


7-2016

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Recommended Citation

Barasch, Esq., Amy, "Pro Pro Bono: Volunteer Lawyers Are an Essential Part of Access to Civil Justice" (2016). *Impact Center for Public Interest Law*. Book 7.

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IMPACT

**COLLECTED
ESSAYS ON
EXPANDING
ACCESS TO
JUSTICE**



Pro Pro Bono: Volunteer Lawyers Are an Essential Part of Access to Civil Justice

Amy Barasch, Esq.¹

If access to justice is achieved through meaningful participation in the courts, then those of us who are officers of the court have a lot of work to do. By most accounts, some 80 percent of low-income litigants in our civil courts proceed without representation, and their legal outcomes suffer as a consequence.² Not only do litigants face great harm – such as the loss of children, liberty and/or housing-- but they learn that the courts are not a place of justice for all. It should be no surprise then that many low-income people eschew the courts when they have legal problems. The more our court system loses the trust of its citizens the less well it functions. In New York City, a place with more lawyers *per capita* than most, it is essential that the private bar's contribution of pro bono services be leveraged to its full potential as part of the solution to closing the gap in access to justice. The key is in recognizing how to match the available talent to the need. If pro bono power is harnessed strategically it has the capacity not only to reduce the gap in access to justice, but to transform the public support for and understanding of the importance of access to civil legal services overall. In this essay I reflect on the ongoing gap in legal services for low-income civil litigants, and illustrate how the needs of the private sector can be matched with the needs of civil litigants in order to help individuals and the civil legal system as a whole.

I. The Persistent Need for Civil Legal Services

There is no doubt that we are failing as a community in our provision of legal support to low-income litigants. Litigants need attorneys to protect their rights, and ensure that they fully understand the substantive and procedural law that applies to them. More and more research is being conducted to show how representation can have a dramatically positive effect for litigants. That positive effect goes beyond an improved case outcome, and can include improved health, economic security, and physical safety.³ The Legal Services Corporation (LSC) has been persistently vocal and convincing about the need for additional funding for legal services. The LSC has anticipated that to meet the need of those eligible for free legal services, the federal share

¹ Amy Barasch, Esq., is the Executive Director of Her Justice. I would like to thank Rachel Braunstein, Senior Policy Attorney at Her Justice for her careful review of this paper, as well as the rest of the Her Justice staff without whose work none of the successes described would be possible.

² See, e.g., TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1-2 (2013), available at http://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceReport_2013.pdf; LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 1 (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf; A.B.A., LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS (1994), available at <http://www.americanbar.org/content/dam/aba/migrated/legalervices/downloads/sclaid/legalneedstudy.authcheckdam.pdf>. For a discussion of studies of need, see Herbert M. Kritzer, *Examining the Real Demand for Legal Services*, 37 FORDHAM URB. L. J. 255 (2010).

³ See, e.g., JENNIFER S. ROSENBERG & DENISE A. GRAB, SUPPORTING SURVIVORS: THE ECONOMIC BENEFITS OF PROVIDING CIVIL LEGAL ASSISTANCE TO SURVIVORS OF DOMESTIC VIOLENCE (Institute for Policy Integrity 2015), available at <http://policyintegrity.org/documents/SupportingSurvivors.pdf>; Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 FORDHAM URB. L. J. 37 (2010); David A. Lash, *Finding the Next Big Idea to Fight Poverty*, DIALOGUE, Vol. 15, Issue 3 (Winter 2012), http://www.americanbar.org/content/newsletter/publications/dialogue_home/dialogue_archive/ls_dial_wi12_probono1.html; Rebecca Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact*, 80 AM. SOC. REV. 909 (2015); Russell Engler, *When Does Representation Matter?*, in BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA 71 (Samuel Estreicher & Joy Radice, eds., 2016).

of funding must grow five-fold.⁴ Given political realities, such an increase is unlikely, which is why all tools must be used, including the targeted use of pro bono services.⁵

