia.

While a case could be made that limits on the type of family law cases done by ULACs are due to the sensitive nature of these matters, especially when it comes to divorce, domestic violence, and custody proceedings, it is important to note that students are allowed to act in complex cases such as commercial disputes. Still, the charged importance of family matters in social dynamics may prevent legislators from authorizing final-year law students, mostly twenty-two years of age, to handle such matters. Pro bono lawyers thus bear a special responsibility to take these types of cases.

A common argument of lawyers against taking cases in areas where they lack expertise is the risk of ill-advising their pro bono clients. Nevertheless, as Paula Samper points out, “[a]ttorneys should understand that pro bono clients are much better off with a tax lawyer handling their divorce, than having no legal counsel at all.”¹⁰⁷ Although the practice of some areas of law requires specialized knowledge, a good lawyer who is interested in helping can find the right information and strategy to tackle a case even if it is not in their area of expertise.

Also, a prioritized menu¹⁰⁸ of cases, categorized according to the type of issue, could promote the selection of first-order legal needs. Top-

105. See Bengt R. Widgren & Majid Jourak, *Medical Emergency Triage and Treatment System (Metts): A New Protocol in Primary Triage and Secondary Priority Decision in Emergency Medicine*, 40 J. EMERGENCY MED. 623, 624, 626-27 (2011).

106. See Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice*, 48 WASH. U. J.L. & POL'Y 11, 18 (2015).

107. Samper, *supra* note 44.

108. Menus serve as an appropriate way to “match opportunities with the range of possible interests and commitment levels.” Cummings, *supra* note 27, at 69.

ten-style lists that highlight the most pressing cases can help make the system's priorities visible.¹⁰⁹ Reported pro bono hours by lawyers should reflect this categorization, and recognitions, such as Pro Bono Lawyer or Coordinator of the year, should give greater weight to these urgent first-order cases.¹¹⁰ The PBF can play an important role with this task, since it serves as the cases' clearinghouse. As the PBF restructures its categorization methods and accountability systems to reflect these triage-based categories, pro bono work on the low-income population's most pressing legal needs may increase.

Practices where pro bono coordinators choose the cases and assign them to lawyers may contribute to less effective services. Studies in volunteerism have proved the importance of preserving free choice to ensure satisfying experiences with social services.¹¹¹ This observation was echoed by one of the surveyed interns, who stated that lawyers showed greater reticence towards pro bono cases that were directly assigned to them than towards cases that they chose.¹¹²

Once ULAC coverage of certain cases has been rearranged, the PBF can determine what their new priority legal areas and services should be. This process must consider two special factors: the observation of NSULN or other reliable measures of the country's most pressing legal needs, and the surveillance of cases most requested by people who come to the PBF in search of free, high quality legal services.

By implementing new incentive schemes where legal needs are ranked and the taking of first-necessity cases is promoted by individual recognition of lawyers, the PBF can help solve triage limitations that currently prevent pro bono from achieving its goal of ending social inequity in access to justice.

Finally, this triage reform would be a testament to the notion that the design of a comprehensive pro bono policy must recognize other existing forms of legal aid and work with them toward the common goal of broadening, equalizing, and ensuring access to justice in Colombia. To view legal aid providers as independent systems is to lose important opportunities to create more efficient strategies. Research has shown that successful educational experiences with social services will result in more altruistic professional activities¹¹³ down the line. Since their

109. "Los Angeles' Public Counsel, for instance, sends out a 'top ten' list via e-mail that sets out its most urgent matters for pro bono assistance." *Id.* at 66.

110. See *id.* at 40, regarding the power behind public awards as a way to incentivize the growth of pro bono.

111. Cf. Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 J. LEGAL EDUC. 413, 421 (2003) (discussing the issues with rewarding individuals that provide pro bono).

112. UNIVERSITY OF LOS ANDES PRO BONO INTERN SURVEY, *supra* note 88, at survey 5 (on file with author).

113. Rhode, *supra* note 113, at 421.

creation over forty-six years ago, it has been the responsibility of ULACs to send prepared final-year students into professional practice with their minds set on helping others. If ULACs are able to meet this goal more effectively, these efforts should soon be reflected in increased numbers of pro bono hours being offered by lawyers.

Narrowing the Specialties Gap

Although the presence of more pro bono lawyers would not necessarily help balance gender disparities in litigation—that is, pro bono lawyers might primordially take cases with men as plaintiffs—more legal aid outlets should be made available to low-income women due to the limitations they face in the judicial system.

The assistance of a lawyer for under-resourced women, when their rights might be at risk within family relationships, is fundamental to the realization of equal access to justice. To date, there is no available data regarding the proportion of women and men that request assistance in family law issues from the PBF. This information could be useful in determining whether the lack of services offered in family law has especially negative consequences for women, on the equal provision of pro bono services, and on the elimination of gender barriers in the judicial system.

Strengthening access to justice through pro bono work necessarily means offering family, employment, and criminal law services, since these are the most pressing legal needs of the underprivileged population. The PBF must strive to recruit more law firms, and more individual lawyers, to offer pro bono services in these areas and those that are most needed (for example litigation). From another angle, the legal education system must teach students about the social implications and importance of practicing these areas of law, especially through pro bono programs.¹¹⁴

Perhaps instead of offering ethics courses¹¹⁵ that end up having a philosophical undertone, there can be ethics modules inside family, criminal, and employment law school curricula. These modules could help put the social importance of these areas in perspective and discuss the negative consequences for access to justice that the lack of these services has. This structure would allow future lawyers to understand

114. Law schools should also teach students what pro bono is, and what firms are doing in their most significant pro bono efforts. *See Cummings, supra* note 27, at 54-55.

115. “In too many institutions, issues of professional responsibility are relegated to a single required course . . . [t]he result is legal ethics without the ethics and little attention to broader issues of access to justice.” Deborah L. Rhode, *Lawyers as Citizens*, 50 WM. & MARY L. REV. 1323, 1333 (2009).

the social implications and responsibilities implicit in their possession of this much-needed knowledge. Also, students should be tested on the real-life professional ethical dilemmas of doing pro bono work and how to solve these in a way that respects and protects everyone's right to access justice.

Finally, law schools could carry out more informational events in specially identified communities to help empower them in the exercise of their rights and possibly prevent some people from needing to utilize the judicial system in the future.

Restructuring Pro Bono Institutions

Most pro bono institutions borrowed from the United States have not completely adjusted to their receiving end—the Colombian legal system.¹¹⁶ Structural differences between one context and the other, such as the absence of the infrastructure behind bar associations,¹¹⁷ mean that pro bono as a legal institution is still in an adjustment period in Colombia. It faces significant challenges ahead if it is to further the cause of broadening, securing, and equalizing access to justice.

Pro bono actors inside law firms must be able to bring about substantial changes in legal aid practices. In order to do this, pro bono coordinators must have a say not only over firm policies, but also some authority over the lawyers that carry them out.¹¹⁸ Also, the involvement of partners in pro bono firm endeavors goes a long way in making pro bono work an important theme within the firm's day-to-day practices

116. Cf. *Las Obligaciones Sociales de los Abogados*, *supra* note 18, at 57.

117. In Colombia, Mauricio García Villegas is a strong advocate for the creation of a Bar Association. See generally Mauricio García Villegas, *Tradiciones, saberes y actores en el campo jurídico*, in *LOS ABOGADOS EN COLOMBIA* 27 (Mauricio García Villegas ed., 2010). Although there are considerable benefits derived from the creation of these institutions—like promotion and regulation of pro bono work—in other parts of the world, Bar Associations have rarely contributed to the overall strengthening of the equal right to access justice. One example is in the U.S., where some Bar Associations oppose the unbundling of legal services or *pro se* litigants. See *Lawyers as Citizens*, *supra* note 117, at 1327, 1330. See also Spaulding, *supra* note 78, at 1399, “the bar’s failure to mandate service *pro bono publico*” and how, although the bar has become a strong force in the institutionalization of pro bono work, it has also resisted any mechanism that makes it partially or completely mandatory. See generally Brooks Holland, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, 82 *MISS. L.J. SUPRA* 75 (2013) (analyzing Washington’s Legal Technician Rule and potential to enhance access to justice).