Despite general consensus about the need to include pro bono in the access to civil justice solution,⁶ from the perspective of a legal services organization, the management of pro bono help can feel like more of a burden than a benefit. Matching a bright attorney who has never set foot in a courtroom with a poor litigant who is facing eviction or the loss of custody of a child is no easy task. Just as firms have institutionalized the coordination of their pro bono efforts through the creation of pro bono counsel positions, legal services offices have been creating their own pro bono coordinator positions as well. These positions are necessary because successful management of pro bono is labor-intensive. Firms must ensure supervision, track cases, generate institutional support, and promote the commitment to pro bono at all levels of the firm. Nonprofits must adequately train and mentor volunteer attorneys, and assist them with unfamiliar court procedures, client interviewing skills and negotiation tactics. Most volunteer attorneys have never had the opportunity to manage a case on their own, and the bulk of the mentoring is focusing on these “soft” lawyering skills that distinguish a real litigator from a person with a J.D. degree. These positions – the firm pro bono counsel and the nonprofit pro bono coordinator – work together to massage the surfeit of legal talent to fit the yawning chasm of legal need. For those of us working in “pro bono first” organizations this kind of triaging, and matching service to need, is our bread and butter.

II. The Approach of One “Pro Bono First” Organization

Legal services offices are like free law firms for the poor. When someone comes to a legal services office, they want one of the office’s attorneys to represent them in their legal matter(s). A small percentage of the cases are identified by the legal services organization as appropriate to be placed with a volunteer attorney, and are handled pro bono. Pro bono placement represents approximately 10 percent of a typical legal services office’s caseload.⁷ In contrast, what I call a “Pro Bono First” organization is one that provides the majority of its legal assistance through the coordination of volunteer attorneys. While LSC-funded organizations are required to spend 12.5 percent of their budget on pro bono activities, for us it’s over 75 percent. We spend the majority of our effort focused on how best to mentor and train volunteers, as well as how to match legal need to talent, all to give clients the best legal assistance we can offer. If a “match” cannot be made, we handle the case in-house.

Since September of 2014 I have been the Executive Director of Her Justice, a pro bono first organization that focuses its efforts on ensuring that poor women in New York City receive legal services in the areas of family, divorce, and immigration law. There are many other such pro bono first organizations locally, such as Volunteers of Legal Service, New York Lawyers for the Public Interest, Brooklyn Bar Association Volunteer Lawyers Project, and Partners for Women

⁴ LEGAL SERVS. CORP., *supra* note 2, at 3.

⁵ The Legal Services Corporation’s Pro Bono Task Force identifies consistent use of pro bono as one goal in addressing the access to justice gap as well. See LEGAL SERVS. CORP., REPORT OF THE PRO BONO TASK FORCE (2012); see also 45 C.F.R. § 1614.1(a) (“Except as provided hereafter, a recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12.5%) of the recipient’s LSC annualized basic field award to the involvement of private attorneys in such delivery of legal services ...”).

⁶ See, e.g., Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know – and Should Know – About American Pro Bono*, 7 HARV. L. & POL’Y REV. 83 (2013).

⁷ See, e.g., LEGAL SERVS. CORP., 2014 LEGAL SERVICES CORPORATION BY THE NUMBERS 1, 27 (2015), available at <http://www.lsc.gov/sites/default/files/attach/2015/08/LSC2014FactBook.pdf>.

and Justice (New Jersey), to name just a few. At Her Justice, we coordinate a large volume of volunteer legal services to low-income women (over 3,000 clients receive assistance annually), and specialize in some of the hardest to place cases – litigated family and matrimonial cases. Our staff attorneys are expert lawyers in their fields, and due to their work with us, are also expert trainers and mentors.

My examples of the pro bono first model are taken from the practice at Her Justice which is the one I know best, but elements of the approach are probably used at most similarly-situated organizations. When clients call Her Justice, it's usually because they have exhausted all other options. They are facing a court case without representation because no one was available for them, so they check to see if we can find them a volunteer lawyer. Sometimes, we meet them at a community office of a nonprofit or a Family Justice Center, and they know they have a legal issue, but are not sure what to do next. Our attorneys balance the client's need and situation with the menu of options we have to offer. That spectrum runs from legal information, through advice and counsel, brief services, limited scope representation to full representation by a volunteer attorney or one of our staff attorneys. By ensuring that the solution matches the needs, the limited legal resources we have go farther. Her Justice serves clients from all five of the New York City boroughs, clients are typically at or below 200 percent of poverty, 71 percent have children, and 85 percent are victims of domestic violence.

A “spectrums” approach is integral to how we provide pro bono services to low-income litigants. Volunteer lawyers from private law firms are often well intentioned and smart, but are not the right resource for all cases. Rather than conducting intake for our staff attorneys, and then selecting cases to place with big law attorneys, we do intake *assuming* placement with the private bar. Since we know those resources are limited by elements more nuanced than the type of law being addressed, we open a wide net for intake, and offer advice and counsel or brief services to clients who are not ready for trial, would not benefit from trial, or would do better with immediate advice than waiting for us to match them with a lawyer.⁸ All other cases are brought in for potential placement, and those that we cannot place, we represent in-house. Doing this kind of triage has made us comfortable talking about some of the issues on the forefront of discussions about Access to Justice, like unbundled legal services and the role of advice and counsel versus full representation.