118. “The institutional status of coordinators affects the scope of their duties and their relative influence within the firms. Those with greater prestige and institutional security within their firms can avoid more administrative duties and exert greater influence over policy and client selection decisions.” Cummings, *supra* note 27, at 62.

and long-term goals.¹¹⁹ The deeply hierarchical structure of firms makes it important for partners to promote and take on pro bono work themselves—a lead-by-example approach.

Efficiency strategies can also help increase assistance rates, especially with regard to those legal areas that firm lawyers are least trained in. The PBF, as the clearinghouse, can direct new cases to the law firms that are similar to other ones that firm has already taken. This system would retain information on past legal assistance provided both by firms and by the specific lawyers within them.¹²⁰ The creation of a strong database of forms could also contribute to the implementation of a more efficient system, available to help lawyers deal with the most-needed pro bono causes.¹²¹

Promoting the structuring of signature cases, or specific lines of action, can also help in developing services firms do not usually offer.¹²² If, for example, a firm chooses to handle divorce proceedings for low-income women in Bogotá, and their cases are referred by an NGO that specializes in women's rights, they are creating expertise within their firm, with lawyers continuously engaged in the same subject. This model would allow them to feel that they are part of a bigger project and that their work can have a larger impact.¹²³ Also, this specialization serves as an efficiency-booster as lawyers can share common practices and cut wait-times for clients.¹²⁴ In response to the survey, only one of the PBF members singled out a star project or line of action that they were involved with long term, but replication of this idea at other firms could significantly increase assistance with people's most pressing legal needs.

Also, by recruiting lawyers rather than their firms, the PBF could contribute to higher rates of service.¹²⁵ PBF members could highlight how many pro bono lawyers each one has in their firms. Even finding a way to recognize personal work carried out by each professional instead of the firm as a whole could contribute to the personal incentives for

119. "Without the effective adhesion of supreme mandarin to the pro bono discourse, it couldn't become a part of daily practices within their legal business." *Las Obligaciones Sociales de los Abogados*, *supra* note 18, at 57.

120. See Cummings, *supra* note 27, at 67.

121. The PBF administration has searched for years for a way to create useful databases with forms and other material that can expedite and increase services. Samper, *supra* note 44.

122. Cummings & Rhode, *supra* note 47, at 2398.

123. See KEVIN LAPP & ALEXA SHABECOFF, PRO BONO GUIDE: AN INTRODUCTION TO PRO BONO OPPORTUNITIES IN THE LAW FIRM SETTING 4-7 (2008), <http://hls.harvard.edu/content/uploads/2008/07/guide-pro-bono.pdf>.

124. See Cummings & Rhode, *supra* note 47, at 2429-30.

125. Sandefur, *supra* note 77, at 102.

individual lawyers to pursue pro bono work. Personal recognition could also serve as incentive for law firms to strive harder to grow their number of pro bono lawyers. Singling out this type of work will allow good pro bono lawyers to shine within the legal community and motivate the ones who work at PBF firms but have not yet practiced any pro bono.

Finally, mandatory implementation of service-evaluation systems for all PBF members could contribute to an improvement of the services offered in the future. As of the time of the survey, only 53.1% evaluate pro bono services, while 54.2% of those evaluations measure client satisfaction. When firms skip this step, they are ignoring an important source of information that can help them turn their pro bono practices around to better satisfy client needs.¹²⁶

Relocating the Pro Bono Intern

In its short existence, the Pro Bono Internship program has allowed interns to play a fundamental role in the processing of pro bono cases. Half of the surveyed firms in the program heavily rely on intern participation in the selection and processing of cases.¹²⁷ Interns should be responsible for auxiliary tasks in pro bono case management, not the more central ones. They should act as important assistants, and in all cases as strong promoters of pro bono work. Still, lawyers should handle the actual processing of the case. This does not mean lawyers cannot receive substantial assistance from pro bono interns, but rather that the latter should not be left on their own to decide strategies, write important briefs, or answer to the client.

If the promise of providing the same quality of services to pro bono clients and paying customers is to be achieved,¹²⁸ the development of pro bono cases must not depend on student interns. There must be appropriate and sufficient supervision of interns' tasks. Law schools that place students in the internship program should also play a stronger role in supervision, not only of their students, but of the pro bono work the students carry out in each organization. Controls from educational organizations can also serve to eliminate bad practices in law firms and help the proliferation of good ones.¹²⁹

Interns could evaluate the organizations that they worked in after each internship, so law firms can have some feedback that allows them to straighten out their course regarding unhealthy pro bono practices.

126. See Cummings & Rhode, *supra* note 47, at 2394-99.

127. Survey carried out by the author of FPB members (on file with author).

128. Cf. *Las Obligaciones Sociales de los Abogados*, *supra* note 18, at 54.

129. See Rhode, *supra* note 113, at 421-22.

There is not enough data to allow broad conclusions to be drawn regarding the entire Pro Bono Internship program, but any practices that involve strong reliance on the intern to process pro bono tasks should be eliminated.

CONCLUSIONS

If pro bono work can bring about positive changes within the legal profession, it should persist, even if it has not yet achieved the number of clients served that perhaps it should. Nevertheless, letting pro bono advance and expand within the legal community without it having any real effect upon the realization of equal access to justice would perpetuate the status quo of insufficient work obscured by powerful discursive imagery.¹³⁰ Lawyers, and especially law firms, think they are helping a great deal, when the real change they are effecting is less than minimal. When this happens, the energy that these professionals are willing to share to make a difference in other people's lives is squandered.

The answer, though, does not purely rely on lawyers or law firms but rather needs to bring about change from within every institution that deals with or affects the legal profession. Legislators have an important challenge of rearranging priorities for legal aid and the way the law reflects them. Without substantial changes in coverage areas for ULACs and even public defenders, a large proportion of first-necessity cases will be left almost exclusively in the hands of pro bono attorneys and firms.

Regulatory gaps are noticeable not only in the law, but also in how the disciplinary duties of lawyers are enforced by Colombia's Supreme Judicial Council. The disciplinary body of lawyers has done very little—if anything—to remind legal professionals of their social responsibilities.¹³¹ Even when an issue regarding pro bono counsel is put forward, this disciplinary body has not yet implemented an effective way to reward good practices and sanction bad ones.¹³²

Universities in general, and law schools in particular, must focus their efforts using three main approaches. First, to help their legal aid strategies to target those areas of law that are first-necessity, but that

130. "[T]he failure to confront pro bono's limitations risks privileging professional interests over concerns of social justice—promoting the image of equal access without the reality." Cummings, *supra* note 27, at 149.

131. See VILLEGAS & BEDOYA, *supra* note 9 (for a full discussion of the legal profession and professional rules of Colombia).

132. See Consejo Superior de la Judicatura [Supreme Judicial Council], agosto 5, 2016, No. 11001110200020160077601 (Colom.).

are not being handled by their students. Specific outreach programs in under-resourced communities can help in this task.¹³³ Second, universities should transform legal ethics courses into an effective channel for instructing students on the social responsibilities of lawyers. It would perhaps be effective to try ethics modules within the specific areas that need targeting, such as family, employment, criminal, procedural, and constitutional law, instead of straight ethics courses that more often than not digress into philosophical discussions. The third, and very obvious one, is to teach students about pro bono as a concrete expression of their duties. Procedural and constitutional law professors should teach students about the importance of this work, and how it should be a feature they seek in any organization they aspire to enter once they graduate.¹³⁴

The professional bar, even with its very private nature in the Colombian legal system, can bring about changes if it creates efforts that applaud lawyers who accomplish the most important pro bono work or who develop best practices.