For traditional direct legal services, full representation by a staff attorney is the goal, and anything short of that is “less than.” These goals come from the traditional lawyer's belief that only full representation provides adequate client protection, and that only lawyers can provide the services needed by individuals with legal disputes; concerns that anything short of full representation will enable a resources-starved system to short-change low-income clients; and funding designs that mandate a certain number of full representation cases. However, despite the goal of full representation, over half⁹ of all clients who contact legal services must either be turned away altogether for lack of capacity, or receive one-time advice and counsel since the attorney must move on to identify more clients who might be able to obtain full representation. Our pro bono first model recognizes that clients have a spectrum of legal needs, and that in many cases not only is some information better than none, it may be exactly the right amount of information. Since not all

⁸ Similarly, at legal services organizations, about 60 percent of intakes close out with brief services. See, e.g., 2014 LSC BY THE NUMBERS at 16, *supra* note 7.

⁹ See *The Unmet Need for Legal Aid*, LEGAL SERVS. CORP., <http://www.lsc.gov/what-legal-aid/unmet-need-legal-aid> (last visited May 15, 2016).

clients make good fits for volunteer attorneys (their court dates are too soon, their legal issues too complex, or ironically, their legal issue so straightforward that it does not provide enough experience to justify the firm placement process), we are constantly trying to identify clients who would achieve their goals with less than full representation. Rather than turning them away, we can offer “longer-term” brief services – such as a series of calls to review papers – because our staff attorneys can handle that while the lengthier matters go through the placement process. On occasion, if an urgent case is particularly compelling and the client has been unable to obtain representation elsewhere, we will find a way to take the case in-house – with our attorneys or law firm externs¹⁰ – rather than add the caller to yet another waitlist. Since full representation for us is achieved only through a careful matching of client to private attorney, we are careful as to how we allocate that resource, and make sure we have plenty of other alternatives so that no one contacting us for help leaves with nothing, but also so that they don’t leave with more than they need.

I receive regular anecdotal reports about the successes of our model – the clients who were armed with papers we prepared and prevailed in court on their own, or a volunteer attorney who helped a client’s child support payments grow from \$50/month to \$950/month. The former – pro se support – is one of the many services our staff attorneys provide. The latter, full representation on a litigated support matter, happens only because of the resources and time a private attorney can direct towards the kind of case most litigants face alone. There is no right to a lawyer for child support cases in New York, and most legal services offices are too swamped to take them. The private bar, however, can litigate these matters as they would any other, resulting in significant poverty-averting awards for our clients. This solution should not be a Band-Aid, but a reliable and logical piece of the access to justice practice.

III. A Few Examples of Matching Firm Needs to Client Needs

The following examples are hardly definitive, but are some illustrative examples from an organization that provides pro bono support as a primary focus. Many of us at Her Justice have worked on both sides of the firm/nonprofit relationship, and we are charting a specific role for organizations that focus on making the pro bono connection. I see it as the role of organizations like mine to improve, measure, and explain how best to support pro bono work so that we take advantage of untapped legal resources without putting additional burdens on legal services providers. These examples highlight what the private sector needs in order to provide volunteer services, and how one pro bono first organization works to meet that need in a way that best meets the needs of clients.

A. Complex Litigation Is the Toughest Match, But the Most Important

Complex litigation is a tough fit for volunteer attorneys. These cases can be drawn-out, unpredictable, and emotionally fraught – all of the qualities that make them intimidating or of concern for volunteers. However for historically disempowered litigants, like the poor women with whom we work at Her Justice, having an attorney is essential to protect their rights. It can also correct for any power imbalance that is inherent in litigation, often exacerbated by the presence of unrepresented parties. Especially if intimate partner abuse is involved, it is not only ludicrous but unsafe to expect a litigant to proceed alone. The benefit of representation in these

¹⁰ Four law firms place mid-level associates with us for 4 – 6 months on a full-time basis. Those associates receive intensive supervision, and handle a full caseload of primarily litigated matters.

cases is the protection of vital rights, but also a complete shift in the terms of negotiation in the case, particularly important when so few cases go to trial.

We are one of the only organizations in town that provide free representation for low-income women in litigated divorce proceedings, for example. While people rarely think “social justice” when they hear divorce, our volunteer attorneys quickly learn that without their help, our poor often abused clients face destitution, loss of custody, and litigation that can last for years further draining them of resources and independence. Without a formal divorce, parties cannot take next steps with important interests in property and pensions; and especially in abuse cases, without court orders, victims of partner violence are challenged to ensure a safe situation for managing custody, visitation and child support. Many low-income victims of partner violence choose never to file for divorce out of fear – because of drawn-out litigation with the abuser and because of an inability to anticipate the economic outcome. That decision often leaves funds that they deserve – like child support – out of reach. Families often fall apart. When they do, the law can offer some protection.

In approximately half of the litigated divorce cases for which we provide representation, the parties discuss the possibility of imputing income to the moneyed spouse for determining support payments. Although our clients are poor, their partners regularly hide or under-value assets like businesses and off-the-books income. Many clients will tell us that they have no documents that prove their partner’s income, but they know about purchases made, lifestyle choices, and other actions that imply some stream of income. For those clients, child support calculated on declared income alone would seriously undervalue their partner’s ability to support their child. The court provides for a litigant’s ability to impute income to their partner, if they can provide evidence of expenses that show the income is higher than stated. Despite its availability as a tool, a concept like imputation is not one that unrepresented litigants would likely come to on their own. Alone, our clients would go forward on W-2’s or statements of net worth with no ability to challenge the statements of their partner. We find that once the specter of imputation is raised, in other words when the adverse party realizes that we will be able to show the actual income available, a favorable settlement is often close behind. Recently, through the assistance of volunteer investigators from a global financial services firm, we were able to show the income generated by a laundromat owned by the adverse party. He had declared his income at \$7,000 annually. The investigator observed the business, identifying the number of customers and loads of laundry washed, compared this with other local businesses, and issued a report to the court. This kind of investigation is at a level of expertise rarely applied to family court litigation. In this case, rather than the \$25/month minimum child support award that our client would have received based on declared income, the client received an award of over \$500/month.

Our volunteer attorneys regularly achieve substantially increased financial awards for clients, awards that necessitate substantial discovery and expert analysis – resources that are not as uniformly available to legal services attorneys for this type of case. There is no question that the playing field is leveled in a powerful way when clients have such a high level of professional support behind them.

Connecting a volunteer attorney with this kind of case is one of our biggest challenges, and our greatest satisfaction. Because we know the need is so great, we try to mitigate the private attorneys’ hesitation. The availability of volunteer experts is a great help, as is in-house support for clients’ non-legal needs, and of course ongoing trainings and mentoring by our expert staff attorneys. The opportunity to appear in trial court; put on expert witnesses; conduct depositions; hold settlement

conferences; and change a client's life for the better are all powerful incentives. The challenge of the case is also its opportunity for the volunteer: to gain real legal skills, know you're having a profound impact on the outcome of a case, and get the client contact it can take years to access at a firm. If one firm takes a few of these cases, they build an in-house expertise so that they require less mentoring going forward, and associates begin to see them as a litigation "rite of passage."

B. Clinics Can Meet Pro Bono Attorneys' Need for Predictability

While "placing" litigated cases is the bulk of our work, we are constantly developing alternative ways to connect pro bono attorneys to low-income litigants. The typical pro bono attorney is a mid-level associate. They are working long hours, at the behest of partners, often without great control over their schedules. In order to balance volunteer work with paying work, predictability is a priority for them. Litigation can be difficult to place with these attorneys, since courts like housing and family court are anything but predictable, and the personal and emotional nature of the cases often causes them to move in unexpected directions. We typically assign two attorneys to any case, to protect against time management conflicts, but even then, as described above, they are the most resource-intensive matters.

Legal information or pro se clinics, on the other hand, are a successful way to engage first time volunteer attorneys while offering a legal service that meets the immediate needs of some clients. At a minimum, pro bono attorneys will provide concrete assistance to a certain number of people at any of these clinics. In addition, almost any legal information clinic results in some individuals being identified as needing full representation. More broadly, these clinics serve as "stealth" community legal education as clients go back and tell family and friends what they have learned, usually passing along our phone number in the process! We sometimes call these clinics "gateway" pro bono opportunities¹¹ – often the volunteer attorney who helped someone with a clinic matter is then interested in continuing his or her assistance for other legal matters that arise.