Changes in pro bono attitudes and practices probably will not be seen immediately, and unattended legal needs cannot wait. Recognizing the limitations of the Colombian Pro Bono system is important to effect real change. The study of other models that might complement the existing one is fundamental. The analysis of a partially salaried model,¹³⁵ where lawyers are hired and paid to carry out pro bono work, could help increase the participation rate for these cases. Not only could government agencies hire these personnel, but law firms, law schools or even bar associations could look into it.

The creation of a partially salaried model would leave pro bono efforts in place but add another outlet to increase the service rates. The coexistence of both systems is important, especially since the salaried lawyers could help prevent or overcome positional conflicts. In those areas of law where lawyers will not take cases that could risk hurting their paying clients in any way, even if not directly, another type of assistance must be provided due to the class and privilege elements that

133. Recent efforts between the PBF and the Legal Aid Clinic at the University of Los Andes have been made to reach out to specific communities. Lawyer-members of the PBF like carrying out informational exercises because this type of social aid requires little preparation and the investment of only a few days. This interest should be fully harnessed by the Foundation in conjunction with University-Based Clinics. Samper, *supra* note 44.

134. See generally LAPP & SHABECOFF, *supra* note 125 (detailing the importance of pro bono work, pro bono trends, and volunteer opportunities available).

135. See Sandefur, *supra* note 77, at 80-83.

typically distance law firms from the problems of the low-income population.¹³⁶

Finally, academia must start to think about these problems and offer solutions and strategies that respond to our specific legal system. Some of the research topics that remain untouched are: pro bono work in the regions (a decentralized expression of pro bono); how to use pro bono efforts in legal education to promote access; what other expressions of pro bono, perhaps informal ones, exist and work outside of the PBF; and the possibility of rotation programs in law firms that send lawyers to be trained in pro bono work by state or other types of institutions.¹³⁷ These are only some of the topics that could help the information-seeking task that is needed if pro bono is to meet its purpose of furthering equal access to justice in Colombia.

A fundamental task that must not be abandoned by policy researchers is the updating of comprehensive data tools such as the NSULN. As social, economic, and political changes settle in Colombia, so will the unmet legal needs of the low-income population. The possibility of entering a post-conflict period could have enormous consequences on the rearranging of legal service priorities. Without a reliable way to discover and quantify these needs, there is no way to offer services to match what is actually needed.

The efforts made by pro bono lawyers in assisting the under-resourced population in materializing its right to access justice is one of the most important ways the legal profession can help reduce social and economic inequalities in one of the most unequal countries in the world. These efforts can also provoke structural change within the legal profession and its relation to the community it serves by bringing social elites closer to poverty in all its aspects and dimensions.

Perhaps only nine years have passed since the creation of the PBF, the first institutionalized expression of pro bono work in Colombia, and substantial changes in the legal profession cannot be expected already. When the beginner mandarins occupy important places in their respective law firms, state institutions, and bar associations, it is likely that pro bono will come closer to serving its purpose. Perhaps that is the

136. "A system that depends on private lawyers is ultimately beholden to their interest. This means not just that private lawyers will avoid categories of cases that threaten client interests, but also that they will take on pro bono cases for institutional reasons that are disconnected from the interests of the poor and underserved—and often contrary to them." Cummings, *supra* note 27, at 147; see Sandefur, *supra* note 77, at 104-05.

137. "Many firms have developed rotation models, sometimes called externships or fellowships, that lend an associate for a period of weeks or months to community non-profit group or legal services provider." LAPP & SHABECOFF, *supra* note 125, at 11.

best bet judicial public policy architects can make: a bet on the new generation of lawyers being better than the one that came before it.

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