We typically design these as single issues clinics – such as uncontested divorce or naturalization clinics -- as opposed to general "walk in" legal advice clinics. They can be structured either as pro se clinics,¹² or full representation clinics, depending upon the balance between clients' needs and attorney comfort and liability coverage. Some legal issues are resolved "on the papers" – in other words without a court appearance. When we structure these clinics for clients with volunteer attorneys, private attorneys are supported by our legal staff (attorneys and paralegals) so clients get the full attention of a lawyer. The lawyers bring with them law firm support, which can simplify roadblocks such as affording or achieving service of process; paying filing fees; and accessing agency records and fingerprints. For example, when Deferred Action for Parents of Americans and Lawful Permanent Residents¹³ (DAPA) had just been announced by the President (and when we still thought it would be an achievable remedy) Her Justice reviewed our client files for people who had not been eligible for immigration remedies when we met them, but who we thought would be eligible for DAPA. We invited them to a clinic at Simpson Thacher. We conducted

¹¹ Thanks to Janice MacAvoy, Pro Bono Counsel at Fried Frank Harris Shriver & Jacobson LLP for the phrase.

¹² Research thus far indicates that at least some litigants can effectively represent themselves. See, e.g., D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L. J. 2118 (2012); Ralph C. Cavanagh & Deborah L. Rhode, Project, *The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis*, 86 YALE L. J. 104 (1976).

¹³ Current status on the DAPA remedy is provided at *Executive Actions on Immigration*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/immigrationaction> (last visited on May 15, 2016).

a two-hour training on DAPA for Simpson volunteer attorneys, and held the DAPA clinic the next week. Both sessions were held in the Simpson offices, so it was easy for attorneys to attend at the end of, or as a break in their day. Simpson is also very easy to access by public transportation for clients, and together we were able to provide food and childcare. We ensured that a fingerprinting machine was available, so many of the required documents could be assembled on site; with the help of Simpson's photocopiers, formal requests of the FBI and other agencies were made on the spot. In two hours, 20 clients completed the preparation for DAPA submission. The attorneys gained Continuing Legal Education (CLE) credit hours,¹⁴ clients gained access to top-notch legal advice and practical help, and Her Justice was able to provide even more holistic services to its clients.

These clinics can grow even more as business development opportunities by partnering law firms with clients. Attorneys at corporate counsels' offices often are interested in volunteering, but have limited time, and may lack liability insurance. When Skadden, Arps, Slate, Meagher & Flom and Credit Suisse worked together on a clinic with us, they enhanced their working relationship, increased the number of available attorneys, and served more clients. The nonprofit must spend time and energy identifying clients, training attorneys, and managing operations the day of the clinic. However, the effort results both in legal help and substantial in kind support for clients.

C. Limited Scope Representation Can Offer Pro Bono Attorneys Appealing Time-Limited Commitments

The combination of court delays and pro se litigants, in what are already emotionally fraught cases, can result in cases that last many months or years. Cases of that duration are challenging for pro bono attorneys because they do not control their own schedules such that they can ensure availability that far into the future. In addition, there is a great deal of mobility in private law, so often the attorney of record on year one is no longer with the firm in year three. We can never know for certain how long a case will take, so setting expectations early is important, but assessing ways to offer shorter commitments is another terrific way to match pro bono attorneys to what they are best suited to do.

The clinic model described above is one approach to limit the attorneys' time commitment. But many lawyers are eager to take on a case, not just provide advice. For that situation, limited scope representation offers many possibilities. Limited scope representation can take many forms and has historically raised some concerns, but it provides an important opportunity to match legal resource to need.¹⁵

One area in which we addressed this issue recently was with regard to U Visas. U visas offer the possibility of work authorization for foreign-born individuals who participate in criminal investigation or prosecution. They are often appealing remedies for victims of intimate partner violence who have called the police for protection. Her Justice is one of the major providers of this representation in New York City because these cases have historically been very popular with

¹⁴ While many private attorneys have access to CLE programs through their firm, it is an added advantage to achieve pro bono hours and CLE hours simultaneously.

¹⁵ See, e.g., ABA STANDING COMMITTEE ON PRO BONO AND PUBLIC SERV., SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS vii (2013), available at http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lb_pb_Supporting_Justice_III_final.authcheckdam.pdf (reporting that 59 percent of attorneys surveyed indicated that limited scope pro bono opportunities would encourage their participation).

volunteer attorneys. No court appearances are necessary; the first phase of representation lasts under two years; and at the end of the representation you have an enormously thankful and happy client. Recently, the federal government announced that these remedies would be delayed even further since there is a cap on the number issued each year, and right now there is a large backlog. Upon hearing that cases could now take as long as 9 years, we discovered that some firms were beginning to balk at trying to continue supporting a case for so long, especially when it would be essentially inactive for 7 of those years. In partnership with Fried Frank Harris Shriver & Jacobson LLP we created a solution. Fried Frank would sign a limited retainer for the initial phase of the representation. After that phase, Her Justice would manage the client relationship with a Board of Immigration Appeals-accredited advocate. Once the case came back ready for regularization of status (the last step) we would reach back out to Fried Frank to see if they wanted to complete the case. If not, we would place it with another law firm. In essence, we are offering the firm two time-limited cases rather than one 9-year case. The firms have responded very favorably to this solution; instead of wondering if they would have to stop taking on U visas entirely, they are now eager to continue the practice, comforted that it will be manageable.

D. An Emergency Staff Attorney Could Address the Fact that Pro Bono Attorneys Cannot Respond Quickly

Another possible benefit of a limited scope approach could mitigate the urgency in many of our cases. As mentioned above, many times by the time a client reaches us they have an imminent court date, and we struggle to assign a private attorney quickly enough. Since we are one of very few providers that offer representation in litigated divorces, these cases in particular come to us at the last minute, after the clients have exhausted all other resources, with court appearances looming. Pro bono placement is a challenge in urgent situations because matching takes time and firms must conduct conflict checks and obtain approval for a litigated matter. On occasion we will take on a case like this in-house, but with our attorneys' high mentoring load, capacity is limited. Recently we've charted a solution; if one of our attorneys could appear only for the first court appearance, they could protect the client's rights and request any necessary interim relief in order to stabilize the situation. Then we would have the time to place the case with an appropriate volunteer attorney, keeping our own caseloads to a reasonable level. We hope to pilot this approach with an interested judge, but given the desperate need for representation on divorce matters, we think this use of limited scope representation might make it possible for us to offer full representation to more divorce clients.

E. Firms' Rich Resources Position Them to Be Strong Partners in Systemic Change

Law firms that handle individual pro bono are often very interested in bringing actions that arise out of that work. Law firms can provide representation on cases where LSC-funded programs are barred due to their funding source obligations.¹⁶ They are also a terrific resource for the creation of issue briefs, as well as original research that may be beyond the resource capacity of legal services organizations. A good policy paper, backed up by the individual cases handled by nonprofits, can make changes in the system that will impact thousands of litigants to come. Much

¹⁶ Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 *FORDHAM L. REV.* 2357, 2368 (2010).

of the disconnect between pro bono attorneys and the gap in legal services comes from a lack of knowledge of the practice of trial courts. Private attorneys are well equipped to master the law and the facts, but in many courts that is less important than understanding practice on the ground. With issue papers and systems advocacy, private attorneys are in their element. They can direct their substantial resources and talent to making persuasive arguments, and can do so freed from any regular role in the system they might be challenging. Partnerships with the private bar can be a terrific team approach to making social change.¹⁷

IV. The Transformative Potential of Pro Bono Work

Not only can pro bono service help to fill a desperate need for legal services, it also has an under-recognized ripple effect throughout the legal profession. As we struggle over the nuts and bolts of delivering services to poor people, while navigating the restrictions placed on volunteerism by firms, we often forget the transformative nature of increased pro bono activity for the profession as a whole. We have all heard volunteer attorneys say that the case they took reminded them why they went to law school, and is the one they will always remember. Rather than being cynical about how one poor person's case enables a volunteer to feel better about a lifelong career doing big law transactional work, we should remember that the volunteer will be sharing with professional colleagues the concerns of the poor over cocktails and networking events for years to come. If we are lucky, they will be directing some of their charitable giving to legal services organizations, and they will be more likely to listen intelligently to political analyses of social services decisions. In my agency, we were recently holding a meeting among current and former volunteers, and they all expressed a desire to get together with other "like-minded" attorneys. Rather than networking within their firm, or within big law, they want to network with the private lawyers who care about the public interest. If legal services and pro bono organizations promote that connection, we are growing a powerful base within the professional class that will continue to support access to justice for the poor, while being able to leverage their own substantial access to power. •

¹⁷ Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 *FORDHAM URB. L. J.* 1227, 1250 (2014).